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אגוד הרבנים המתקדמים

# CENTRAL CONFERENCE OF AMERICAN RABBIS

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Office of the Executive Vice President

28 March 1980

TO THE EXECUTIVE BOARD

Following is the agenda of the coming Board meeting which will convene at

9:30AM Tuesday 29 April at  
838 Fifth Avenue  
Ending mid-afternoon Wednesday  
We will meet Tuesday night

## TUESDAY MORNING

Placement - Jack Stern and Stanley Dreyfus  
NCRCR - Richard Steinbrink and Ted Broido  
Ethics and Rabbinic Relationships - Robert Kahn

## TUESDAY AFTERNOON

Committee on Overseas Jewry - Steve Goldrich  
Women Rabbis - Laura Geller  
Possible Salary Survey - Elliot Stevens  
Psychodynamics Project  
Reestablishment of Interreligious Commission

## TUESDAY EVENING

Dinner  
Conversion Report  
Review of Divrei Gerim  
Resolution on Patrilineal Descent  
Other Resolutions  
Falashas

## WEDNESDAY MORNING

Admissions - Stanley Dreyfus  
NY Board of Rabbis Policy  
Treasurer - Meyer Heller  
Finance - Sylvan Schwartzman

## WEDNESDAY AFTERNOON

Umbrella Affiliations - Herman Schaalman  
Executive Board Alternate Policy  
Time and Place: 1984, 1985, Fall Board

Enclosed are some materials relevant to the meeting. We may send additions later.

We have reserved a block of rooms at the Barbizon Plaza, Central Park South and 7th Ave. Please be sure to send in the enclosed attendance card. All good wishes for a Happy Pesach.

*Joe*

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# A Dynamic Halakhah: Principles and Procedures of Jewish Law

ROBERT GORDIS

NO SERIOUS DISCUSSION ON THE NATURE of Judaism or of its experience in the past, its condition in the present, or its prospects for the future can proceed very far without the introduction of the term Halakhah. The word, derived from the Hebrew root *halakh*, "go, walk," means "the Way" and refers to the body of Jewish law and practice by which the Jewish people has been governed during its long pilgrimage through time.

Tradition found the origin of Halakhah in the written Torah of Moses, which required oral elucidation and interpretation. Halakhah became the central intellectual and spiritual enterprise of the Jewish people after the Babylonian Exile, with the arrival of Ezra the Sopher, "master of the book," in Palestine in the middle of the fifth century B.C.E. It continued to be cultivated by the Sopherim (fifth to the second centuries B.C.E.) and by their successors, the Pharisees (second century B.C.E.-70 C.E.). It assumed literary form in the Mishnah and the early Midrashim at the beginning of the third century C.E. The Mishnah, in turn, became the subject of detailed analysis and extensive interpretation in the Gemara, carried on by the Amoraim, "expounders," in Palestine and in Babylonia.

After the sixth century, the Mishnah and the Gemara, now constituting the Talmud, served as the basis for the activities of the Saboraim (6th-7th centuries C.E.) and the Geonim, the heads of the great Babylonian academies (7th-11th centuries C.E.). After the decline of the Babylonian center, a multiplicity of Jewish centers of settlement arose in North Africa, Spain, Provence, Italy, Germany and Poland. They created new forms in which the Halakhah continued to grow — legal treatises, commentaries, all-inclusive codes and Responsa by individual scholars. The latter have continued to augment the Halakhah until the present day.

A true understanding of the nature of the Halakhah and of the principles and procedures by which it grew is fundamental for comprehending the past history of Judaism, as well as its present and future.

## *Fundamental Principles*

A basic concept in traditional Judaism is the *authority of the Halakhah*. For several reasons this formulation is much to be preferred to the term "the supremacy of the Halakhah," which has the triumphalist ring of a battle waged against enemies. A less pragmatic difficulty with the latter

R. G.



phrase, but one of ultimately deeper significance, is that it connotes confrontation between the Halakhah and the world. This approach will be spelled out below, rests on a basic misunderstanding of the nature of Halakhah itself.

The past two centuries of brilliant and dedicated research in Jewish law, literature and life have demonstrated that the *Halakhah* has a history that reveals the dialectic of continuity and change at every given point. The researches in history and literature of Leopold Zunz, Nachman Krochmal, Solomon Judah Löb Rapoport, Samuel David Luzzatto, Heinrich Graetz and Harry A. Wolfson, as well as the studies in law and institutions of Zacharias Frankel, Abraham Geiger, Isaac Hirsch Weiss, Jacob Lauterbach, Solomon Schechter, Louis Ginzberg, Chaim Tchernowitz and Solomon Zeitlin, together with their fellows and successors in our own day, have supplied abundant evidence that the law of growth and development, which is universal throughout nature and society, applies to Judaism as well. The record is clear that Jewish law was never monolithic and unchanged in the past. There are, therefore, no grounds for decreeing that it must be motionless in the present and immovable in the future.

Jewish tradition is best compared to a flowing river which possesses a mainstream, but also side-currents and even cross-currents that affect the flow significantly. To be sure, it is not always easy to determine at every point which is the dominant and which is the secondary current. At the time that the issues were being debated, the Rabbinic sages were sure that the Sadducees were not in the mainstream of the tradition. But they had no such certainty at the time with regard to the controversies of Hillel and Shammai, Rabbi Akiba and Rabbi Ishmael, Rab and Samuel, Raba and Abaya. Even in retrospect, when we have the benefit of hindsight, it requires a high level of knowledge, insight and intellectual integrity to recognize the difference between the normative tradition and aberrant groups in Judaism, and to do justice to the contributions of both.

The dynamic of tradition, the method by which the Halakhah grows in the process of transmission, has been illumined and delineated by modern Jewish scholarship. When the tradition is alive and well, a process of interaction sets in. Each age receives a body of doctrine and law from the period preceding. This body of tradition from the past comes into contact with the conditions, problems and insights of the present. A complex interaction between past tradition and contemporary life now takes place. The spiritual and intellectual leadership in Judaism is called upon to evaluate these new elements, struggling to be admitted into the sanctuary of the tradition. Some aspects it will recognize as dangerous and ill-advised and will reject in toto. Others it will judge to be ethically sound, religiously true and pragmatically valuable, and these will be incorporated into the content of tradition. Many new phenomena, if not most, will be judged to contain both positive and negative elements. The former will be accepted in greater or lesser degree, often after being modified.



bring them into greater conformity with the spirit and the form of the tradition. To utilize the familiar but useful terminology of Hegel, past tradition constitutes the thesis, contemporary life is the antithesis, and the resultant of these two factors becomes the new synthesis. The synthesis of one age then becomes the thesis of the next; the newly formulated content of tradition becomes the point of departure for the next stage.

This is not to suggest even remotely that tradition is bound to surrender to "the spirit of the age." It is always free, indeed commanded, to examine the demands and insights of each generation and to accept, modify or reject them as it sees fit. But when the tradition is healthy or, more concretely, when its exemplars are true to their function, they will be sensitive to the age and respond to it. Often, if not generally, there will be sharp divergences of views as to the validity of these new factors and how the tradition should respond to them. Indeed, the issue may remain *in suspense* for some time. Ultimately, however, life is the determining factor and from its decision there is no appeal.

This dialectic process, that has operated throughout the history of Judaism and is the secret of its capacity to survive, can be documented in all areas — ritual, civil and criminal law, marriage and divorce. It is most evident in the great creative eras of Rabbinic Judaism — the Tannaitic and the Amoraic periods, that saw the creation of the Mishnah and the Talmud. With the advent of the Middle Ages came an increasing incidence of persecution, spoliation and harassment, not to speak of frequent expulsion and massacre. Inevitably, these mounting tragedies brought about a decline of creative vitality and a narrowing of perspective in all aspects of Judaism, Halakhah included. The Expulsion from Spain and Portugal, the Thirty Years War in Germany, the Chmielnicki massacres in Poland and the debacle of Shabbetai Zevi, the "false Messiah," that all but destroyed Jewish morale, brought about an ever increasing ghettoization of the spirit of the Jewish community. Medieval Jewish leadership necessarily made Jewish group survival, rather than the needs, interests and desires of the individual, their basic concern. The strength of their influence on the present state of the Halakhah can scarcely be exaggerated, since, for the bulk of East-European Jewry, the Middle Ages continued until the twentieth century.

From this paradigm of the dynamic of the Halakhah, an important theoretical and pragmatic conclusion emerges: *The Halakhah is not to be conceived of as being locked in mortal combat with the contemporary age, the demands of which are, therefore, to be resisted with every means at its disposal.* The Halakhah itself comprises both elements in the dialectic: continuity with the past and growth induced by the present. The evidence for the operation of this principle in the past and its significance for the future will be discussed below.



*Methods of the Halakhah*

The techniques of the Halakhah are significant not only for their sake. They reveal the openness of the tradition and the interplay of and life, and thus illumine the creative resolution of the tension between them. This characteristic enabled the Halakhah to survive and function successfully under such radically changing social, economic and political conditions as the Hellenistic-Roman world, the Christian church-state, Islamic polity, the feudal system, the early laissez-faire capitalist order, emergence of democracy and the welfare state, and, we profoundly believe, the as yet unknown social orders of the future.

The origins of the Oral Law are to be found in the Biblical period for, indeed, no written law can be functional without an oral law at its side. However, the Halakhah became the basic spiritual enterprise in Judaism with Ezra, of whom the Sages justly remark, "Ezra was worthy of having the Torah given through him had not Moses preceded him."<sup>1</sup> With his successors, the Sopherim, the two basic techniques of the Halakhah emerge.<sup>2</sup>

One method, that of *Midrash*, is deductive; the other, *Mishnah* *Halakhah*, is inductive. The Midrash method takes its point of departure from a minute study of the Biblical text, which it searches out and analyzes, in order to deduce implications for contemporary life. The Mishnah method, on the other hand, has its origin in a life-situation. When a problem or a legal case arises, the decision is reached by the accepted authorities on the basis of their religious and ethical perceptions. They then seek to relate to a Biblical text which becomes its formal source and validation.

While there is no iron curtain separating the two procedures and the same authorities, Sopheric and Tannaitic, participated in both methods, two distinct types of literature emerged. The deductive method is embodied principally in the Halakhic Midrashim, *Mekhilta*, *Sifra* and *Sifre*, which reached their present form early in the third century C.E. The inductive method is embodied in the Mishnah, compiled by Rabbi Judah Hanasi at about the same time.

Thereafter, the fortunes of the two techniques diverged radically. The method of Halakhic Midrash was virtually exhausted in the Tannaitic age and no significant Halakhic Midrashim emerged thereafter. The reason is not far to seek. While the Torah is, indeed, "longer than the earth in measure and broader than the sea,"<sup>3</sup> the legal passages in the Torah total only a few hundred verses in all. No matter how fruitful the text and ingenious the method of interpretation, there are limits which

1. B. Sanhedrin 21b.

2. Cf. *inter alios* J.Z. Lauterbach, *Midrash and Mishnah* (New York, 1916), pp. 61-64; J.N. Epstein, *Mebharot Lesifrut Hatannaim* (Jerusalem, 1957); L. Ginzberg, *Jewish Law and Lore* (Philadelphia, 1955), chap. 1.

3. Job 11:9.



changing conditions and new insights ultimately reached. The possibilities of Midrash are, therefore, inevitably limited by the parameters of the text.

The inductive method of Mishnah, on the other hand, which has its starting point in life-situations, is as unlimited as life itself, with each day creating configurations of men and circumstances. Hence, the Mishnah of Rabbi Judah Hanasi included only a portion, albeit the most significant one, of the material available to the redactor. Even the second compilation of Tannaitic material, the Tosefta, attributed to his contemporary, Rabbi Hiyya, did not exhaust this material. Hundreds of *Baraitot*, "external traditions," survived outside both collections as *disjecta membra* and have been preserved only because they were later cited in the Gemara.<sup>4</sup>

The entire later development of Halakhah followed the method of Mishnah rather than Midrash. Predominantly, the Halakhah began with life, which it sought to relate to the body of accumulated tradition. This is true of the Gemara both of Palestine and Babylonia. It is, of course, the method par excellence of the Rabbinic *Responsa* which have become a mighty stream, showing no signs of diminution even today after a millennium and a half.

The availability of this technique of Mishnah, deriving its impetus from life, created the potential for a Halakhah that would be appropriate to all times and conditions. This potential was actualized because in each generation there were scholars possessing the insight, compassion and courage to apply the Halakhah of the past to the problems of the present.

#### *Basic Factors in the Growth of Halakhah*

In essence, there were two factors making for growth in the Halakhah — one *external* and the second *internal*. The first was the *necessity to respond to new external conditions — social, economic, political, or cultural* — that posed a challenge or even a threat to accepted religious and ethical values. The second was the need to give recognition to *new ethical insights and attitudes* and to embody them in the life of the people, even if there was no change in objective conditions. The operation of both factors may be illustrated in all areas of life. Moreover, these factors functioned actively in every period of Jewish history — ancient, medieval and modern.

#### *Responsiveness to New Conditions*

The impact of *new social conditions* on the Halakhah is clearly evident in the pages of the Mishnah. Observers of the contemporary scene in our day are wont to lament the erosion of ethical standards and the corruption of human behavior in the life of society as a whole and of its individual

4. They were collected and arranged in a series of ten volumes by M. Higger, *Ozar Halbaraitot* (New York, 1938-1948).



members. The Rabbis of the Greco-Roman Era were confronted by a similar breakdown of accepted norms of behavior. In several striking cases, they responded to the challenge by abrogating ancient laws laid down in the Torah which no longer served their original purpose.

One such practice was the ritual of the public expiation of an unsolved murder through the breaking of the neck of a calf accompanied by a litany of atonement pronounced by the elders of the nearest city (*eglah aruphah*) (Deuteronomy 21:1-7). Another was an ordeal in which a woman suspected by her husband of infidelity (*Sotah*) had to drink "bitter water" (Numbers 5:11-31). These antique rites, Biblical in origin, were no longer adequate in Rabbinic times, because of new social conditions. These were explicitly recognized in the Mishnah, *Sotah* 9:9:

When the murderers increased, the rite of the *eglah aruphah* was given up (*batlah*) . . .

When adulterers increased, the bitter waters ceased to be employed (*pasku*). It was Rabbi Johanan ben Zakkai who abrogated the practice, for he said:

"I will not punish their daughters for playing the harlot nor their daughters-in-law for committing adultery, For the men indulge their lust with harlots and sacrifice with prostitutes" (Hosea 4:14).

It is noteworthy that the prophet Hosea's words constitute the oldest extant protest against the double standard of sexual morality that has prevailed for millennia, and down to our own day. It is equally significant that Rabbi Johanan ben Zakkai finds a warrant in the prophet's words for dispensing with a Biblical ordinance.

There are also many examples of the Halakhah responding to new economic conditions. A classic one is Hillel's *tagganah* of the Prosbul. Out of its deep solicitude for the well-being of those in need, the Torah lays down the principle that a debt which has remained unpaid for six years is to be cancelled on the seventh, "the year of release."<sup>5</sup> This norm operated to the advantage of the under-privileged in the primitive economy of the First Temple. In a simple, rural-urban society, a farmer would borrow money only when some disaster, such as sickness or drought, had left him and his family destitute. Hence, virtually all lending of money was a form of charity. However, in the more advanced agri-urban economy of the Greco-Roman world, the cancellation of unpaid debts in the seventh year proved to be a major obstacle to the securing of credit. The prospect of having debts wiped out at the end of six years served "to shut the door against borrowers," as the Talmud observes.<sup>6</sup> Accordingly, Hillel established a far-reaching *tagganah*. Falling back upon the words of the Biblical text, "The creditor shall release his hand on the seventh year from the debt he sought to collect from the borrower," he ruled that the Torah

5. Deut. 15:1-6.

6. For this formulation, see Rashi, *Gittin* 37a, top. The Mishnah generalizes the reason as *nipnei tiqqun ha'olam*, "for the improvement of the world."



forbade the creditor, but not the courts, to collect the debt in the seventh year, so that if a man transferred the debt to the court, it would be collectable after "the year of release."<sup>7</sup>

Superficially viewed, Hillel's *taqqanah* would seem to represent a total abrogation of the law. Actually, the objective of both the Torah and of Hillel was identical — to make economic help available to those in need. New conditions required radically different, even apparently contrary, procedures for achieving the same goal.

The Halakhah exhibits another related instance of its responsiveness to changed economic conditions. As the relatively simple economy of the First Temple days was transformed into the more complex socio-economic order of the Roman and the Parthian Empires, the Biblical prohibition against taking interest from Jews<sup>8</sup> posed a major obstacle to the free-flow of credit. The Talmud was clearly aware of the problem and permitted a variety of practices bordering on the direct taking of interest (*'abhak ribbit*, "dust of usury").<sup>9</sup> As the economic order became increasingly complex, interest became the life blood of commerce and industry. In the Middle Ages, the use of a legal fiction became widespread. A document "permitting a business transaction" (*shetar heter isqa*) was signed, in which the lender became a partner *pro forma* in the business enterprise of the borrower, thereby protecting the lender against any loss and guaranteeing him a minimum fixed "profit."

In the case of the *Prosbul* and the taking of the interest, the new stage in economic development was permanent. In other instances, the changed conditions were of limited scope, either in time or space. Even here, the Rabbis did not hesitate to make the Halakhah responsive to felt needs by drastic modifications in the law. Two instances in the area of ritual may be cited. According to Biblical law, a woman was obligated to bring an offering of two doves or pigeons to the sanctuary for each birth.<sup>10</sup> Since a family did not make the pilgrimage to Jerusalem each year, a woman who had borne several children since her last visit might require four, six or eight birds for the offering.

One year, the merchants took advantage of the heavy demand for the fowl and drastically raised the price. Rabban Simeon ben Gamaliel thereupon ordained that a woman was required to bring only one pair of birds to the Temple even after several childbirths. As a result the price quickly reverted to normal.<sup>11</sup>

7. M. *Sheviit* 10:3. "This is the text of the *Prosbul*, 'I declare (*mosrami*) to you, judges in this place, that, any debt owing to me, I may collect whenever I choose.' The judges or the witnesses sign below." See also B. *Sanhedrin* 32a, B. *Arakhin* 28b.

8. Cf. Deut. 23:20f.

9. For a conspectus of the history of interest ("usury" in its older meaning) see *Jewish Encyclopedia*, s.v. "Usury," vol. XII, pp. 388-92, and *Encyclopedia Judaica*, s.v. "Usury," vol. 16, pp. 27-32.

10. Lev. 12:8.

11. M. *Keritot*, chap. 1 end.



The second instance occurred in the Amoraic period in Babylonia where people were accustomed to discard their ordinary earthenware vessels before Pesah, thus creating a high demand for new crockery after the holiday. The hardware merchants took advantage of the increased demand and raised their prices exorbitantly. The Amora Samuel threatened to accept and proclaim Rabbi Simeon's view that the *hamez* pots did not need to be broken before Pesah, but could be used after the festival. This threat was sufficient to bring down the price.<sup>12</sup>

These two instances are highly interesting, for they reveal the ethical sensitivity of the Sages and their responsiveness to contemporary conditions. They did not hesitate to set aside what they understood to be the law in the Torah. But, in each case, the situation that they sought to meet was of limited scope in time and space, affecting one locality at one specific period. Their morally courageous actions did not spring from any change in accepted ethical attitudes. Fleecing the poor for personal gain is as reprehensible in accepted ethical attitudes. Denunciations of this evil fill the pages of the Prophets.<sup>13</sup>

#### *New Ethical Insights and Attitudes*

Even more significant is the clear evidence of growth and development in the Halakhah because of *new ethical insights and attitudes that represent movement beyond earlier positions*. In these instances the Halakhah did not hesitate to establish new legal norms, not local or temporary in character, but universally and permanently binding. We shall adduce two instances that testify to the dynamic character of the ethical consciousness of the Sages and to their unremitting effort to interpret the Torah in the light of their ethical insights. Both cases are derived from the same Biblical passage, Deut. 21:15-21.

The Lawgiver sets down side by side two provisions of family law. The first is concerned with the law of inheritance, the second with the law of "the stubborn and rebellious son." Both paragraphs are expressed in the identical casuistic style, "If a man has two wives" and "If a man has a stubborn and rebellious son." Both were equally meant to be regarded as operative law.<sup>14</sup> Yet it is noteworthy that the two similarly formulated provisions sustained radically different treatment in Rabbinic Judaism, neither being treated literally.

In the first passage, the Torah ordains that the eldest son in the family must receive as his inheritance *pi sh'neyim bekol asher yimaze lo*. This

12. B. Pesahim 30a.

13. Amos 2:6-8; Isa. 3:13-15; Micah 3:1-4 may be cited among many.

14. Deut. 21:15-17 and 21:18-21.

15. For the two major modes in the formulation of Biblical law, casuistic and apodictic, see A. Alt, *Der Ursprung des israelitischen Rechts*, translated into English as "The Origins of Israelite Law," in A. Alt, *Essays on Old Testament History and Religion*, trans. by R.A. Wilson (New York, 1967), pp. 161-71.



can have only one meaning, "two parts (out of three)," that is, two-thirds of the entire estate. The meaning of the idiom is not subject to doubt in the least. Thus, when at the translation of Elijah to heaven the young Elisha asks: *viyehi na' pi sh'nayim beruhakha 'eylai* (II Kings 2:9), he is obviously not demanding that he receive double the Divine Spirit granted to his master, but, more properly, only two-thirds. The meaning is even more explicit in Zechariah 13:8: "In the whole land, says the Lord, two thirds (*pi sh'nayim*) shall be cut off and perish, and one third (*hashlishit*) shall be left alive."

The Rabbis had an incomparable knowledge of the Biblical text in minutest detail. They were adept in invoking a *gezerah shavah*, comparing two similar or identical usages in language, however remote from one another in location or in theme. Now the text in Deuteronomy (21:15-17) is clear, and the passages in Kings and Zechariah remove any possible doubt about the meaning of the idiom. Yet, the Rabbis do not invoke these parallel usages. Instead, they engage in a casuistic discussion which reveals that they were aware of the original meaning:

Does the Torah mean double any other brother's share, or two parts (out of three) of all his possessions? You may argue it as follows: Since the eldest son inherits at times with one other brother and at times with five, just as he receives double when there is one other brother, so he receives double any other portion if there are five. Or follow another line of reasoning — since he receives two parts of the estate when there is one other brother, he should receive two parts of the entire estate when there are five! The verse instructs us, "In the day that he gives an inheritance to his sons." The verse has added *to his sons* (and made the sons the measure of the inheritance).<sup>16</sup>

Other Biblical verses that are unclear are then adduced<sup>17</sup> to support the conclusion that the first-born receives twice the share of any other brother and not two-thirds. To reach the desired conclusion, the clear-cut passages in Kings and Zechariah where the identical phrase is used are passed over in silence. The reason is clear. The Rabbis sought to limit the prerogatives of the first-born, so that in a family of five sons, for example, he would receive two-sixths and not two-thirds of the patrimony. In this moderate form, the Rabbis found the verse in conformity with their standards of equity, or at least not in violent conflict with them. They never doubted that the Torah, being the word of God, embodied the highest level of justice; anything else would have been unthinkable.

Quite different was the fate of the adjoining provision in the Torah dealing with "the stubborn and rebellious son." To be sure, the law in Deuteronomy requires a trial for the son before the elders of the city at the gate, thus representing a great step forward in the protection of the young. In other cultures, the *patria potestas* was virtually unlimited, so that

16. *Sifrei, Devarim* (ed. L. Finkelstein), sec. 117, p. 250. In B. *Baba Batra* 122b, 123a, the same reasoning is presented in slightly different form.

17. Gen. 49:22 and I Chron. 5:1 f.



a father could beat or even kill his child without being answerable for the act. The Torah denies to the father the right to take the law into his hands and insists upon a trial of the alleged culprit. However, in Talmudic times, even the literal meaning of the text, while more moderate, was no longer in harmony with the moral sensitivity of the Rabbis. Obviously, the Law of God could not be inferior to the conscience of men.

The Halakhah, therefore, proceeded to apply a series of casual limitations to the text in Deuteronomy which made the law totally operative in practice. Thus, to cite only one set of restrictions out of many, if either parent was deaf, mute or blind, crippled or a dwarf, the law did not apply. Perhaps the most remarkable statement is the *Baraita*: "Rabbi Judah says, If his father and his mother are not identical in voice, appearance and height, he cannot be treated as a stubborn and rebellious son." As a result, the Rabbis declared that the Biblical ordinance regarding the stubborn and rebellious son, "like that ordaining the total destruction of the idolatrous city,"<sup>18</sup> "never was and never was destined to be."<sup>20</sup> They explained that the law was placed in the Torah merely to stimulate the hermeneutical skill of the Sages and to serve as a warning to possible youthful offenders.<sup>21</sup>

Here we can see the genius of Rabbinic Judaism at work. In one case the law was modified to meet the demands of justice as the Sages understood it. In the other, the law was completely set aside because the Rabbis could not reconcile it with their ethical stance and their fundamental faith that the Torah was designed to teach men to practice justice and mercy. In both instances, as in many other provisions in the Mishnah and the Talmud, the dynamic of the Halakhah is clearly evident. What remains constant from the Bible to the Talmud and beyond is the ethical goal: "righteousness and justice, lovingkindness and mercy."<sup>22</sup>

#### *Criminal Law*

In the area of *criminal law*, the best known instance of the Halakhah responding to deepening ethical insights is to be found in the Rabbinic attitude towards *capital punishment*. While Biblical legislation prescribed the death penalty for many crimes, the Halakhah interposed a large variety of safeguards before such a sentence could be carried out. The most notable was *hatra'ah*, "warning," the requirement that there must be two adult male witnesses who have expressly informed the sinner of the gravity of his contemplated crime and the specific penalty that it entails.

18. For the plethora of limitations introduced by the Rabbis, see M. *Sanhedrin* 8:1-4 and the Gemara, *Sanhedrin* 71a.

19. Cf. Deut. 13:13 ff.

20. B. *Sanhedrin* 71a.

21. Ibid.

22. Hos. 2:21.



followed by his explicit admission that he is aware of both the crime and the penalty.<sup>23</sup>

Undoubtedly, a good deal of Halakhah in the area of criminal jurisprudence is utopian in character, deriving from the period of Roman hegemony, when the Jewish courts no longer had jurisdiction in capital cases. Nevertheless, the spirit of Jewish law is clear from the famous statement that a Sanhedrin that had convicted a criminal once in seven (or seventy) years was called a "murderous Sanhedrin."<sup>24</sup> Equally eloquent is the appended statement of Rabbis Tarphon and Akiba that, had they been members of that court, even the single execution would not have taken place.

Here, too, viewed externally, these provisions of the Halakhah would seem to make Biblical law inoperative in practice. In a deeper sense, however, the Rabbis were fulfilling the implications of the Biblical worldview. One of its pillars is the concept of the sanctity of human life which goes back to the covenant with Noah.<sup>25</sup> There the eating of the life blood is forbidden and is linked to the prohibition of murder, which is a desecration of the image of God in which man is created. The Rabbis felt that, before a human agency could take a life, there must be not the slightest doubt regarding the full culpability of the criminal. Since the imposition of a death penalty by the court would be a fully conscious and completely premeditated act, it would be exceeding the guilt of the criminal if any uncertainty prevailed regarding the conscious and willful character of the crime. A death sentence would, therefore, be a violation of the principle of equity implied in the doctrine of *middah keneged middah*, "measure for measure."<sup>26</sup>

Another striking, though less familiar, instance from the area of criminal law may be cited to illustrate how drastically the Halakhah limited the application of the death penalty. The book of Deuteronomy deals with the all-too-common phenomenon of a perjured witness falsely charging the accused with guilt:

If a man appears against another to testify maliciously and give false testimony against him . . . the magistrate shall make a thorough investigation. If the man who testified is a false witness, if he has testified falsely against his fellow man, you shall do to him as he schemed to do to his fellow. Thus you will sweep out evil from your midst. . . . Nor must you show pity: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot.<sup>27</sup>

23. *Sifrei, Shofetim*, sec. 173; B. *Sanhedrin* 8b, "Warning was established to distinguish between wilful and accidental murder."

24. M. *Makkot* 1:10 — *huvlanit*.

25. Gen. 9:17, esp. vv. 4-6.

26. That the punishment must not exceed the crime is the meaning of the famous injunction, "An eye for an eye, a tooth for a tooth" (Ex. 21:23). While Rabbi Eliezer interpreted the verse literally, all of his colleagues overrode his view and interpreted it to mean *mammon*, "financial compensation for the injury" (B. *Baba Kamma* 84a), as the only way to make sure of fair retribution. Cf. the explanation in B. *Ketubbot* 38a: "An eye for an eye and not an eye and a life for an eye."

27. Deut. 19:16-21.



The Sadducees interpreted the passage literally to mean that if false testimony had led to the actual execution of the innocent party, the false witness would suffer the same fate. On the other hand, the Pharisees, followed by the Tannaim, restricted the provisions of the law to one situation. They referred it only to the case where two witnesses (not one) had charged the accused with a crime and then two other witnesses accused the original witnesses of lying by declaring: "You were with us at that time at another place, so that your testimony is false."<sup>28</sup> If secondary witnesses were then discovered to be false, the Rabbis ruled that they fell under the provisions of the Biblical law. This was not all. The death penalty was to be meted out to the lying witnesses only if the execution of the original group of innocent witnesses had not been carried out. Had the primary witnesses already been executed, the lying secondary witnesses would not be killed. This latter ruling, which ran counter to the Sadducean practice, was derived by the Rabbis from the Biblical phrase, "You shall do to him as he had plotted to do to his neighbor" which they interpreted "as he had *schemed* to do, not as he had actually done." Undoubtedly, false testimony in civil law suits and in criminal proceedings was rife in ancient times, though, one ventures to hope, less frequent than in our own day. Nevertheless, the Halakhah drastically limited the practice of judicial execution by imposing these two limitations.

The intent and the content of the Halakhah here should be clearly understood. We have discussed above the establishment by the Halakhah of the general principle of *hatra'ah*, "warning," as a prerequisite for conviction in capital cases. In these instances, the goal of the Halakhah may be construed as the desire to fulfill the inner intent of the Torah in proving the willful character of the crime beyond the shadow of a doubt. In the case of the Biblical provision regarding a perjured witness, the Halakhah goes beyond this purpose and radically restricts its application to a set of circumstances so rare and complicated as to be virtually nonexistent. It is interpretation carried so far as to become legislation to intents and purposes.

#### *Family Law and Personal Morality*

It is in the field of *family law* that the Halakhic process is most significant, and for two reasons. First, while much in ritual, civil and criminal law became inoperative after the destruction of the Temple, the Dispersion and the loss of Jewish autonomy, the Halakhah on marriage and the family has remained in force to our own day. Second, the thrust of Rabbinic law in this area sheds substantial light on the direction of the Halakhah with regard to the status of women.

28. *Aten heyitem immanu otto hayom bimekom peloni* (M. Mak. 1:4).

29. B. Hullin 11b; Rashi *ad loc.* The reasons advanced for this limitation are discussed by Barukh Halevi Epstein, *Torah Temimah*, on Deut. 19:19, note 73, who concludes, "The greatest of the Sages tried greatly to reduce the number of people executed by the court."



One of the most striking illustrations of the dynamic of Halakhah is to be observed in the institution of *yibbum*, "the *levirate*," which is one of the most widespread institutions in primitive and ancient societies the world over.<sup>30</sup> Originally, the duty to marry the childless widow of a dead brother (or another close relative) in order "to set up the name of the dead man upon his inheritance," was felt to be a solemn and inescapable obligation. Thus, in Genesis, when Judah refrains from giving his third son, Shelah, in marriage to Tamar in order to fulfill the levirate duty because his two older brothers, Er and Onan, had died, Tamar then takes the desperate step of dressing as a harlot and seducing Judah himself, in order to ensure her having progeny from her husband's family. Nevertheless, Judah's judgment upon her extreme action is that "she is more righteous than I."<sup>31</sup> In fact, her cohabitation with Judah is the starting point for the family line from which King David ultimately descends. Clearly the levirate is felt to be a solemn, fundamental obligation.

The law of the levirate is laid down in Deuteronomy, where the duty to marry a childless widow is still felt to be paramount. However, if the living brother is unwilling to do his duty, the law provides an "escape clause." The recalcitrant brother may avoid it by the rite of *halizah*, though a stigma attaches to him for his dereliction and his family thereafter is called "the family of the unsandaled one."<sup>32</sup>

[In Rabbinic times, new factors entered the situation, so that *halizah* took precedence over *yibbum*. All the resources of Rabbinic hermeneutics were utilized to limit and, where possible, to prevent the consummation of the levirate,<sup>33</sup> and in post-Talmudic times, the practice shifted 180 degrees so that only *halizah* was permitted in Ashkenazi communities. *Yibbum* remained an option only in Muslim countries, where polygamy was not forbidden by Rabbi Gershom's *taqqanah*, to be discussed below. Thus, changes in social and cultural conditions, and probably also a higher degree of sensitivity to personal likes and dislikes,<sup>34</sup> led to a radical change in a basic marriage law in the Bible and the Talmud.

The dynamism of the Halakhah continued to function even in the Middle Ages. Most notable are the famous *taqqanot* of Rabbenu Gershom, "the Light of the Exile" and his Synod (adopted about the year 1000 C.E.). One *taqqanah* made it obligatory for a husband to obtain his wife's consent

30. Cf. *inter alios*, E. Westermarck, *The History of Human Marriage* (New York, 1923), Vol. 3, pp. 207-20; L.M. Epstein, *Marriage Laws in the Bible and the Talmud* (Cambridge, 1942); R. Gordis, "Love, Marriage and Business in the Book of Ruth, A Chapter in Hebrew Customary Law," reprinted in Gordis, *The Word and The Book* (New York, 1976), pp. 89-95.

31. Gen. 38:26.

32. Deut. 25:5-9.

33. For a conspectus, cf. Epstein, *Op. cit.*, vol. 5, pp. 384-404.

34. M. *Bekhorot* 1:7; "Yibbum took precedence over *halizah* in the past when men's intention was to fulfill the commandment. But now that they do not have the intention to fulfill the commandment (but are motivated by the woman's beauty or money), the Sages said that *halizah* takes precedence over *yibbum*." See the discussion in *Tosefta*, *Yebamot*, chap. 6; B. *Yebamot* 39b; P. *Yebamot* 13, 2.



for a divorce, a marked extension of women's rights beyond Talmudic practice.

The other ordinance of Rabbenu Gershom was the prohibition of polygamy.<sup>35</sup> This radical departure from both Biblical prototypes and Talmudic law needs additional analysis. It should be remembered that the *taqqanah* did not introduce a totally new practice into the Jewish community. Monogamy had been the prevailing practice in the Jewish people from its inception, if only because the biological ratio of the sexes, as well as economic considerations, made polygamy impossible for anyone except the royal dynasty and the aristocracy.<sup>36</sup> The Adam and Eve narrative in Genesis obviously pictures a monogamous family, as does the 129th Psalm, and other Biblical evidence is plentiful. No instance of polygamy is recorded among the 3000 Sages whose names occur in the pages of the Talmud. Nevertheless, the *taqqanah* of Rabbenu Gershom forbidding polygamy was valid only for Jews living in Christian countries.<sup>37</sup> In Islamic lands, polygamy was both lawful and operative until very recently.<sup>38</sup>

What explains the divergence? It would be fatuous to deny the impact of the Christian environment upon Rabbenu Gershom and his colleagues. They found it intolerable for Jews to maintain an attitude toward marriage — in theory, if not in practice — that set womankind on a lower ethical plane than that of their monogamous Christian neighbors.<sup>39</sup> For polygamy, it need hardly be pointed out, is clearly based on the inferiority of women, with the male being dominant and free to have more than one wife, but not the reverse. Today, of course, the original limitations of the *taqqanah* with regard to time and country have fallen away and monogamy is universally observed in Jewry. But the impact of cultural influence from without is clear both in Rabbi Gershom's *taqqanah* and in the limits of its operation.

Another situation reveals the responsiveness of the Halakhah even to conditions which it did not find to its liking because they stood on a far lower ethical level. In medieval Spain, as Jews acculturated to the dominant groups in society, some members of the upper classes imitated the Muslim prototypes by establishing liaisons with women outside of marriage.<sup>40</sup> We may be certain that none of the accredited Rabbinic leaders

35. See Rama on *Shulhan Arukh, Even Ha'ezer* 119:6.

36. The newly published Temple Scroll from the Qumranite sectaries forbids polygamy even to kings.

37. See *Shulhan Arukh, Even Ha'ezer* 1:10; Asheri, *Responsum* 42:1; Tashbetz, *Responsum* 94.

38. The State of Israel formally banned new polygamous marriages in the 1951 Keneset "Law on Equal Rights for Women."

39. As Rabbi David Aronson has acutely noted, this ruling is a clear application to contemporary conditions of the Talmudic dictum enunciated (B. *Sanh.* 58b) by Raba: *Mi ikka midde veyisra'el lo mehayyab venokhri mehayyab*, "Is there any act for which a Jew is free from guilt and a non-Jew guilty?" (David Aronson, "The Authority of the Halakhah and the Halakhah of Our Authority," *Proceedings of the Rabbinical Assembly*, vol. XL, 1979, pp. 42-56). [The quotation on p. 51 is not cited exactly.]

40. The subject and its relevance for an approach to contemporary sexual mores is discussed in R. Gordis, *Love and Sex: A Modern Jewish Perspective* (New York, 1978), pp. 167-68.



ership of Spain favored these extramarital arrangements and many of them translated their opposition into stringent prohibitions and anathemas pronounced against the practice. But the liaisons did not abate, even in the face of Rabbinic opposition, and a well-known authority on the history of sexual mores remarks:

In vain did the great Maimonides try to prohibit concubinage; not only did the practice continue, but most contemporary and later rabbinical authorities . . . accepted it. Acceptance, of course, did not mean approval.<sup>41</sup>

In the light of their inability to eliminate the practice through social and religious pressures, religious leaders sought to meet the situation by reviving the Biblical concept of the *pillegesh*, the "concubine". They were thereby conferring upon this status a measure of legitimacy. Thus, Nahmanides (1194-1270) declared that if the relationship with an unmarried woman was not temporary or promiscuous but, on the contrary, permanent and exclusive, it was permissible. Such leniency was, naturally, not accepted universally. Rabbi Isaac bar Sheshet Perfet (1326-1408), for instance, was far stricter.<sup>42</sup> He decried the popular saying, "An unmarried woman is not forbidden,"<sup>43</sup> but saw other and greater threats to traditional standards of personal morality in his time.<sup>44</sup> Apparently the practice was not prevalent in Ashkenazi Jewry, yet the great German authority, Rabbi Jacob Emden, adopted a very lenient view.<sup>45</sup>

Liaisons of the kind we have described ended with the tragic destruction of Spanish Jewry as a result of the Expulsion from Spain in 1492 and from Portugal in 1497. Thereafter, the earlier and stricter traditional standards became all but universal again, and there no longer was a need to find even quasi-legal basis for extra-marital relations.

#### *The Ongoing Problem of the "Agunah"*

We may cite one more highly important instance in family law with direct relevance to modern life, the problem of the *agunah*, "the chained

41. Raphael Patai and Jennifer P. Wing, *The Myth of the Jewish Race* (New York, 1976), p. 131.

42. He cites Nahmanides' view in his *Responsa*, No. 6, 398. Nahmanides, in his correspondence with R. Jonah Gerondi, permits it (cited in *Zedah Laderekh*, III, 1, 2, 122b, "because there are many in this country who take concubines;" cf. also S. Halberstam, *K'vuzat Mikhtavim Be-inyanei Hamahloket al Dvar Sepher Hamoreh V'hamada*, (Bamberg, 1875; Haifa, 1969). See L.M. Epstein, *The Jewish Marriage Contract* (New York, 1927). On the etymology of *pillegesh* and the categories of concubinage in ancient times, see E. Neufeld, *Ancient Hebrew Marriage Laws* (London, 1944), pp. 123 ff.

43. The Hebrew phrase is *pelonit penayah muteret*.

44. *Responsum* 425; see also No. 6 and No. 398 on concubinage. Cf. A.M. Hershman, *Rabbi Isaac bar Sheshet Perfet and His Times* (New York, 1942), esp. pp. 143-5, and Yitzhak Baer, *A History of the Jews in Christian Spain* (Philadelphia, 1966), Vol. II, pp. 465-6; L.M. Epstein, "The Institution of Concubinage Among the Jews," *PAAJR*, 6, (1934-5): 153-88.

45. Cf. *She'elot Yavez* Part II, *Responsum* 15. He declares that it is his own view that "it is a *mizvah* to proclaim publicly the permissibility of concubinage." But he does not wish to have any one rely on his own individual opinion. The motive for his eccentric opinion is the desire to increase the population of God's holy people. On this objective in the Halakhah generally, see sec. 4b-c.



wife." This tragedy, repeated times without number, was an inevitable consequence of the fact that the initiative for the issuance of a *get* according to the Rabbinic interpretation of Deuteronomy 24:1 ff., was in the husband alone. Keenly aware of the inequality involved, Halakhah took steps to reduce the power of the husband on the one hand and to extend the rights of the woman on the other. Two such instances may be mentioned. The principle, *kofin oto ad sheyomar rozeh ani*, "we force him until he says, 'I am willing,'" was invoked by the Rabbis in special cases. In the post-Talmudic period, a woman's consent was required for the husband's issuance of a divorce. Other modifications designed to bring relief to the *agunah* will be noted below.

The disparity of rights between the sexes was never eliminated, but some of the worst inequities could be mitigated. So long as the judicial system of the Rabbis operated under the aegis of the state, as in Babylon and its authority was universally recognized, the Halakhah was not helpless. It was possible to utilize various instruments, including the threat of imprisonment and excommunication, to bring a recalcitrant husband in line and have him issue a *get* when the marriage was dissolved.

The breakdown of the Babylonian center and its replacement by a multiplicity of independent communities led to a general fragmentation into many areas of local jurisdiction. The coercive power of Rabbinical law was now correspondingly reduced. The frequent uprooting of Jewish communities, the migrations and transplantations of individuals, accompanied by the deaths of countless individuals through natural disaster, famine or massacre, substantially increased the number of *agunot*. The medieval Rabbis partially met the challenge by a variety of changes in the law designed to free as many *agunot* as possible from the chain of perpetual widowhood.

Then came the modern period, marked by the Enlightenment and the Emancipation, which wrought havoc with the traditional pattern of Jewish life. The admission of Jews into political citizenship, civic equality and economic opportunity was directly and explicitly linked to the erosion of the authority of Jewish law and to the breakdown of the traditional Jewish communities in Central and Eastern Europe. The rapid growth of secularism was accompanied by the migration of millions of individuals from one country to another. The establishment of civil marriage and divorce in nearly all Western countries gave rise to a tremendous increase in the number of *agunot*. Women loyal to the Halakhah were at the mercy of unscrupulous, greedy or vindictive husbands, who had secured a civil divorce and now refused to grant a *get* or had disappeared, leaving their wives perpetual widows. By and large, the Orthodox rabbinate declared itself powerless to deal with the problems.

At the outbreak of the Russo-Japanese War (1903), when many Jewish young men in Russia were called to fight in the Czar's army and



there loomed the tragic possibility of their being lost and missing in action, Rabbi Isaac Elhanan of Kovno visited the troops before they left for the front and urged Jewish soldiers to issue a *get 'al tnei*, a conditional divorce, so as to free their wives from the status of *agunah* should the husbands not return.

This procedure was clearly helpful in individual cases, but it did not meet the problem of the husband who deserted his wife in peace-time or received a civil divorce and refused to issue a *get*. Rabbi Louis M. Epstein, of Boston, after years of study of the entire question, proposed a plan whereby a groom, before his marriage, would designate specified individuals to serve as his agents for the issuance of a *get* (*minnui shelihut*) if, at some future date (a) a civil divorce were to be issued, (b) the husband were to disappear, or (c) he were to be lost in an accident or in military action.

Subjected to a barrage of misrepresentation and proving unwieldy in operation, the Epstein plan, after being put into practice in many cases by the Rabbinical Assembly, fell into disuse. But the principle of an active concern for the *agunah* and a determination to act on her behalf persisted, and a new procedure was worked out by the eminent Rabbinic authority, Professor Saul Lieberman. It consists of a codicil added to the traditional marriage contract in which husband and wife solemnly agree to abide by the provisions of Jewish law. The theory is that this commitment includes the issuance of a *get*, should that become necessary in the future. If the husband then fails to honor his promise, the civil court could be asked to enforce performance of the contract. There has thus far been no test of the Lieberman *ketubah* in the secular courts.

The Rabbinical Assembly has since decided to utilize another resource of the traditional Halakhah for dealing with the problem, by putting into practice provisions for conditional marriage and divorce already existing in the Talmud. "Whoever contracts a Jewish marriage does so under the authority of the Rabbis,"<sup>46</sup> is not merely an abstract principle. It is applied by the Talmudic and post-Talmudic authorities to annul a marriage when circumstances require it. In the words of the Talmud, "The Rabbis retroactively break the husband's marital contract."<sup>47</sup> Even the presence of children born to the couple does not prevent the application of this principle, since their legitimate status in Judaism is not impugned by the annulment.

The instances we have adduced from the areas of ritual enactment, civil and criminal law, marriage, family morality and divorce are by no means exhaustive, but they should suffice to demonstrate the validity of the principles governing the Halakhah set forth in the first section of this paper. They also perform a second, equally significant, highly relevant function. *In all aspects of Jewish law, the Halakhah reveals a deep concern for*

46. B. Ketubbot 3a, Kol hamme'addesh 'ada'ata derabbanan mekaddesh.

47. Ibid., Afke 'in ho rabbanan lekiddushei minneh.



basic ethical considerations, whether age-old or newly arrived at. In all periods Halakhah manifests its lively awareness of social, economic, political and cultural factors in the life of the Jewish community.

### *Strengthening Jewish Survival*

Another powerful motive in the dynamic of the Halakhah, closely related to the Rabbis' ethical concerns, is the survival of the Jewish people. During the period of the Mishnah and the Gemara, they wrestled with the need to preserve the integrity and the viability of the Jewish community in Palestine. It was by no means an easy task, in view of the heavy taxation and other forms of oppression practiced by the Roman power. As a result, Jews were increasingly tempted to leave the land of Israel for more favorable centers of settlement elsewhere, — Babylonia, Egypt and the Mediterranean littoral. The Pharisees, and the Rabbis after them, sought time and again to stem this flight by enacting a *gezerah*, "a restrictive decree," declaring territory outside the land of Israel "unclean" and by the adoption of other regulations.<sup>48</sup> However, their efficacy was probably limited in duration.

It was not easy for the Jewish farmer to maintain his precarious foothold in the Holy Land. In addition to the various "gifts due to the priesthood," he was obligated to let his land lie fallow each seventh year. To solve this problem the Rabbis sought to meet by establishing the principle, which, they declared, emanated from the Men of the Great Assembly, that "the land conquered by Joshua after the Exodus (*kedushah rishonah*) became holy only temporarily (while Jews lived on it), but not for the future. Only the land acquired after the Return from the Babylonian Exile (*kedushah sheniyah*) acquired a permanent sanctity."<sup>49</sup> Since the second Jewish settlement was much smaller in extent than the first, it meant that considerable portions of the country were freed from these special burdens. Measures such as these undoubtedly helped to prolong the existence of a Jewish presence in Palestine.

Ultimately, however, the bulk of world Jewry was to be found outside the land of Israel, in Asia, North Africa and Europe. Now Jewish survival became a desperate battle against heavy odds. Persecution, spoliation, expulsion and massacre made great inroads into the Jewish population. The perennial physical hazards of disease and malnutrition also decimated the ranks of the children, as well as their elders.

Faced by these perils, medieval Jewry saw its preservation dependent on a high birth rate, without restriction or qualification. The imperious demand for group survival made no allowance for individual desires of family welfare. Only through children and more children could the Jew hope to overcome the tragically high mortality rate. Thus, the instinctive

48. See B. *Shabbat* 14b and parallels, and see the detailed studies of Solomon Zeitlin.

49. B. *Hag.* 3b; see also B. *Yeb.* 92b on "three inheritances" and Rashi *ad loc.*



wish for progeny was intensified by overpowering religio-national motives. Hence, the view of the Halakhah that the birth of two children fulfills the requirements of the law<sup>50</sup> was ignored and parents were encouraged to bring as many children into the world as possible.

A classical passage in the Talmud, repeated six times, permitted (or commanded) three categories of women — a minor, a pregnant woman and a nursing mother — to use an absorbent to prevent a new conception.<sup>51</sup> The passage was now interpreted narrowly, in defiance of linguistic usage, to mean that only one Sage, Rabbi Meir, permitted the practice and only for a child wife, while all his colleagues prohibited it for all three categories.<sup>52</sup>

Moreover, this basic Talmudic passage permitting (or prescribing) birth control was totally ignored and passed over in silence in the medieval codes. It is not referred to in the *Mishneh Torah* of Maimonides or in the authoritative *Shulhan Arukh* of Rabbi Joseph Karo. A distinguished modern Orthodox scholar writes that "the codes, rather surprisingly, omit any direct reference to contraception altogether."<sup>53</sup>

The same motivation came into play on a related subject. The Talmud frequently voices strong objections to the marriage of young children.<sup>54</sup> The medieval authorities ignored these objections and urged that marriage engagements be entered into whenever practicable at any age. They justified their action by calling attention to the rigors of the exile, which included the perpetual threat of physical attack and economic insecurity.<sup>55</sup>

The ongoing threat to Jewish spiritual integrity, stemming from close contacts with pagans, was also a source of perpetual concern. Among the eighteen *gezerot* which the school of Shammai succeeded in adopting over the objections of the school of Hillel, before the destruction of the Second Temple, was a prohibition forbidding the bread, the oil, the wine and the daughters of pagans to Jews.<sup>56</sup>

### *The Role of the Popular Will*

Another factor closely related to the preceding motive of advancing Jewish survival is the responsiveness of the Halakhah to the popular will, meeting the desires of the common people. Whenever a particular practice did

50. Mishnah Yeb. 6:6; *Shulhan Arukh*, *Yoreh Deah* 1:5.

51. See B. Yeb. 12b, 100b; *Ketubbot* 39a; B. *Nedarim* 35a; B. *Niddah* 45a; *Tos. Yeb.* 2:6.

52. See the analysis of the text in R. Gordis, *Love and Sex: A Modern Jewish Perspective* (New York, 1978), pp. 266 f., note 12.

53. I. Jakobovitz, *Jewish Medical Ethics* (New York, 1959), p. 169 (italics ours).

54. Cf. B. *Kiddushin* 41a; B. *Niddah* 13a.

55. On the difficulties involved in harmonizing the Talmudic objections to child marriages and the medieval practice, see D.M. Feldman, *Birth Control in Jewish Law* (New York, 1968), pp. 176-80.

56. On "the Eighteen Decrees" designed to restrict intercourse between Jews and pagans, see P. *Shabbat* 1, 7, 3c; B. *Shabbat* 13b, 17b.



not contravene an important religious or ethical norm and enjoyed widespread support, the exemplars of Halakhah yielded to the general will with greater or lesser grace, as the case might be.

When the people followed a practice on *Pesah* that seemed to contradict the law, Rabbi Johanan declared, "Do not interfere with Israel; they are not prophets, they are the descendants of prophets."<sup>57</sup> He proceeded to explain that the populace was really following a law which they had forgotten. Again and again Rabbis seeking to establish the proper practice invoked the principle, "Go out and see how the people conduct themselves."<sup>58</sup>

The Middle Ages offer a striking instance of how the popular will overrode the accepted Halakhah of the past. Not only did the people create the festival of *Simhat Torah* without the support, and often in the face of opposition, from the recognized Halakhic authorities; they insisted upon introducing into the observance of the festival, both in the synagogue and without, practices at variance with the Halakhah.<sup>59</sup>

In modern America, the introduction of family pews, not merely in Reform congregations but also in Conservative ones, is an illustration of the triumph of the popular will. With the exception of ultra-right wing Orthodox and Hasidic synagogues, Orthodoxy in America has yielded on this point, with such devices as separate sections for men and women, token *mehizot*, or raising the women's section three or four inches. Conservative leadership has never "sanctioned" mixed pews; they are an expression of the popular will which has been allowed to prevail because the leadership recognized important social and ethical values in the practice and no contravention of any vital religious principle.

The far-flung evidence of the responsiveness of the Halakhah to the world, a fraction of which has been adduced above, leads inescapably to one conclusion: *The notion that the Halakhah and "sociology" are antagonistic forces that are in perpetual confrontation with each other and must be kept at arm's length from each other is a major error. "Sociology" is not extraneous to Halakhah; it is an integral element in it.*

To be sure, at any particular moment, the law, which embodies the received tradition and practice of the past, will be in tension with conditions and insights of the present. But it is their interaction that produces the body of tradition to be transmitted to the future. This process has created the dialectic of Halakhah in the past and is the secret of its vitality for the present and the future.\*

57. B. *Pesahim* 66b.

58. B. *Ber.* 45a; B. *Erub.* 14b and often.

59. See "Simhat Torah — The Triumph of the Democratic Spirit" in R. Gordis, *Judaism in the Modern Age* (New York, 1955), pp. 195-203, for the original Halakhah, for the final day of the Festival, for the objections of the Rabbinate to the newly introduced practices on Simhat Torah, and their ultimate yielding to the popular will.


\* The author expresses his thanks to his former student, Rabbi Ben Scolnic, for his assistance in checking the references and researching the sources cited in this paper.



A young woman related the following story: When she was 17 years old she became romantically involved with a young man who was an Italian Catholic. When she became pregnant, he agreed to convert to Judaism and to marry her. He completed the course at the New York Federation of Reform Synagogues and was converted by a Reform Rabbi of a congregation in that city. Subsequently, they agreed that they did not have an adequate base for marriage and they were divorced.

About two years later, she met a young man from a traditional conservative family, and went to his Rabbi to discuss the wedding. The conservative Rabbi recognized the conversion of her first husband and the legitimacy of her first marriage. He suggested that from consideration of the traditional background of the family, she should go to an Orthodox Rabbi for a bill of divorce (a get) before she remarried.

The couple went to an Orthodox Rabbi who was ready to arrange for the get until he discovered that the first husband had been a convert. The Orthodox Rabbi did not recognize the Reform conversion, so that in his view, it was if the Rabbi officiated at a mixed marriage, sanctifying an invalid relationship. The woman asked the Orthodox Rabbi whether her former husband could undergo full Orthodox conversion so as to be qualified for participation in the get procedure. the Rabbi replied that conversion for the sake of marriage may be condoned only on the assumption that living a Jewish life will eventually lead the convert to complete and sincere conversion; conversion for the sake of divorce would lack even this possibility and could not be tolerated by Jewish law. When the woman asked what she should do, the Rabbi answered that since she already had a child, she should never marry again, but spend the rest of her life as a single parent who is neither married nor divorced according to Jewish law.





The halachic (legal) issues of this case:

1. A traditional conversion process includes circumcision for a male convert and immersion (going to a mikvah) for male and female converts.

~~Should the Reform conversion process~~

What are the sources for this process? Should the Reform conversion process incorporate the traditional requirements?

2. Has the Jewish community historically accepted people who seek to convert for ulterior motives such as marriage? Should we do so today?

3. Traditionally, a Jewish couple was divorced by a formal delivery of a bill of divorce (a get). Currently, psychologists talk of the need for a formal end of a marriage, parallel to its formal establishment by the wedding ceremony. What is the ~~traditional~~ procedure and the general principles of the traditional divorce? Should the Reform movement re-institute some type of divorce process?

4. The Rabbi in this case has pronounced a sentence against the woman. Are there historical precedents for her status of being in limbo? What were traditional means of dealing with this problem? ~~Is the problem~~ Does the problem pertain to modern times?

5. Traditionally, if a woman does not obtain a get from her first husband, but marries a second, her children are bastards (mamzerim, sing. mamzer). What are the implications of their status as bastards in Jewish law? How in general is the status of children determined? What are the ramifications for our present times?



## Glossary

agunah: a woman living apart from her husband, but still technically married to him.

Chalal. pl. Chalalim: Children of a priest and a woman who was previously married.

Cohen. pl. Cohenim: priests

Dina DeMalchuta Dina: The law of the land is law.

Ezrach: A native-born.

Get: A bill of divorce

Immersion: going to a mikvah, the Hebrew word is tevilah "dipping"

Ger: <sup>Originally</sup> ~~Biblically~~: a resident foreigner. Later, a convert

Mamzer fem. mamzeret. pl. mamzerim: an illegitimate child

Nachri: a foreigner

Shach: acronym for Shiftei-Cohen, a 17th century commentary on the Shulchan Aruk.

Shetuki: A person whose mother is known but whose father is not known.

ketuvah: The marriage contract, which makes provision for the woman's support in case of a divorce.

apostate: renounce Judaism, Hebrew hemir



## Conversion in the Bible

Information about conversion in the Bible comes from two main sources: laws directly on the subject, and details in stories from which one can extrapolate procedures. Besides the questionability of trying to extrapolate laws on the basis of the narrative passages, there is a further problem. The Bible itself is a corpus of material which spans about 2000 years, As customs change over time, dating different passages becomes an important issue.

Rosenbloom concludes: originally the ger was "anyone living in association with a community which originally was not his own." Early evidence of foreigners joining Israel:

Gen. 12:5: Abram took his wife Sarai and his brother's son Lot and all the wealth they had amassed and the persons that they had acquired in Haran, and they set out for Canaan.

Exodus 12:38: In addition a mixed multitude went out (from Egypt) with the Israelites, and much livestock, both flocks and herds.

Legal categories of people in ancient Israel included the eizrach or native Israelite and the nachri, the foreigner:

1 Kings 8:41: "...concerning the foreigner who is not of your people Israel.

2 Samuel 15:19: King David said to Ittai the Gittite, "Why are you coming with us? Return and stay with the king, for you are a foreigner and an exile. Return to your own place."

A foreigner who wished to join the Israelites was granted a different status and called ger.

Numbers 9:14: If a ger is living with you and wants to make the passover offering to the Lord, he must offer it according to the rules and rites of the passover sacrifice. There shall be one law for you, whether a native or a ger in the country.

Deut. 1:16: I commanded your judges then as follows: Hear out your fellows, and rule justly between any one and a native or a ger.

Numbers 15:14-16: When, throughout the generations, a ger who has taken up residence with you or lives with you, wants to present an offering by fire acceptable to the Lord, just as you do it, so shall it be done by any member of the community. There shall be one law for you and for the ger, it shall be a law for all time throughout the generations. You and the ger shall be equal before the Lord, the same ritual and the same rule shall apply to you and to the ger who resides among you.

The procedure for the foreigner to formally join the community, and even if there was a formal procedure at all, is unclear.

Ruth 1:16: But Ruth said, "Don't ask me to leave you or turn away, for wherever you go, I will go, where you stay, I will stay, your people will be my people, and your G-d will be my G-d, Where you die, I will die and there I will be buried, however G-d directs my life, only death will separate us.

(No other procedures are specified in the narrative)

Exodus 12:48-49: If a foreigner is living with you, and wishes to make the passover offering to the Lord, he and all the males of his household should be circumcised. Then he can be brought into the community to make the offering, and he shall be considered as



a native citizen. But no uncircumcised man shall eat the passover offering. One law shall you have for the native born and for the ger living among you.

Isaiah 56.6-7: As for the strangers who join themselves to the Lord to serve Him and who love the name of the Lord to minister to him, all who keep the Sabbath rules and observe my covenant, I will bring them to my holy mountain and make them joyful in my house of prayer, their sacrifices and offerings will be accepted on my altar, for my house shall be called a house of prayer for all people.

After the exile in Babylonia 586-546, an independent Israelite nation was not reestablished. The affiliation of the ger was no longer national and ~~political~~ religious, but only religious. One may conjecture that there was greater pressure for the ger to assume all aspects of contemporary observance.





Origin of conversion requirement of circumcision:

Ex 12.49:...no uncircumcised ~~person~~ man shall eat the passover offering.

Circumcision seemed to be a requirement for being part of the community.

origin of conversion requirement for sacrifice:

Ex. 24.1-8: He said to Moses, "Go up towards the Lord, you and Aaron, Nadav and Avihu and the 70 ~~wise~~ leaders of Israel, and worship from afar. But Moses alone approaches God, and told the people all that God said and all the laws. All the people answered with one voice and said, "Everything that God tells us, we will do." Moses wrote down all that God had said. He got up early in the morning and built an altar at the foot of the mountain with twelve pillars for the twelve tribes of Israel. He sent out the youths to offering sacrifices and they sacrificed bulls for burnt offerings. Moses then took half of the blood and put it on basins and threw the other half of the blood on the altar. Then he took the book of the covenant and read it to the people. They replied, "All that God said, we will do and we will understand." Moses took the blood and sprinkled it on the people and said, "This is the blood of the covenant which God entered into with you regarding all these matters."

~~Maimonides uses a different text for sacrifice~~

The Rabbis then say, just as the Jews used sacrifices to enter into the covenant at Sinai, so all converts who seek to enter the covenant must bring a sacrifice.

origin of conversion requirement for immersion:

Ex. 19.14:10: God told Moses: Go to the people and tell them to sanctify themselves today and tomorrow, and wash their clothes."

Though most Medieval commentators take the word "sanctify" to mean ready oneself or abstain from sex, Maimonides uses this text as proof of the ~~new~~ Biblical basis for immersion.



I. Introduction to the period

After the conquest of the Middle East by Alexander the Great 333 BCE, the Jews fell under the province of the Greco-Roman empire. The Greeks built cities in Judea, and with the growth of these cities grew the need for urban laws. The next stratum of Jewish law after the closing of the Bible reflects this urban situation. These laws were compiled into the Mishnah, written 200 CE, but reflect cases and precedents which were established as early as the Maccabean revolt 165 BCE, and institutions with perhaps even earlier origins.

II. Attitude of the community was welcoming

Josephus Against Apion 70 CE : The consideration given by our legislator (Moses) to the equitable treatment of foreigners also merits attention. It will be seen that he took the best possible measures both to secure our own customs from corruption and to open them ungrudgingly to any who choose to share them. To all who desire to come and live under the same laws with us, he gives a gracious welcome. (2.210)

III? Disagreements over the necessity of circumcision and immersion

In the Talmud, Yevamot 46a-47b. : Rabbi Yohanan said, To be a convert, one must be circumcised and immersed. If ~~xx~~ one is not immersed, one is not yet a Jew." The Rabbis recorded that Rabbi Eliezer (first cen. CE) said about a ~~man~~ man who was circumcised but not immersed "He is a proper convert" since this was the case for our forefathers who were circumcised but not immersed. Rabbi Joshua said that one who was immersed but not circumcised is a valid convert, since our forefathers were immersed and not circumcised. But the others said that both circumcision and immersion is necessary, a person is not a valid convert unless circumcised and immersed... yet all agree that if one is immersed and not circumcised, he is a valid convert....here, "others" refers to Rabbi ~~Yosi~~ Yosi.

IV. Necessity of converting by a court

Talmud Yevamot 47a: Rabbi Judah (first century CE) said, "A person must be converted before a court. If he is converted privately, it is not a valid conversion." Once a man came before Rabbi Judah and told him, "I was converted privately." Rabbi Judah said to him, "Do you have witnesses?" He answered no. "Do you have children?" "Yes" Rabbi Judah ruled, "You are believed to impugn yourself, but not to impugn your children."



V. Disagreement over procedure for a man already circumcised

In the Talmud, Shabbat 135 a: Shammai and Hillel  $\pm$  (first centry BCE) differ on the issue of a man who comes to be converted and is already circumcised. Shammai's court holds that a drop of blood must be taken to symb lize the covenant. Hillel's court rules that it is not necessary to take a drop of blood.





## Conversion in the Talmud

### Introduction to the period:

When the Jews were exiled from Judea by the Romans, the center of the Jewish community shifted to Babylonia. To respond to the needs of the community outside of its homeland, a new corpus of law developed, consisting of Gemarah, or comments to the Mishna. The corpus was compiled about 500 CE and went through generations of editing.

### Necessity of circumcision and immersion before a court

Yevamot 47a: Rabba said, "~~It happened that~~ <sup>A</sup> prospective convert came before Rabbi Hiya bar Rabi who had been circumcised but not immersed. He said to him, "Wait here until tomorrow to be immersed." Three things are implied from this story: a) immersion needs three (ie a court) b) conversion is not valid without circumcision and immersion. c) immersion should not be done at night.

### Description of the process of accepting converts

Yevamot 47a: The Rabbis taught ~~that~~ <sup>that</sup> a person who comes to be converted in the present time should be asked, "What do you see ~~that~~ <sup>that</sup> you have come to convert? Don't you know that Israel is oppressed and persecuted and reviled today?" If the person answers, "I know, and I am not worthy," he is accepted immediately. Tell him some of the easy laws and some of the more stringent laws. Tell him that the grain remaining after the reaping ~~must~~ <sup>must</sup> be left for the poor, ~~asxax~~ <sup>asxax</sup> is the grain in the corners of the fields. Tell him the punishments for breaking the laws. Say to him, "You know that until you convert ~~as~~ you can eat forbidden fat without the punishment of excommunication, you can desecrate Shabbat without the punishment of stoning. Now if you eat forbidden fat you will be excommunicated and if you desecrate Shabbat you will be stoned." As you tell him of the punishments of the laws, tell him of the rewards. Say to him, "You know that the next world is only for saints, and Israel at this time is unable to bear too much prosperity or too much suffering." But don't elaborate or linger on these matters, but circumcise him immediately. If shreds remain, circumcise him again. As soon as he is recovered, immerse him. When he is being immersed, two sages stand by him and tell him some of the easy laws and some of the more stringent laws. He immerses himself, and when he gets out, he is a Jew in all matters. For a woman, women should bring her into the water up to her neck. Two sages should stand outside and tell her some of the easy laws and some of the more stringent laws.



acceptance of converts who immerse themselves to fulfill a mitzvah

Yev 45b: The slave of Rabbi Hiya bar Ami had a nonJew immerse herself so that they could marry. Rabbi Joseph said, "I can declare her and her daughter legitimate converts"...

A man was called "a son of a nonJew" but Rabbi Asi said, "Didn't his mother immerse herself after her menstrual period? (If so, she was a legitimate convert)"

Another man was called "a son of a nonJew". Rabbi Joshua bar Levi said, "Didn't his father immerse himself after a seminal emission? (If so, he is a legitimate convert.)"





## the Medieval Period

### Introduction to the period

After the Talmud was closed, new legal forms arose to answer questions posed by new situations. Responsa literature, in which an answer was given to an individual question, was developed in Babylonia, and the answer was issued under the name of the Gaon, the head of the Jewish community (7-mid-11th century). With the fall of the Caliphate in Baghdad, the community's center shifts to the Mediterranean. The Jews of Germany and Provence develop a literature of comments on the Talmud. Rashi's commentary of the 11th century contains material from the Ashkenazic school. This form of literature is further developed by the Tosafot, commentators of Germany and France of the 12-14th centuries.

Meanwhile, the Spanish Jews were writing comprehensive codes summarizing and organizing the legal decisions of the Talmud. The most important codes are by the Rif (Rabbi Isaac Alfasi 1013-1103) followed by Maimonides' Mishnah Torah (1135-1204.) Next came Jacob ben Asher's Arba Turim 1270-1340. Jacob was the son of Asher ben Yehiel, an Ashkenazi Jew who fled to Spain, bringing Ashkenazi traditions. The culmination of the codes is Joseph Karo's Shulchan Aruk, published 1565. Drawing on the three earlier works, it becomes the definitive code for Sephardic Jews, and with the additions by the Rema (Rabbi Moses Isserlis) the definitive code for Ashkenazic Jews. It was interpreted by several 17th century commentaries: the Taz by David ben Samuel ha-Levi, the Shiftei-Cohen (Shach) by Shabbetai Meir ha-Cohen, and the Magen Avraham by Abraham Abele Gombiner.





The necessity of immersion before a court, circumcision and proper intention  
from Maimonides' code of law

Maimonides' Mishnah Torah, Sefer Qiddushim, Issurei Biah chpt. 17

1. Israel entered into the covenant by circumcision, immersion and sacrifice.  
2. Similarly, when a non-Jew wants to convert, circumcision, immersion and a sacrifice is necessary.

5. Since there is no Temple, the need for a sacrifice is abrogated.

6. A man who was circumcised but was not immersed, or was immersed and not circumcised, is not converted until he is both circumcised and immersed.

He must be immersed before three ~~(or, before a court)~~ since three form a court. He should not be immersed on Shabbat or a holiday or at night, but if he is immersed then, he is converted.

One who is immersed alone or before two is not converted.

One who says, "X's court converted and immersed me" is not believed until he brings witnesses.

8. A man married to a Jew whom suddenly says, "I was converted privately" is not believed in regard to his children, but is beleived about himself and has to be immersed before a court.

9. People who act as Jews and observe the laws are considered converts even if no witnesses testify that they converted. But if they want to marry, they need to bring witnesses or be immersed before a court.

10. A stranger who comes to the community and says, "I was not Jewish and was converted by a court" is beleived...This holds in Israel at that time since it was a community of Jews, but outside of Israel, one needs proof.

14. Don't think that Samson or King Solomon married nonJewish women. Rather, the secret of the matter: the proper procedure when a person comes to convert is to examine them lest they are converting for money or benefit or fear or for marriagge. If there is no ulterior motive, tell them the heaviness of the yoke of Torah and the bother of doing the laws, to put them off. If they accept and are not put off but return, receive them.

15) The court therefore did not accept converts in the reigns of King David and King Solomon, for David, lest they were converting from fear, for Solomon, lest they were converting for the glory and honor. For anyone who converts from a desire for the things of this world are not righteous converts. Even so, there were many converts made during the reigns of David and Solomon, before courts with ~~sima~~ lay judges. The high court was suspicious of them. They were not rejected after their conversion in any case, but they were not totally accepted until it was seen what they did.

16. Solomon converted women and married them, as did Samson. Since they had ulterior motives and were not converted by a court, they were considered as non-Jews.

17. Therefore the wise men say, "Converts are as hard for Israel as boils." since most of them convert for ulterior motives and lead Israel astray. It is hard to separate them after they converted. See what happened in the wilderness with the golden calf and all the things the mixed multitude began.

18) A person who wasn't examined or told the laws and their punishments, but was circumcised and immersed before three lay men, is converted. Even if it is known that he converted for an ulterior motive, if he has been circumcised and immersed, he is no longer a non-Jew, but is suspect until his deeds are clear. But even if he returns to idolotry, he is a renegade Jew. He can marry a Jew, and it is a mitzvah to return what he lost, since after immersion he is a Jew.



## Procedure for conversion

this procedure is according to Jacob ben Asher's Arba Turim, Yoreh Deah 268:

1) A convert must be circumcised and immersed. If already circumcised, Rabbanu Hananel wrote that that is sufficient, but his sons must be circumcised to enter the community. He is converted by God, but to insure that his sons are properly converted, they should be circumcised. The author of Halachot wrote: It is not sufficient, but a drop of blood should be taken.

The author of the 'Itur wrote: If he were born circumcised, it is not necessary to take a drop of blood, but immersion is sufficient, as for a woman. But if he wasn't born circumcised, but was circumcised without intent to convert, for example, the Arabs, a drop of blood is necessary. Rabbi Asher ben Yehiel ruled that a drop of blood is necessary.

(The author then quotes Yevamot 47a-b about procedure):

One has to be converted before three qualified judges and during the day, but after the fact, if it was at night, or before only 2 judges or the immersion was not done expressly for converting, the conversion is valid and the convert can marry a Jew. But conversion is only valid after the convert accepts the laws.

The Rif: Conversion is invalid if before only two or at night and one is not permitted to marry a Jew. xif But if such a "convert" should marry and have a child, the child is not impugned. ...

A person who comes to a Jewish community, whether in Israel or outside, and says, "I was properly converted at X court, he is not believed until he brings proof. For proof, it is ~~and~~ sufficient for two witnesses to testify that they heard that he was converted at X court. But some say that he needs complete testimony that witnesses saw him convert, so Rabbi Asher ben Yehiel rules. This proof is needed only when the person was known to have been a non-Jew. If the person was unknown to the community and came and said, "I was converted at X court" he is believed. If he said, "I was converted privately" and he has children, he is believed about himself but not to disqualify his children.



Procedure for conversion, including circumcision, immersion before a court, and proper intent, according to Joseph Karo's Shulchan Aruk

sec. Yoreh Deah 130

1) To convert, one first must be circumcised. If previously circumcised, the man must have a drop of blood taken, though no blessing is said over the drop. Also, immersion is necessary.

When one comes to convert, ask him, "What do you see that you have come to convert? Don't you know that today Israel is persecuted and oppressed and reviled?" If he answers "I know and I am not worthy to join you" then receive him immediately. Tell him the fundamentals of the faith: the unity of God, the prohibition against worshipping idols, and expand on this matter. Tell him some of the easy laws and some of the more stringent laws. Tell him some of the punishments for breaking the laws, for example, "before you came to this level, you ate forbidden fat without punishment of excommunication, you desecrated Shabbat without punishment of stoning.

Shach; this is <sup>done</sup> in order to discourage and warn the prospect. But don't dwell too long or in great detail on the introduction. Tell the prospect the rewards of observing the laws: that he will merit the world to come and the only true saint is the wise one who observes the laws and understands them. Tell him, "You know, this world to come is stored for the righteous which is Israel. Though Israel suffers pain in this world, the benefits are stored up for them. They can't receive benefits in this world like others, lest they become haughty and err and lose the reward of the next world. So God brings evil upon them in this world so they will not be destroyed. Rather, the heathens will be destroyed and the Jews will endure. Expand on this matter to familiarize him with it. If he accepts, circumcise him at once. After he is completely recovered, immerse him properly without impediments.

Some rule, that hair must be shaved, and fingernails and toenails pared before immersion. Stand by him, and tell him some of the easier and some of the more stringent laws a second time while he is standing in the water. If the convert is a woman, women bring her to the water, and the judges wait outside and talk to her while she sits in the water. Then she immerses while they turn away; they leave before she gets out of the water, so they don't see her.

After getting out of the water, the convert says a blessing. Once the person is immersed, he is a Jew and may marry a Jew.



3) All matters of conversion -- telling the prospect about the laws, circumcision, immersion -- must be done before three authorized judges and during the day. This is the rule for proceeding. But after the fact, if the convert was circumcised or immersed before two or at night or even if immersed not expressly for converting, but a man who immersed for a seminal emission or a woman who immersed for the end of her period (that is, they are already following Jewish observance) they are converted. They can marry Jews. ~~Accepting the law must be done during the day and before three.~~

Isserlis: The Rif and Maimonides agree that even after the fact, if there were only two judges or it was at night, the immersion is invalid and the person should not marry a Jew. If the person marry a Jew and have a child, the child is not disqualified.

Taz: Accepting the law is the essence and the beginning of conversion, circumcision and immersion are acknowledging the sentence.

Taz ~~xxx~~ if

Shach: Even ~~he~~ immersion before one judge is valid, as it says in the Tosefot. And if a man immersed before one or at night marries a Jew, ~~the~~ it ~~Shach~~ is kosher in any case. The child is considered fit for priesthood, which isn't the case ~~if~~ for the child of a heathen.

3) For immersion, a court of three is necessary. It should not be done on Shabbat or on a holiday or at night, but in any case, if a person is immersed, he is converted.

9) A man who was circumcised because of health reasons is not converted. If he wants to convert, it is a mitzvah to circumcise him.

10) A person who comes and says, "I was converted by X court" is not believed until he brings witnesses. If the community sees that he acts like a Jew and observes the laws, he is considered a convert, even if there are no witnesses. Yet he cannot marry until he brings witnesses or he immerses before them.

But a person who comes and says, "I was an idolater and I was converted by a court" is believed, since he didn't have to say that he was a convert. This is according to the principle ~~that~~ of self-inditement.

Shach: Maimonides ruled that all this holds only in Israel where the entire community is Jewish, but that outside of Israel he needs to furnish proof of his conversion before marrying. But even Maimonides exempted travelers from the need to furnish proof.

11) A Jew who suddenly says, "I converted privately" is believed about himself but not regarding his children and he is forbidden to Jewish women until he is immersed before a court.

12) When a prospect comes to convert, he should be examined lest he want to convert for money or benefit or from fear. Make sure he is not converting to marry a Jew. If no ulterior motive is found, tell him of the heaviness of the yoke of Torah and the bother of observance to discourage them. If they accept and are not put off but return, receive them. If ~~there~~ he were not examined or are not told of the rewards and punishments of the laws and ~~xxx~~ is converted before three men, the conversion is valid, even if it is known that he had ulterior motives. He is suspect until he acts as a Jew, but even if he return to non-Jewish practices, he is considered a renegade Jew and can marry a Jew.

Shach: This is according to the Tosefta. Hillel converted someone who wanted to be a high priest by reasoning that in the end he would be converted for the sake of God. The BY says from this we deduce that all is at the discretion of the court.



All authorities except one require a drop of blood from a convert who was previously circumcised according to Tosafot

Tosafot commenting on: Shammai's schpp; says a drop of blood is required for a man who was circumcised before coming to convert. Hillel's school rules it is not necessary (SHab. 135a)

The Halachot Gedolot, the earliest compilation of laws, did not rule according to Hillel, but that ...a convert needs a drop of blood. This decision is based on Rabbi Yosi in Talmud chapter Yev. 46b, where it says:

"One who comes and says that he was circumcised but not immersed, Rabbi Judah said immerse him, Rabbi Yosi ruled, don't immerse him."

The text does not mention whether a drop of blood is required.

Rabbi Yosi would have immersed the man if he had been circumcised for the sake of converting. We deduce from this case that if the same court did not oversee the circumcision, he could be an Arab or Gibeonite already circumcised. Therefore, Rabbi Yosi rules that a drop of blood is necessary before immersion. He does not immerse the prospect, since he is not converted unless he is both circumcised and immersed. Rabbi Hananel ruled differently that the Halachot Gedolot.

Rabbi Hananel does not require a drop of blood

Commenting on Shab. 135a: A man who converts when already circumcised needs no improvement (that is, a drop of blood.) His sons may be circumcised and may become part of the community since their father converted by means of immersion. He is considered a convert to legitimize his children, but not himself.

Hillel's statement is reinterpreted to say he requires a drop of blood

Bereshit Rabba 46.9 (a later compilation of comments on Genesis): Rabbi Eleazar ben Rabbi Eleazar ha-Kappar said; Shammai's school and Hillel's school do not disagree in either the case of a man born circumcised or the case of a man converting when already circumcised. They both agree that a drop of blood is required. What do they disagree over? Over a child born circumcised and the eighth day is the Shabbat.



## Conversion in Reform

### 1. A call for new procedures

Pittsburg Conference Nov 1885:

1. Inasmuch as the so-called Abrahamitic rite (circumcision) is by many, and the most competent, rabbis no longer considered as a *conditio sine qua non* of receiving male gentiles into the fold of Judaism, and inasmuch as a new legislation on this and kindred subjects is one of the most imperative and practical demands of our reform movement, be it

Resolved, that a committee of five...be entrusted with framing a full report to be submitted for final action to the next conference.  
(The next conference, called for 1886, did not meet.)

conversion by oath and document

2 CCAR conference New York, 1892:

Resolved that the CCAR...considers it lawful and proper for any officiating Rabbi; assisted by no less than two associates, and in the name and with the consent of his congregation, to accept into the sacred covenant of Israel, and declare fully affiliated with the congregation 723 108  
any honorable intelligent person who desires such affiliation, without any initiatory rite, ceremony or observance whatever; provided such person be sufficiently acquainted with the faith, doctrine and religious usages of Israel; that nothing derogatory to such person's moral and mental character is suspected; that it is his or her own free will and choice to embrace the cause of Judaism and that he or she declare verbally, and in a document signed and sealed before such officiating rabbi and his associates, his or her intention and firm resolve:

- 1) To worship the One Sole and Eternal God and none besides him.
- 2) To be conscientiously governed in his or her doings and omissions in life by God's laws, ordained for the child and image of the Father and Maker of all, the sanctified son or daughter of the divine covenant.
- 3) To adhere in life and death, actively and faithfully, to the sacred cause and mission of Israel, as marked out in Holy Writ.



theoretical principles as reasons to dispense with circumcision

Adolph S Moses (1840-1902)

";;;Now what principles are involved in the proselyte question? Why, the very highest -- the principle whether Judaism is merely the tribal religion, the religion of the one Jewish people, or whether it is in its nature and tendency a universal religion. Is Judaism merely an historical appendage to the Jewish race or is the Jewish race a mere appendage to Judaism? Surely, the idea is that the Jewish race has been and is but a providential means to a high spiritual end, to propagate Judaism among the nations of the earth, to make it universal in practice, as it is in theory, to cause it to become in the deepest and highest sense a far reaching, elevating and humanizing moral power! We have then a mission to mankind, a message for the families of the earth! to

What flows from this idea as the reception of proselytes? Obviously the principle that those Gentiles should be considered and treated by us as our coreligionists who sincerely base their whole theory of life and conduct on the ethical monotheism of Judaism sans Christian phrase and mental reservation. What rites and ceremonies should be observed? Let a simple declaration suffice, made in the presence of the Rabbi and a number of representative men and women! Would you dispense with the so-called Abrahamitic rite (circumcision) and the proselyte oath? Most certainly! Why should the idiosyncrasies of tradition be allowed to interfere with the advancing and expanding life of Judaism? Let no meaningless ceremonies and deterrent rites come between Judaism and the world. Has not history taught us impressively enough of the folly of such ways?"





## Reform Responsum advancing the dispensibility of circumcision

CCAR Yearbook 1892 p.66-128

Dr. Aaron Hahn:

The Rabbi Lipman Mulhauser, who lived in the 16th century, declared...that circumcision is a mere ceremony, and by no means, as some claim it to be, an essential of Judaism...Rabbi Eliah Mizrachi's idea in his book Sefer Mayim Amukim, is that while the mother should immerse herself to become a Jew, her boy, who was born at that time, is not obligated to be circumcised nor to be immersed. He should be admitted upon the strength of a religious vow.

Rabbi Judah Arye Modena in his book Bechinat Ha-Kabbalah wrote: A convert who comes to embrace Judaism should be told what the sense of the circumcision is. If he does not care to be circumcised let him be immersed, and in virtue of that ceremony, he shall be considered a Jew in every respect. But if to such a convert a ~~male~~ boy is born after he has converted, he shall have it circumcised.

I suggest....that in questions of such vital importance the congregations have a right with reference to the deliberation of the Central Conference, to decide for themselves.

a reply in favor of retaining circumcision

Dr. Isaac Schwab: ...Within the pale of the true Jews no authoritative dispensation of full proselytes from the initiatory rite was ever decreed by the ancient doctors is to me beyond any doubt.

The ger was debarred from the passover sacrifice unless he would undergo circumcision. That the sign of the covenant should have been demanded of a proselyte ~~and~~ but for the participation in the Passover rites, and not for other occasions and cases of national-religious life, is an hypothesis not warrented in the least by a common sense interpretation of Scripture.

For all the uncertainty in the definition of the Mosaic ger...we have to assert that all our ancient theologians held fast to the initiatory rite as the indispensable condition of the admission among Jews of proselytes, who wished to become full members for all national religious purposes.

...We ask, further, is it conceivable that Hillel should, in the case of the second Talmudic narrative in question, have imposed on the applicant nothing else than the acceptance of that ethical maxim, "What is hateful to you..." when we are aware, upon the best rabbinical authority, that the school bearing his name Beth Hillel-- were were so vigorous on the question of admitting Gentile converts that they affirmed dogmatically that the previous state of their uncircumcision is a real, intense defilement, cleaving to them ~~yet~~ even after the performance of the circumcision and not yielding even to the rite of immersion, inless they be also sprinkled with the waters of purification and thus cleansed of a ceremonial impurity... (

Does not the Talmud relate of Rabbi Joshua in Yev, that he propped immersion as sufficient for initiating a convert?

To this we must reply the following: The Talmudical account in question must be studied accurately in its entire context. It seems, from the form in which the entire relative discussion in Yevamot is rendered, that once upon a time the theme of incomplete conversion was broached in the academy of Jamnia. Eliezer, Joshua and a number of ~~the~~ other doctors partidipated in the debate upon it. The object in proposing this theme appears...to have been to arrive at a clear and correct judgment on the problem whether an incomplete



conversion, though undertaken in good faith, should avail in case of such a convert's union with a Jewish female, which would result in a living issue. Is this issue to be regarded as an Israelite or a Mamzer (bastard)? For it is to be kept in mind that the rabbis declared children out of mixed marriages of pagans with Jews, mamzerim (bastards), no less than those coming from incestuous relations.... This view is, that Eliezer, Joshua and their fellow-academicians disputed on the legal consequence of an incomplete conversion as regards the rank of the progeny, if such should happen to spring from the union of the deficiently initiated convert with a native Jewess.

But there was then and there no question at all as to the dispensableness of either of the two rites, circumcision and immersion, in all cases of proposed, real and thorough transition of Gentile proselytes to Judaism.

reply~~ing~~ for dispensing with circumcision on the grounds of the spirit of the times

Henry Berkowitz: "He believes that the usages consecrated by age, but which have become untenable by reason of the changed conditions and requirements of life, ought to be revised and transformed."





## contents of a reform manual for converts

1925 OCAR Yearbook

prepared by the Committee for the Preparation of a Manual for the Instruction of Proselytes

the manual shall have three parts:

1. A historic presentation of Judaism's attitude to the nonJew. The aim will be to show to those who are interested in becoming one with us...that our religion is wholeheartedly open...
2. This section will be in three parts:
  - a. brief synopsis of the history of Israel
  - b. cardinal teachings:
    - i. Our conception of God along the lines of ethical monotheism
    - ii. Individual responsibility vs. vicarious atonement
    - iii. Revelation
    - iv. Judaism's place and purpose in the world
    - v. Choice of Israel
    - vi. The spiritual unity of Israel
    - vii. The place of the Synagog in our religious life and other moral and ethical teachings, for example, the ten commandments, Love your neighbor as yourself, sanctify yourselves for the Lord your God is holy, our laws of broad charity, our ideal of peace, and so on.
  - c. A reprint of the Conversion Service
3. The rites and customs of Judaism





contemporary suggested procedure, with optional immersion

Doppelt, Polish, Conversion:

6 It is a Mitzva for a non-Jew who is committed to living a Jewish life and casting his or her lot with the Jewish people, to become converted to Judaism, as did Ruth the Moabite who said, "Your people shall be my people, and your God my God." (Ruth 1.16)

1. Non-Jews may be converted upon completion of a course of study in Judaism and the Jewish way of life, and upon ~~the~~ first convincing a Rabbi of their firm intentions, their character and the renunciation of their former faith.  
the very
2. The course of study should last at least two months and should include both formal instruction in Judaism and instruction in the skills of Jewish living, such as Prayers, Shabbat observance and Holiday observance. In a number of communities, classes for would be converts are offered by the local Association of Reform Rabbis or jointly by Reform and Conservative Rabbis.
3. No one should present himself or herself for conversion, nor should anyone be encouraged to convert who still has an attachment to another religion. This would be disruptive to the person's life and to the life of others.
4. Converting with the intent of marrying a Jew is a legitimate motive as long as the convert honestly wishes to live a Jewish life and conscientiously build a Jewish family.
5. A convert fulfilling the requirements for conversion with integrity, is a full-fledged Jew with all the status, privileges and responsibilities of one born a Jew.
6. Wherever possible, a conversion should be conducted by 3 Rabbis. Where this is not possible, at least one Rabbi should officiate and at least two member of the Congregation should be present.
7. Some Rabbis encourage Tevilah (ritual immersion) for female converts.
8. The conversion service should be private, but the convert may be presented to the congregation at a Shabbat service following the conversion.



## Conversion in the Bible

Information about conversion in the Bible comes from two main sources: laws directly on the subject, and details in stories from which one can extrapolate procedures. Besides the questionability of trying to extrapolate laws on the basis of the narrative passages, there is a further problem. The Bible itself is a corpus of material which spans about 2000 years, As customs change over time, dating different passages becomes an important issue.

Rosenbloom concludes: originally the ger was "anyone living in association with a community which originally was not his own." Early evidence of foreigners joining Israel:

Gen. 12:5: Abram took his wife Sarai and his brother's son Lot and all the wealth they had amassed and the persons that they had acquired in Haran, and they set out for Canaan.

Exodus 12:38: In addition a mixed multitude went out (from Egypt) with the Israelites, and much livestock, both flocks and herds.

Legal categories of people in ancient Israel included the eizrach or native Israelite and the nachri, the foreigner:

1 Kings 8:41: "...concerning the foreigner who is not of your people Israel.

2 Samuel 15:19: King David said to Ittai the Gittite, "Why are you coming with us? Return and stay with the king, for you are a foreigner and an exile. Return to your own place."

A foreigner who wished to join the Israelites was granted a different status and called ger.

Numbers 9:14: If a ger is living with you and wants to make the passover offering to the Lord, he must offer it according to the rules and rites of the passover sacrifice. There shall be one law for you, whether a native or a ger in the country.

Deut. 1:16: I commanded your judges then as follows: Hear out your fellows, and rule justly between any one and a native or a ger.

Numbers 15:14-16: When, throughout the generations, a ger who has taken up residence with you or lives with you, wants to present an offering by fire acceptable to the Lord, just as you do it, so shall it be done by any member of the community. There shall be one law for you and for the ger, it shall be a law for all time throughout the generations. You and the ger shall be equal before the Lord, the same ritual and the same rule shall apply to you and to the ger who resides among you.

The procedure for the foreigner to formally join the community, and even if there was a formal procedure at all, is unclear.

Ruth 1:16: But Ruth said, "Don't ask me to leave you or turn away, for wherever you go, I will go, where you stay, I will stay, your people will be my people, and your G-d will be my G-d, Where you die, I will die and there I will be buried, however G-d directs my life, only death will separate us. (No other procedures are specified in the narrative)

Exodus 12:48-49: If a foreigner is living with you, and wishes to make the passover offering to the Lord, he and all the males of his household should be circumcised. Then he can be brought into the community to make the offering, and he shall be considered as



a native citizen. But no uncircumcised man shall eat the passover offering. One law shall you have for the native born and for the ger living among you.

Isaiah 56.6-7: As for the strangers who join themselves to the Lord to serve Him and who love the name of the Lord to minister to him, all who keep the Sabbath rules and observe my covenant, I will bring them to my holy mountain and make them joyful in my house of prayer, their sacrifices and offerings will be accepted on my altar, for my house shall be called a house of prayer for all people.

After the exile in Babylonia 586-546, an independent Israelite nation was not reestablished. The affiliation of the ger was no longer national and ~~religious~~ religious, but only religious. One may conjecture that there was greater pressure for the ger to assume all aspects of contemporary observance.





I. Introduction to the period

After the conquest of the Middle East by Alexander the Great 333 BCE, the Jews fell under the province of the Greco-Roman empire. The Greeks built cities in Judea, and with the growth of these cities grew the need for urban laws. The next stratum of Jewish law after the closing of the Bible reflects this urban situation. These laws were compiled into the Mishnah, written 200 CE, but reflect cases and precedents which were established as early as the Maccabean revolt 165 BCE, and institutions with perhaps even earlier origins.

II. Attitude of the community was welcoming

Josephus Against Apion 70 CE : The consideration given by our legislator (moses) to the equitable treatment of foreigners also merits attention. It will be seen that he took the best possible measures both to secure our own customs from corruption and to open them ungrudgingly to any who choose to share them. To all who desire to come and live under the same laws with us, he gives a gracious welcome. (2.210)





## Disagreement over accepting converts with ulterior motives:

Shabbat 31a : Once a nonJew came before Shammai and asked, "How many Torahs do you have?" "Two" he replied, "A written Torah and an oral Torah." "I accept the written Torah, but I don't believe in the oral Torah. Convert me so that I may learn the written Torah." Shammai became angry and sent him out. He went to Hillel, who converted him. Hillel said to him, "A,B,C,D" the next day, he reversed the letters. The student protested, "Yesterday you didn't teach it this way." Hillel said, "Don't you rely on me? So I rely on the oral Torah."

Another time a nonJew came to Shammai and said, "Convert me on the condition you teach me the entire Torah while I stand on one foot." Shammai drove him away with his measuring rod. He went to Hillel who converted him: "What is hateful to you, don't do to anyone else. This is the whole Torah, the rest is commentary. Go now and study."

Another time, a non-Jew was passing behind a synagogue and heard the reader say, "These are the clothes they are to make: a breastplate, an ephod, a robe, a fringed tunic, a headdress and a sash. (Ex. 28.4)" He inquired, "Whom are they for?" They said to him, "The High Priest." He said to himself, "I'll convert and become the High Priest." So he went to Shammai and said, "Convert me so that I may become High Priest." Shammai drove him away with the measuring rod he had in his hand. He went to Hillel who converted him. Hillel said, "No one can be appointed king until they are familiar with the lay of the kingdom. Go and study the lay of the kingdom." He began to study and when he came to the verse: ...when the Tabernacle is to be pitched, the Levites shall set it up, any outsider who encroaches shall be put to death." he asked, "Who does this refer to?" They told him, "Even to David king of Israel himself." The convert reasoned, "Even for Israel who are called God's children, and whom He loves greatly, as it is written in the Torah, 'The Lord ~~sia~~ says, 'Israel is My first-born child.'" (Ex. 4.22) yet it says about them they would be put to death, a simple convert <sup>who</sup> came in his staff and cloak, so much the more so." He returned to Shammai and said, "I could never be fit to be High Priest, as it says, 'Any outsider who encroaches shall be put to death.'" He went to Hillel and said, "The humility of Hillel! Let a blessing be upon you, that you brought me under the wings of the Shekinah."

Later on, the three happened to meet together. They said, "The harshness with which Shammai judged us almost drove us from the world, the humility of Hillel brought us under the wings of the Shekinah."

From here the sages taught: Be patient and humble like Hillel and not harsh like Shammai.



## Talmudic Times

### Introduction to the period

When the Jews were exiled from Judea by the Romans, the center of the Jewish community shifted to Babylonia. To respond to the needs of the community outside of its homeland, a new corpus of law developed, consisting of Gemarah, or comments to the Mishna. The corpus was compiled about 500 CE and went through generations of editing.

### Necessity of trying to discourage prospective converts

Yevamot 2 47a: The Rabbis taught

A person who comes to be converted in the present time should be asked, "What do you see ~~that you~~ that you have come to convert? Don't you know that Israel is oppressed and persecuted and reviled today?" If the person answers, "I know, and I am not worthy," he is accepted immediately. Tell him some of the easy laws and some of the more stringent laws. Tell him that the grain remaining after the reaping ~~must~~ must be left for the poor, ~~asxax~~ is the grain in the corners of the fields. Tell him the punishments for breaking the laws. Say to him, "You know that until you convert ~~as~~ you can eat forbidden fat without the punishment of excommunication, you can desecrate Shabbag without the punishment of stoning. Now if you eat forbidden fat you will be excommunicated and if you desecrate Shabbat you will be stoned."

As you tell him of the punishments of the laws, tell him of the rewards. Say to him, "You know that the next world is only for saints, and Israel at this time is unable to bear too much prosperity or too much suffering."

But don't elaborate or linger on these matters, but circumcise him immediately. If shreds remain, circumcise him again. As soon as he is recovered, immerse him. When he is being immersed, two sages stand by him and tell him some of the easy laws and some of the more stringent laws. He immerses himself, and when he gets out, he is a Jew in all matters. For a woman, women should bring her into the water up to her neck. Two sages should stand outside and tell her some of the easy laws and some of the more stringent laws.



acceptance of converts with ulterior motives

Yev. 45b: The slave of Rabbi Hiya bar Ami had a nonJew immerse herself so that they could marry. Rabbi Yosef said, I can declare her and her daughter legitimate converts...

A man was called "son of a nonJew" but Rabbi Asi said, "Didn't his mother immerse herself after her menstrual period? (If so, she was a legitimate convert)"

Another man was called "a son of a nonJew" Rabbi Joshua bar Levi said, "Didn't his father immerse himself after a seminal emission? (If so, he is a legitimate convert)"





Discussion of the status of people converting from ulterior motives

Yevamot 24b: Mishnah: If a man were suspected of intercourse with a servant who later was freed, or with a pagan who was later converted, he cannot marry her. But if he married her, they may remain together. A man suspected of intercourse with a married woman who was later divorced, he may not marry her and if he married her, they cannot remain together.

Gemarah: This text implies that the pagan can be a valid convert even though she converted to marry. But this contradicts a ruling: it doesn't matter whether a man converts for a woman, or a woman converts for a man, or a person converts for a royal feast or converts to be an officer of Solomon, they are not converts.

This ruling must be from Rabbi Nahemiah, since Rabbi Nehemiah ruled: It doesn't matter if people convert from fear of Divine anger (see 2 Kings 17.25) or from a dream, or from fear of being conquered (Esther 8.17) they are not converts unless they convert at the present time (That is, just after the Hadrianic wars, a time of great suffering for Jews, so that converts could not have ~~been converted for ulterior motives~~ had ulterior motives).

Does this statement mean today? No, it means times like that time.

Rabbi Isaac bar Samuel bar Marta said in his teacher's name:

The law follows the opinion that all are converts.

But if the conversion of the woman in the Mishnah was valid, why is the marriage recognized only after the fact?

Because of Rabbi Assi who said, "Put away from thee a deceitful mouth and perverse lips." (ie, don't give credence to the rumors by marrying.)



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## the Medieval Period

### Introduction to the period

After the Talmud was closed, new legal forms arose to answer questions posed by new situations. Responsa literature, in which an answer was given to an individual question, was developed in Babylonia, and the answer was issued under the name of the Gaon, the head of the Jewish community (7-mid-11th century). With the fall of the Caliphate in Baghdad, the community's center shifts to the Mediterranean. The Jews of Germany and Provence develop a literature of comments on the Talmud. Rashi's commentary of the 11th century contains material from the Ashkenazic school. This form of literature is further developed by the Tosafot, commentators of Germany and France of the 12-14th centuries.

Meanwhile, the Spanish Jews were writing comprehensive codes summarizing and organizing the legal decisions of the Talmud. The most important codes are by the Rif (Rabbi Isaac Alfasi 1013-1103) followed by Maimonides' Mishnah Torah (1135-1204.) Next came Jacob ben Asher's Arba Turim 1270-1340. Jacob was the son of Ahser ben Yehiel, an ashkenazi Jew who fled to Spain, bringing ashkenazi traditions. The culmination of the codes is Joseph Karo's Shulchan Aruk, published 1565. Drawing on the three earlier works, it becomes the definitive code for Sefardic Jews, and with the additions by the Rema (Rabbi Moses Isserlis) the definitive code for Ashkenazic Jews.

As interpreted by several 17th century commentaries: the Taz by David ben Samuel ha-Levi, the Shiftei-Cohen (Shach) by Shabbetai Meir ha-Cohen, and the Magen Avraham by Abraham Abele Gombiner.





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ulterior motives esp #14-17

The necessity of immersion before a court, circumcision and proper intention  
from Maimonides' code of law

Maimonides' Mishnah Torah, Sefer Qiddushim, Issurei Biah chpt. 17

1. Israel entered into the covenant by circumcision, immersion and sacrifice.  
2. Similarly, when a non-Jew wants to convert, circumcision, immersion and a sacrifice is necessary.

5. Since there is no Temple, the need for a sacrifice is abrogated.

6. A man who was circumcised but was not immersed, or was immersed and not circumcised, is not converted until he is both circumcised and immersed.

He must be immersed before three ~~(times before a court)~~ since three form a court. He should not be immersed on Shabbat or a holiday or at night, but if he is immersed then, he is converted.

One who is immersed alone or before two is not converted.

One who says, "X's court converted and immersed me" is not believed until he brings witnesses.

8. A man married to a Jew whom suddenly says, "I was converted privately" is not believed in regard to his children, but is believed about himself and has to be immersed before a court.

9. People who act as Jews and observe the laws are considered converts even if no witnesses testify that they converted. But if they want to marry, they need to bring witnesses or be immersed before a court.

10. A stranger who comes to the community and says, "I was not Jewish and was converted by a court" is believed...This holds in Israel at that time since it was a community of Jews, but outside of Israel, one needs proof.

14. Don't think that Samson or King Solomon married non-Jewish women. Rather, the secret of the matter: the proper procedure when a person comes to convert is to examine them lest they are converting for money or benefit or fear or for marriage. If there is no ulterior motive, tell them the heaviness of the yoke of Torah and the bother of doing the laws, to put them off. If they accept and are not put off but return, receive them.

15) The court therefore did not accept converts in the reigns of King David and King Solomon, for David, lest they were converting from fear, for Solomon, lest they were converting for the glory and honor. For anyone who converts from a desire for the things of this world are not righteous converts. Even so, there were many converts made during the reigns of David and Solomon, before courts with simple lay judges. The high court was suspicious of them. They were not rejected after their conversion in any case, but they were not totally accepted until it was seen what they did.

16. Solomon converted women and married them, as did Samson. Since they had ulterior motives and were not converted by a court, they were considered as non-Jews.

17. Therefore the wise men say, "Converts are as hard for Israel as boils." since most of them convert for ulterior motives and lead Israel astray. It is hard to separate them after they converted. See what happened in the wilderness with the golden calf and all the things the mixed multitude began.

18) A person who wasn't examined or told the laws and their punishments, but was circumcised and immersed before three lay men, is converted.

Even if it is known that he converted for an ulterior motive, if he has been circumcised and immersed, he is no longer a non-Jew, but is suspect until his deeds are clear. But even if he returns to idolatry, he is a renegade Jew. He can marry a Jew, and it is a mitzvah to return what he lost, since after immersion he is a Jew.



Todafot rule that one who converts for ulterior motives is a convert

Tosefot commenting on Yevamot 24B "The law follows the opinion that all these (who converted for ulterior motives) are converts":  
The law is according to the one who said they are all converts.

Jacob ben Asher's code Arba Turim agrees

Yoreh Deah sec.268:

A man who converts to marry or a woman who converts to marry or one who converts for the sake of a royal feast or one who converts from fear or from a dream, all are converts.



A person who converts for ulterior motives is a Jew

rules of intention by Joseph Karo's Shulchan Aruk sec. Yoreh Deah 130

9) A man who was circumcised because of health reasons is not converted. If he wants to convert, it is a mitzvah to circumcise him.

10) A person who comes and says, "I was converted by X court" is not believed until he brings witnesses. If the community sees that he acts like a Jew and observes the laws, he is considered a convert, even if there are no witnesses. Yet he cannot marry until he brings witnesses or he immerses before them.

But a person who comes and says, "I was an idolater and I was converted by a court" is believed, since he didn't have to say that he was a convert. This is according to the principle ~~khax~~ of self-inditement.

Shach: Maimonides ruled that all this holds only in Israel where the entire community is Jewish, but that outside of Israel he needs to furnish proof of his conversion before marrying. But even Maimonides exempted travelers from the need to furnish proof.

11) A Jew who suddenly says, "I converted privately" is believed about himself but not regarding his children and he is forbidden to Jewish women until he is immersed before a court.

12) When a prospect comes to convert, he should be examined lest he want to convert for money or benefit or from fear. Make sure he is not converting to marry a Jew. If no ulterior motive is found, tell him of the heaviness of the yoke of Torah and the bother of observance to discourage them. If they accept and are not put off but return, receive them. If ~~khax~~ he were not examined or are not told of the rewards and punishments of the laws and ~~ax~~ is converted before three men, the conversion is valid, even if it is known that he had ulterior motives. He is suspect until he acts as a Jew, but even if he return to non-Jewish practices, he is considered a renegade Jew and can marry a Jew.

Shach: This is in according to the Toseft. Hillel converted someone who wanted to be a high priest by reasoning that in the end he would be converted for the sake of God. The BY says from this we deduce that all is at the discretion of the court.



converts with ulterior motives accepted according to a modern Orthodox authority

Tosefot on Yev. 24b:

The tosefot brings down many instances where converts were admitted into Judaism, such as the daughter of Pharoah who married king Solomon. In the days of the Gibeonites, the increase of converts over Jews reached 150,000. In the days of Queen Esther and Mordechai, it is written that many converted by themselves. A/sp, the famous story of the one who came to Hillel and asked to be converted while standing on one foot. The other story is also quoted, of the woman who came to Rabbi and asked to be converted so that she could marry a certain student. In all these cases, the Tosefot finds a justification to fit.

We gather that when someone comes to be converted and is informed of what is required and accepts all that is required of that person and goes through all the religious laws required, that person should be converted without any attention given to his or her motives. We have the right to assume that the conversion will be in the long one a ~~st~~ lasting one.

these comments to Tosefot are by a modern authority.



## Reform Coverisions

a convert should agree to a statement of ~~int~~ intention

2 CCAR conference New York, 1892:

Resolved that the CCAR...considers it lawful and proper for any officiating Rabbi; assisted by no less than two associates, and in the name and with the consent of his cangregation, to accept into the sacred covenant of Israel, and declare fully affiliated with the congregation ~~any~~ <sup>3013720 723 308</sup> any honorable intellegent person who desires such affiliation, without any initiatory rite, ceremony or observance whatever; provided such person be sufficiently ~~am~~ acquainted with the faith, doctrine and religious usages of Israel; that nothing derogatory to such person's moral and mental character is suspected; that it is his or her own free will and choice to embrace the cause of Judaism and that he or she declare verbally, and in a document signed and sealed before such officiateing rabbi and his associates, his or her intention and firm resolve:

- 1) To worship the One Sole and Eternal God and none besides him.
- 2) To be conscientiously governed in his or her doings and omissions in life by God's laws, ordained for the dhild and image of the Father and Maker of all, the sanctified son or daughter of the divine covenant.
- 3) To adhere in life and death, actively and faithfully, to the sacred casue and mission of Israel, as marked out in Holy Writi Writ.

acceptance of conversions for ulterior motives

CCAR 1947:

7 It is our Reform practice always to accept a proselyte who intends thereby to be eligible to marry a Jew, provided, of course, we are convinced that the candidate is serious and reverent in the intention to convert...Since the traditional law is doubtful as to the acceptance of proselytes whose intention is to marry a Jew, we suggest that we accept the following statemtn as principle:

The CCAR considers all sincere applicants for proselytizing as acceptable whether or not it is the intention of the candidate to marry a Jew.



## Divorce in the Bible

### Introduction

Information about divorce in Biblical times comes from two main sources: laws directly on the subject, and details in stories from which one can extrapolate procedures. Beside the questionability of extrapolating laws on the basis of narrative passages, there is a further problem. The Bible itself is a compilation of material which spans about 2000 years.. As customs change over time, the difficulty of dating passages becomes an important issue.

### The basic laws of divorce

Deut 24:1-3:

If a man marry a woman and she doesn't please him because he finds something obnoxious about her, then he should write her a bill of divorce and put it into her hand and send her out from his house. If she leaves his household and becomes the wife of another man and the second man rejects her, writes her a bill of divorce, hands it to her and sends her away from his house, or the second husband die, then the husband who first divorced her shall not remarry her. She has become disqualified for him and the remarriage would be abhorrent to the Lord.

### In one story, a woman takes the initiative

Judge 19:1:

In those days before there was a king in Israel, a man from the tribe of the Levites who was living at the other end of the hill country of Ephraim took a concubine from Bethlehem in Judah. Once his concubine deserted him and returned to her father's house in Bethlehem, and stayed there for four months. Then her husband set out with an attendant and a pair of donkeys to woo her and win her back.

## Divorce in Mishnaic Times

### Introduction

After the conquest of the Middle East by Alexander the Great in 333BCE, the Jews fell under the control of the Syrian-Greco empires. The Greeks built cities in Judea, and with the growth of these cities grew the need for urban laws. The next stratum of Jewish law after the closing of the Bible reflects this urban situation. These laws were compiled into the Mishnah, edited 200 CE, but reflect cases and precedents which were established as early as the Maccabean revolt of 165 BCE, and institutions with perhaps even earlier origins.

### Some of the rules for the writing of the get

- 2.3 The get (bill of divorce) may be written with anything lasting, on any type of paper or surface.
- 2.5 Anyone may write a get, even a deaf-mute, an imbecile or a minor. A woman can write her own get and a man can write his wife's receipt for the get, since the get is validated only by being signed correctly.
- 3.2. One who writes copies of a get should leave space for the husband's name, the wife's name and the date...Rabbi Judah forbids preparing a form in advance. Rabbi Elazar also forbids writing a get in advance, since it must be written expressly for the specific woman.
- 9.3 The essential formula of the get is "You are free to marry any man" Rabbi Judah gives an Aramaic formula: "This is your bill of divorce and letter of dismissal and get of liberation which frees you to marry any man you want."
- 9.8 If a get was written in Hebrew and the witnesses signed in Greek, or if it was written ~~α~~ in Greek and the witnesses signed in Hebrew, or if one witness signed in Greek and one in Hebrew, or if it was signed by the scribe and one other witness, it is valid.
- 9.4 There are three types of get which are ~~invalid~~, but if the woman defective remarries, her children are legitimate (that is, ~~hx~~ she is not considered married to her first husband): if the husband wrote it himself but there were no witnesses to sign it, or a scribe wrote it and it was witnessed but without the date, or if there were only one witness who saw him write the whole get...Rabbi Elazar says, "Even if there were no witnesses to the writing of the get, if it was given to the woman in the presence of witnesses, it is valid, and she may collect her ketubah money even from mortgaged property, for witnesses only sign the get for the sake of the welfare of the community."

### Cases when the court can force the husband to give a divorce

7.9

A man who developed defects can't be forced to be divorced. Rabbi Shimon ben Gamliel rules that this rule only applies to minor defects, but for major ones, he should be forced to divorce her.

7.10 These are the cases in which men are forced to a divorce: a man with boils or who has an offensive ~~nasaa~~ smell, or who collects dog excrement, or is a coppersmith or a tanner, whether these conditions began before the marriage or during. Rabbi Meir said, "Even if the wife agreed specifically to marry him despite this condition, she is entitled to say, "I thought I



## Divorce in Mishnaic times 2

could endure it, but I can't endure it."

But the majority ruled, "She must endure it even against her will, except if her husband has boils because ~~thx~~ she will weaken him"

Once in Sidon a tanner died and had a brother who was a tanner. Though the widow would usually have to marry the brother, in this case the majority ruled that she could refuse to marry the brother.

Other laws concern the appointing of an agent and the details of witnesses:

Summary of material contained in the book of Divorce of the Mishnah:

1. Credentials of the get and of witnesses; nullifying a non-delivered get.
2. Authentication by witnesses; get must be written and signed in one day; qualified and authorized writers, valid materials, reliable authorized intermediaries.
3. Get must be specifically drawn up for the woman concerned; authorized bearer or substitute.
4. Cancellation of a get before delivery; widow's dowry and support; captive's and slave's status.
5. Regulations concerning alimony, damages, debt, dowry, usurper's use of produce confiscated property, transactions with minor and deaf-mutes.
6. Husband's right to annul the get before its delivery, divorcing a minor.
7. An insane man's order to have a get drawn up is void; procedure for writing a get if he's stricken dumb, other conditions and the validity of the get.
8. Validness of a get for different statuses of husband and wife, invalidity of a get with incorrect names or date.
9. Any deviation of the essential pronouncement of the get, "You are free to marry any man" when the get is presented renders it invalid.

## Divorce in the Talmud

### Introduction

When the Jews were exiled from Judea by the Romans, the center of the Jewish community shifted to Babylonia. To respond to the needs of the urban community living outside of its homeland, a new corpus of law developed, consisting of Gemarah, or comments to the Mishnah. This material was compiled about 500 CE and went through generations of editing.

### General principles of divorce

Gittin 33a: Jews are married by the authority of the Rabbis and marriage is dissolved by their authority.

If the divorce is mutual, there is no concept of assigning the responsibility of the end of the marriage to one of the partners.

Gordis concludes: "The attitude in life towards divorce is strict...but the law on divorce is liberal."

### the language of the get

Gittin 19b: The get may be written in any language, as it was ruled in Mishnaic times: the get can be written in Hebrew and the witnesses sign in Greek, or it can be written in Greek and the witnesses sign in Hebrew.

### the formula of the get

Yev 115a: Abaye said,... "a get was found in Nehardia reading; Wear the twon of Kolonia, I Endrolinai of Nehardia divorce and release my wife X. Samuel's father sent the get to Rabbi Judah Nesiah, who ruled that all Nehardia should be searched (lest someone else have that name.) Rava said, "If that holds, the whole world should be searched. In fact, he sent that message only not to embarass Sameul's father, because the get was valid.

Yev. 116a: A get was found in Sura and in it was written: In the town of Sura, I Anan bar Chaya of Nehardia divorce and release my wife X. The Rabbis searched from Sura to Nehardia and didn't find another Anan bar Chaya except for an Anan bar Chayaof Hagra who was in Nehardia. Witnesses testified that Anan bar Chaya of Hagra was with them in Nehardia the day the get was written in Sura.



## Divorce in the Talmud 2

### women initiating divorce

The Palestinian Talmud, a document roughly parallel to the Babylonian Talmud but compiled earlier in Palestine, records an insertion in the ketuvah (marriage contract) reading: if he divorces...if she divorces... but the full clauses are not given in the extant text (Jer. Ket 30B) In another section of this talmud, a ketuvah is recorded with this clause: If this one be married to that one, her husband, and she be displeased with his companionship (seeks divorce) she shall take half of her ketuvah money." (Jer. BB 16C)

cases in which the man can be forced by the court to give a divorce

Ketu. 77a:

Mishnah: A man who developed defects can't be forced to be divorced. Rabbi Shimon ben Gamliel holds that this rule only applies to minor defects, but to major defects he should be forced to divorce her.

Gemarah: Rabbi Judah interpreted this first statement to mean that the defects arose during the marriage. Hiya bar Rav interpreted this to mean that the defects husband had these defects prior to the marriage.

Those who interpret that the defects arose during the marriage also forbid divorce for defects the man had prior to the marriage, since the woman must have known about them yet agreed to marry him anyway.

Those who interpret the defects as arising before marriage do not apply this ruling to defects which develop during marriage.

For those who interpret the first statement as the defects developed during the marriage, it is appropriate to distinguish between minor defects and major defects for which he can be forced to divorce.

Those who interpret the first statement as the man had the defect prior to marriage--what difference should it make whether these defects are major or minor, since in either case the woman must have known about the, yet agreed to marry the man anyway? She might have thought she could tolerate him, but found that she couldn't.

Major defects are interpreted by Shimon ben Gamliel to include if the husband were blinded, if his hand were cut off, or if his leg were broken.

Rabbi Aba bar Yakov said that Rabbi Yohanan followed the decision of Rabbi Shimon ben Gamliel. Baba said the Rabbi Nachman followed the anonymous ruling.

....Rav said, "A husband who says he will not support his wife should be forced to divorce her and pay her her ketuvah.

Rabbi Elazar told this ruling to Samuel, who exclaimed, "Force him to support her rather than force him to divorce her, you fool." Rav answered, "No one can live with a snake."

a husband may not stipulate whom his divorced wife may or may not marry

Mishnah in Gitin 82a:

One who ~~says~~ divorces his wife saying, "You are free to marry any man but Mr. X" Rabbi Eliezer says this divorce is valid, the majority rule that it is invalid.

Gem:

Does the word "but" here mean "except" or "on condition that"

1) Perhaps: If it means "except", that Rabbis differ from Rabbi Eliezer in that the husband has left an omission in the get by not making her free to marry any man.

If it means "on condition" (that is, you are divorced on condition that you don't marry Mr. X), The majority agrees with Rabbi Eliezer that this is a condition like any other (that is, the get is effective at once, while the condition has to be fulfilled later)

or perhaps 2) The disagreement is over the meaning "on condition" and when the meaning is "except" Eliezer agrees that the get is invalid since it omits the idea that the woman is now free to marry any man.

(By examining the implication of another verse, the Rabbis deduce that the "but" here has the meaning of "except":

Ravina said, "All houses of Jews are made impure by leprosy, but those of heathen." here the correct meaning of "but" must be "except."

~~If the word means "On condition that, then the houses of heathen are not defiled, the houses of Jews become defiled"~~

If the phrase means "on condition that the houses of heathens are not defiled, then the houses of Jews become defiled" then when the houses of heathen are defiled, the houses of Jews cannot be defiled, which is absurd. Also, we know from elsewhere that the houses of heathens cannot be defiled, from the verse: "I have set this plague of leprosy in the house of the land you possess." So only houses in the land you possess can be defiled, and not the houses of heathens. So we conclude that "but" means "except." )

(A long discussion follows in which Rabbis bring in objections to Rabbi Eliezer and other refute the objections, others introduce some general principles, and debate whether these principles can apply to this case or not)

84a: We can conclude that Rabbi Eleiezer and the majority agree that once she is separated from him, she is separated completely (that is, he cannot dictate whom she can or cannot marry.)



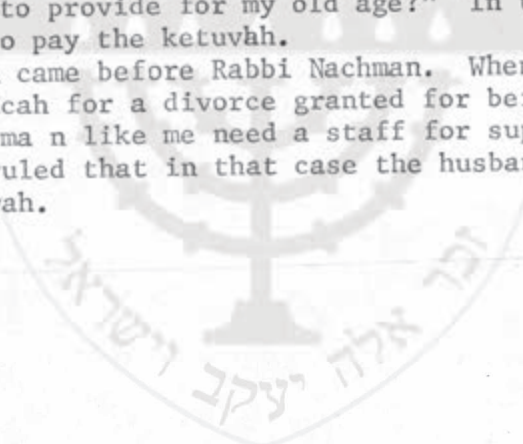
restricting women's opportunities to force a divorce

Yeb. 112a: It was ruled, "Originally it was held that in three cases a woman had to be divorced and was paid her ketuvah: one who says "I am unclean to you" or "the heavens are between us" or ~~"K&K"~~ "May I be kept away from the Jews" This ruling was later revoked lest a wife be attracted to another man and disgrace her husband with charges. Rather, one who says "I'm unclean to you" must bring proof. For the wife who says, "The heavens are between us" (Rashi: he denies her her conjugal rights) the husband is requested to act decently toward her. One who vows, "May I be kept away from the Jews, her husband is excluded from the vow, so they may remain married.

A woman can force her husband to give her a divorce on the grounds of childlessness

Yeb 65b: A case in which a woman sought a divorce on the grounds that she was childless came before Rabbi Yohanan at his court in Caesaria and he ruled that they should be divorced and she should be paid her ketubah... perhaps the ruling was favorable because she made a special plea, as did a woman who presented her case before Rabbi Ami and asked to be paid her ketuvah. He said, "Go away, you can't claim your ketuvah for seeking a divorce for being childless." She replied, "What shall become of a woman like me who has no one to provide for my old age?" In this case, he ruled the husband is forced to pay the ketuvah.

Similarly, a woman came before Rabbi Nachman. When he ruled that she couldn't claim her ketuvah for a divorce granted for being childless, she said, "Doesn't a woman like me need a staff for support and a hoe to dig my grave?" He ruled that in that case the husband must be forced to pay her ketuvah.



## Divorce for the Rishonim

After the Talmud was closed, new legal forms arose to answer question posed by new situations. Responsa literature, in which an answer was given to an individual question, was developed in Babylonia and the answer was issued under the name of the Gaon, the head of the Jewish community (7- mid-11 century.) With the fall of the Caliphate in Baghdad, the community shifts to the Mediterranean. The Jews of Germany and France develop a literature of comments on the Talmud. Rashi's commentary of the 11th century contains material from the Ashkenazic schools. This form of literature is further developed by the Tosafot, Rabbis of Germany and France of the 12-14th century. They also continue using Responsa forms. Meanwhile in Spain and North Africa, Rabbis write comprehensive codes summarizing the legal decisions of the Talmud. The most important codes are by the Rif (Rabbi Isaac Alfasi) 1013-1103, followed by Maimonides' Mishnah Torah 1135-1204, followed by the Arba Turim, written by the son of Asher ben Yehiel, an Ashkenazi Rabbi who fled to Spain. His Ashkenazi customs are reflected in his son Judah's work 1270-1340. The culmination of the work of codification is the Shulchan Aruk by Joseph Karom published in 1565. It becomes the definitive code and marks the end of the period of the Rishonim and the beginning of the later Rabbis, the Achronim.

### AMERICAN JEWISH ARCHIVES

#### 1. General principles

Maimonides Laws of Divorce. Miahnah Torah

8.1 A man who issues a conditional divorce, if the condition is fulfilled, his wife is divorced and if the condition is not fulfilled, she is not divorced. When the condition is fulfilled, she is divorced from the time the get is delivered into her hands.



## Divorce for Rishonim 2

### 2. the Get and its form

Maimonides Mishnah Torah. Laws of Divorce:

1. A woman is only divorced by a written document which is called a get. There are ten basic aspects of divorce set in the Torah:

- a) The man is only divorced voluntarily.
- b) The divorce is made through a written document and no other way.
- c) The subject of the get is that he divorces her and has removed her from his possession.
- d) It should express the idea of separation between them.
- e) It should be written expressly for her.
- f) It must not require any other act except delivery.
- g) He must give it to her.
- h) He must give it to her in the presence of witnesses.
- i) He must give it to her as a bill of divorce.
- j) Only the husband or his agent can give it to her.

The other feature of the get, for example, the date and signature of witnesses are Rabbinic in origin.

2. How do we know that the Torah set these ten essentials?

It is written (Deut 24.1): If she fails to please him...

This phrase implies that he divorces her voluntarily, but she can be divorced against her will.

"...he writes..." implies the necessity of a written document.

"...for her..." implies expressly for her

"a letter of separation..." implies that the contract should express separation and hands it to her..." implies that the get must be handed to her, or her agent, or her courtyard, which are all considered as her hand as will be explained.

"and sends her away..." implies the get must express that he sends her away and not that he sends himself away from her:

3. If he wrote: you are sent from me, you are divorced from me, you are free to yourself, you are permitted to any man, or suchlike, the divorce is valid.

The essential formula is "You are permitted to marry any man." But if he write "I am not your husband, I am not your betrothed, I am not your man," this is not valid, since he can't send himself away. Similarly, if he writes to his wife, "You are a free woman" this is not valid.

5. She is divorced as soon as she received the get, even if she is still living in her husband's house. *see next page*

Tosafot Gitin 9a: It is customary to write the get in twelve lines, but if there are more or less, it is valid.

Rif Gittin 9:

~~The~~ The get is composed of the toref, the binding part of the document, and the tofes, the remainder of the document. The tofef consists of the name of the man, the name of the woman and the place. Some say, also the formula, "You are permitted to any man/"

## Divorce in Rishonim 3

Shulchan Aruk 120 Even haEzer:

the get should be written by her husband or his agent, so the sofer should give the parchment and ink and all the things for the writing as a gift and the husband should pay the sofer. After the fact, this procedure is not necessary. But the sages say the woman should pay the sofer, because of the laws of abandoned wives.

3. The woman doesn't have to be present if the witnesses know the couple, or if one of the witnesses know them...but in emergencies the get should be written and delivered even if the witnesses don't recognize the woman.

4. The sofer cannot write a get unless expressly directed to by the husband.  
122.1 Anyone may write a get, except for five types of people, a Samaritan, a slave, a deaf-mute, an imbecile or a minor. Even the woman can write it for herself if her husband asks her to write it, then she gives it to him and he delivers it back to her.

125:1. The get must be written in clear, indelible characters.

126.1 The get may be written in any language of Jews or of nonJews, for example, Provencal, but if written partly in one language and partly in another, it is invalid. Now it is customary to write it in Aramaic (The section then goes on to detail how each word should be written in Aramaic, how it should be spelled, how the characters should appear in the text.)

Rambam cont: 3.15 Anyone may write a get except for 5 types: a nonJew, a slave, a deaf-mute, an imbecile, a minor. Even the woman can write her own get. But a Jew who violates Shabbat is like a nonJew.

~~8.1 A man who issues a conditional divorce, if the condition is~~

### 3. Women forcing a divorce

Maimonides Mishnah Torah Laws of Divorce

2.20 A man who is ordered by the court to divorce his wife, but he doesn't want to grant her the divorce.: A Jewish court should give his lashes until he says he wants to grant the divorce. Then the get is given and is valid. Also if a nonJewish court lash him and tell him to do what the Jews ask of him and the Jewish community pressure him through the non-Jewish court until he will grant a divorce, the get is valid. But if a non-Jewish court takes it upon themselves outside of Jewish law to oppress him until he writes a divorce, the get is not valid. Why are the other cases valid, since they are against his will? Someone who is forced to fulfill an obligation is not oppressed by the court, rather, he oppresses himself by his evil intention.

Shulchan Aruk Even HaEzer 119.6

A woman can be divorced against her will.



## Divorce

Rambam. Issut 4.15 in Yad;

One who marries a Samaritan or servant, it is as if they never married. Also, a non Jew or slave who marries a Jew, their marriage is not valid. An apostate who married, though he is a nonJew by choice, this is a valid marriage, and the wife would need a get to divorce.

Women forcing divorce:

Shulchan Arak, E.H. 154.2

3. One who says, "I will not feed nor support her" Force him to feed and support her. If the court cannot force him, for ample, if he is too poor to support her or he doesn't want to support her, if she wants, the court shall force him to divorce her and ~~her~~ pay her her ketuvah. Similarly for a man who wouldn't have sex with his wife.

Ber Hetev: he is liable for her support all the time up to when he finally issues the get.

Isserlis: Similarly for a man who is wont to be angry and kick his wife out of the house, he is forced to divorce her since he is not supporting her and is withholding sex, which she is entitled to, so says Tosephot and Rifash. A man who beat his wife regularly, the court forces him with all their punishments to make him swear he will not do it again. If he does, some rule that the court should force him to divorce her immediately, ~~and~~ others say after he has been given one or two other chances, since it is not the way of Jews to beat their wives. Rather, it is the custom of the nonJews. All this applies if he begins the matter, but if she curses him for no reason or belittles his father and mother or rebukes him, some say he may hit her and some say even if she is an evil woman it is forbidden to hit her. The first explanation is primary. If it is not known who caused the problem, the husband is not believed to say she began it, for all women are considered proper. Rather, sit down between them afterwards to see who causes the problem. If she curses him for no reason, she should be divorced without payment of her ketuvah, especially if she is wont to curse him and after there is testimony to the fact.

1. These are those men forced to divorce and pay their ketuvah: he who develops a smelly mouth or nose, or becomes a collector of dog leavings, or a coppersmith or a tanner or a . . . . If she wants, she may stay with such a husband. If a man develops leprosy, he is forced to divorce her and pay her the ketuvah. Even if she wants to stay with him, she is not heeded and they are forceably separated, because she only further weakens him. If she says, "I will live with him with witnesses so he won't have sex with me, she is heeded.

Isserlis: Some say that nonJews can force him to give the divorce, but some disagree. Some say a Jew who becomes an apostate is forced to divorce his wife if he leads her to sin, for example, by giving her nonkosher food ~~xxxxxx~~ or he transgresses his vow to her... If he visits a prostitute, ..and there are witnesses who saw him with ~~an~~ adult orers, some say he should be forced to divorce his wife. If he has nonJewish children, there is no need to doubt the truth of the witnesses.

4. A man who develops defects after marriage, even if his hand or foot is cut off or his eye is blinded, and his wife does not want to stay with him, he cannot be forced to divorce her and give her the ketuvah. If she wants to stay, she may, if not, she is under the laws of the rebellious wife.



## Women forcing divorce 2

Isserlis: Some say this rule applies to one leg, hand or eye, but if both legs or hands or eyes are destroyed, he can be forced to divorce her. So says the Tur and the Rosh.

6. A woman who demands a get on the claim that she is not suited to have children from her husband, she is not heeded. If she claims that she wants to have children, so she will have a son to lean on and she doesn't have a child already and she claims he is the cause since he is impotent: if she lived with him 10 years and was never pregnant and if she is not claiming her ketubah so that it is felt that she wants a divorce to increase her ketubah or for an ulterior motive, her claim is accepted, even if he has children from another wife, because he might have been injured afterward. He is forced to divorce her and pay her the 200 zuz of the ketubah, but no additional sum.

Ber Hetev: No additional sum as a present, but an additional third as is the custom among us is permitted by Rabbi Isaac the Elder: presents given her by her husband at the time of the fixing of the match are his presents given to the husband are his presents given to the wife by others at the wedding are hers, whether given by her family or his family to her.

ShA cont: He gives her her bridal things and what she brought with her, and her ketubah. If he says he will marry another woman to examine himself, he is permitted. If the second wife becomes pregnant, he divorces both with their ketubah... In any event, if it is known that he is sterile, and she is fertile. if she demands it, she can demand a divorce immediately.

Isserlis: he cannot say he will marry a second wife to examine himself.

In any case, the first is entitled to her ketubah.

7. If she claims he is impotent and requests a divorce and he denies the charge some say she is believed (Tur: even during the ten years) and he is forced to divorce her immediately, but not to give her the ketubah (Bach: since he denies the charge) but if he divorces her of his free will, he pays the ketubah.

Bet Yosef ~~in the name of~~ wrote: some say even if he can have sexual relations with another wife, he must pay the first her ketubah, so if he is unable ~~to~~ with the second wife, the first cannot return and accuse him.

8. If it is known that he wants to go to a different country, make him swear that he won't go, or force him to issue a divorce before he leaves conditional on his returning by a specific date.

9. If the husband must flee the country because he committed a crime, he should be forced to divorce.

10. ...If a woman miscarries, gets pregnant again, and miscarries three times, she is considered to be a miscarrying woman. Her husband is forced to divorce her and pay her ketubah and she is permitted to marry another.

13. If he says she miscarried during these ten years of marriage, so he doesn't have to divorce her, but she says she didn't miscarry, she is believed.



The ceremony for granting a get, according to the Shulchan Aruk,  
with modifications by Isserlis (for the aschenazi Jews)

Isserlis: Not any one can write a get. Only an expert in gittin may. If one is not an expert in divorce laws, he should not busy himself with these matters.

2. The Sofer (writer of the get) and two witnesses must be present, who are not related to each other nor the wife nor the husband.

11. It is necessary to be acknowledge that this is Mr. X and this is his wife Mrs. X.

13. The sofer gives the parchment, ink, quill and all other writing materials to the husband who lifts them as a sign of purchase.

14. The presiding Rabbi asks the husband, "Are you giving this get voluntarily without being forced? If you made any restriction or vow or oath that forces you to issue this get, tell us and we will release you."

the husband answers, "I have not vowed nor sworn and I am under no force but from my own free will I issue this get with a whole heart and not under coercion or with reservations."

If he says he swore or was under pressure to give it, he is released before so that it is not as if he does it from coercion.

15. The husband hands that writing materials to the sofer before the witnesses and says before them, "Write me a get for the purpose of divorcing my wife X daughter of X, and for the purpose of separation. I give you permission to write as many documents as needed until one is valid (kosher) without any flaws ~~in~~ either in the writing or the signing, according to the decision of Rabbi X.

Isserlis: It is a custom that if the get is invalid the first time, the whole procedure is repeated.

16. "And you, X and Y are witnesses and will sign this get which sofer X son of X writes for me, for the purpose of divorcing my wife \_\_\_ daughter of \_\_\_, and for the purpose of our separation. I give you permission to sign as many documents as needed until one is valid according to the decision of Rabbi \_\_\_, without any flaws in the writing or in the signing.

Isserlis: This is said in any language he wants. The witnesses answer: "We will do so."

19. The husband pays the sofer, but it is valid if the wife pays.

20. The husband says before witnesses, "I have cancelled before you any protests I may lodge against this get of being coerced, and all declarations that I may lodge ~~revoked~~ to revoke this get, I hereby declare to be null and void. I testify on my own behalf that I have done nothing with will invalidate this get and I invalidate any witness or witnesses who testify that I did or said any thing which would invalidate this get."

21. The witnesses, whom the husband told to witness the writing of the get, must be the ones to sign the get and must be present when the names of the husband and wife and the date is written, and must hear that it is written expressly for this couple.

22 39w The parchment is measured out and cut, so there is no need to cut it after it is written.

42. 13 lines are ruled out, the last in two parts for the witnesses names.

...  
66. The Rabbi and the witnesses read the get and the signature of the witnesses. After they read it, the Rabbi asks the Sofer: "Is this the get you wrote with the writing materials you were given by the directions of the husband for himself and to divorce his wife \_\_\_ daughter of \_\_\_?"



He answers, "Yes"

Isserlis: before witnesses,

the Rabbi asks one witness, "Did you hear the husband direct the sofer to write it for himself and to divorce his wife \_\_\_ daughter of \_\_\_.? Do you recognize that this is the get? Did you sign by order of the husband?"

(Isserlis: Did you sign by order of the husband who ordered you to sign for himself and ~~for~~ to divorce his wife \_\_\_ daughter of \_\_\_?)

Did you sign for him and to divorce his wife \_\_\_ daughter of \_\_\_?

Do you recognize your signature? Did you sign before your companion?

Do you recognize his signature?" The witness answers yes to each of the questions. Do the same for the second witness.

74. He gives the get to the husband and asks him again if he issues the get voluntarily.

75. The husband nullifies his portests a second time as recorded above.

81. The Rabbi says to all present before the transmission of the get, "If there is any person present who knows any flaws that invalidate the get and wants to testify against it, he must do so before it is given

(Iss: and anyone who knows a reason must speak) because after it is given it will be forbidden to register complaints against it."

71. The woman is ordered to remove the ring from her finger, lift her hands open them and bring them together to receive the get. She should not tip them so that the get will not fall.

(Iss: It is the custom to cover the woman's face until the Rabbi speaks with her and she receive the get, for modesty's sake. He ~~asks~~ asks her if she receives the get voluntarily. She answers yes. Others are more stringent and say, "If you swore or vowed, you are released from them." The Rabbi says, "Know that by this get you are divorced from your husband.")

74. The husband puts the get into her hands. As he does so, he says, "Here is your get, (Iss: "receive your get.") You are divorced from me with it and are free to marry any man."

75. After he puts the get into her hands and removes his hands from it, she then closes her hands and holds on to the get and raises up her hands to show her possession of it. Then the Rabbi takes it from her hands and reads it again before witnesses.

Iss: and <sup>some</sup> says that he asks the witnesses the same set of questions again) He prohibits any complaints from being lodged against the get.

76. The get is torn in two and put aside.

77. The Rabbi warns the woman not to be married within 90 days from that day.

~~22 99X~~ 8. If the husband wants to divorce his wife on any conditions, he cannot make any condition in the writing or the signing, but when he hands it to her:

99. If he is giving her the get on condition, when he gives it to her he says, "Here is your get and you are divorced from me with it. You are free to marry any man on condition that I do not return from today within twelve ~~month~~ months, this will be your get effective today. If I return within that time, and appear before X and Y, this is not your get. Let my wife be believed about me to say that I did not return and console her."

If the husband is dangerously ill, <sup>he may say</sup> and says at the time of divorce, "Here is your get. You are divorced from me with it. You are free to marry any man on condition that if I don't die before day X inclusive, this is not your get. but if I die within this time, this is your get."



## Divorce for the Rishonim

the form of the get

This is the form of the get used by the Rif (Rabbi Isaac Alfasi 1013-1103),  
a Spanish ~~comment~~ leader:

On the \_\_\_ day of the week on the \_\_\_ day of the month in the year \_\_\_ from the  
creation of the world according to the calendar reckoning which we usually  
reckon by, in city X, I \_\_\_ son of \_\_\_ (also known as \_\_\_)  
I desire of free will and without compulsion to release, to set free and to put  
aside you \_\_\_ daughter of \_\_\_ (also known as \_\_\_)  
who is my ~~wife~~ wife, So I set you free, release you, and put you aside  
you \_\_\_ daughter of \_\_\_ (also known as \_\_\_)  
in order that you have permission and the authority over yourself to  
go and marry any man you may ~~desire~~ desire. No person may hinder you  
from this day onward, and you are permitted to marry any man. This  
shall be for you from me a bill of dismissal, a letter of release, and a document  
of freedom, in accordancd with the laws of Moses and Israel.



#### Divorce in Rishonim 4

Rabbi Gershom ben Judah 960-1040. Responsa Asheri 42.1 ca. 1000:  
To raise the right of woman to the right of man, it is decreed that  
even as the man does not divorce his wife except from his own free will,  
so shall the woman not be divorced except by her own free will.





the husband may issue his wife a conditional divorce to avoid the problem of agunah (a woman whose husband is not legally dead)

Shabbat 56a: Rabbi Samuel bar Nachmani said in the name of Rabbi Yonathan: Every man who went out to war for King David wrote out a conditional divorce for his wife (~~saying that~~) if he die, she is divorced, saying that on condition that if he die, she is divorced, since often he was agitated about his leaving so they had to send him back from the war.  
Tos: Rashi says on condition that if he dies she would be divorced retroactively. But it ~~says~~ it correct to say that the condition is: if he doesn't return at the end of the war, because then she is not subject to the problem of finding witnesses to his death. (she can't remarry unless he is proved dead)  
There is a problem with her status until the end of the war with this conditional get:  
Rabbi Judah says: She is like a married woman in all respects. According to Rabbi Judah, she is a married woman, but Rabbenu Tam says she is divorced completely without a condition. Yet it also says, Better that a ~~maxxi~~ man sleep with a woman whose status as married is in doubt, than embarrass his friend in public. This statement refers to David's time, since the marriage could be in doubt because wives were divorced privately.  
So it is clear that she is a married woman.



Achronim on Divorce

2. The get and its form

Isserlis on Shulchan Aruk Even Haezer 126.1

Only the Aramiac version of the get is valid except in times of emergency and bound places (Bet Smuel: bound places means after the fact)

Isserlis on Sh A. Even HaEzer 1.10

If the wife becomes an apostate, the husband may divorce her by means of a get by rights, wherein he appoints a agent for receipt of the get, and the get is held by the court against her return to the community.





## Divorce in Modern Times

With the French Revolution of 1789, Jews for the first time were granted citizen status in a secular country. The Jewish community was no longer an autonomous unit, run by Rabbi-judges under Jewish law. Instead, it became a voluntary, religious affiliation. The Judaism which had regulated the entire legal, social and spiritual life of the Jew was now being relegated to the private parts of life. In response to the emergence of a secular culture, and the entrance of Jews into that culture, modern Reform, Conservative and Orthodox movements arose, each with a different way of reconciling secular and Jewish life.



Translation of a modern aschkenazi Get:

On the \_\_\_ day of the week, the \_\_\_ day of the month of \_\_\_ in the  
year \_\_\_ from the creation of the world according to the calendar reckoning  
we are accustomed to count here, in the city \_\_\_ (which is also known  
as \_\_\_) which is located on the river \_\_\_ (and on the river \_\_\_)  
and situated near wells of water, I \_\_\_ (also known as \_\_\_),  
the son of \_\_\_ (also known as \_\_\_), who today is present in the city  
\_\_\_ (which is also known as \_\_\_), which is located on the river \_\_\_  
(and on the river \_\_\_) and situated near wells of water, do  
willingly consent, being under no constraint, to release, to set free, and  
to put aside you, my wife \_\_\_ (also known as \_\_\_),  
daughter of \_\_\_ (also known as \_\_\_) who is today in the city of \_\_\_  
(which is also known as \_\_\_) which is located on the river of \_\_\_  
(and on the river \_\_\_) and situated near wells of water, who has  
been my wife from before. So do I set you free, release you,  
and put you aside, in order that you may have permission and the authority  
over yourself to go and marry any man you so desire. No person may  
hinder you from this day onward, and you are permitted to every man.  
This shall be for you from me a bill of dismissal, a letter of release  
and a document of freedom, in accordance with the laws of Moses and Israel.

ARCHIVES

\_\_\_ son of \_\_\_ witness

\_\_\_ son of \_\_\_ witness





## Divorce in Reform

recognizing divorce in civil courts if the divorce was mutually desired

Phil. Conference 1869:

1. A judgment of divorce, pronounced by a civil court has full validity also in the eyes of Judaism, if the court documents~~x~~ reveal that both parties to the marriage agreed to the divorce. If, however, the civil court decrees a forcible divorce against one or the other party in the marriage, then Judaism recognizes the validity of this divorce only after the divorce grounds have been studied and have been found sufficient according to the spirit of the Jewish religion. It is recommended that the rabbi should seek the advice ~~of~~ of experts for such a decision.

~~Am~~ new divorce procedure is proposed

Israel Goldschmidt (1889-1924)

2. The rabbi opens with a "religious address" of the unhappy fact that the sentiments of love which founded the marriage had changed. Then any one writes a personalized get, including the customary civil names of the people and places, with the Hebrew and secular dates. A committee should be appointed to fix the language of the essence of the document, but the rest of the get should be open to individual needs. the divorce is "not unilateral...by the man, but divorce of man and woman. Not only must the man release his wife, but the wife must also release her husband. ...In family life the wife has equality with her husband; the rights of the woman vis-a-vis her husband have the same weight as those of the man vis-a-vis his wife. Religion must not retain its antiquated unilateralness, Just as divorce by the civil courts respects the rights of both marital partners this in religious divorce the rights of the wife must also be emphasized."

The letter of divorce should have two copies. one for the wife, one for the husband. The letters should be transmitted directly from husband to wife and from wife to husband without "antiquated formality." After the transmission, the rabbi attest that divorce was undertaken. The procedure ends with some words by the Rabbi. If one member refuses a religious divorce after a civil divorce, the Rabbi should demand the party participate in a religious divorce within a fixed time limit. If the person does not comply, the rabbi should annul the marriage officially.

divorce is declared to be purely a civil act

3a 1870 Conference in New York:

From the Mosaic and rabbinical standpoint, divorce is a purely ~~leg~~ civil act which never received religious consecration; it is therefore valid only when it proceeds from the civil court. The so-called ritual ~~get~~ Get is invalid in all cases.

a call for new rules for divorce in Reform

David~~x~~ Philipson, Reform Movement in Judaism

At the Augsburg synod of 1871:

"the synod resolves to appoint a commission to report to the next synod on the jurisdiction in divorce cases viz. on the relation of rabbis to divorce and on the grounds of divorce which are still to be considered valid, keeping in view the equality of both parties to the divorce.

German reformers retain a religious divorce

Plaut, Growth of Reform Judaism:

May 3, 1908, the assembly of the Union for Liberal Judaism in Germany wrote a platform that was accepted at the conference of 1912 in Posen:

"It is a sacred duty to invest the important moments of family life with religious sanctity:

....Ritual divorce shall rest on the principle of equality of man and woman and after a civil divorce or annulment has taken place, shall be safeguarded against malicious obstruction by one or the other marital partner. The form of ritual divorce is to be simplified."

American Reform Rabbis decide divorce is purely a civil matter

Executive Board of CCAR at 40th Annual Convention, 1929

"It was moved and adopted that the Executive Board felt that it was not within the province of the Conference to sanction a divorce by issuing a get or certificate as the Rabbi does in case of a marriage. That when the Rabbi officiates at a marriage, he does so ~~as~~ as an officier of the State. But a divorce is purely a legal action with which the Rabbi has no connection. CCAR Yearbook vol 39. 43

a contemporary Reform Rabbi sees divorce strictly as a property issue

Albert Goldstein "Should We Give a Get" CCAR Jan XIV no 3 June 1967 p 77-80  
divorce is only a civil issue, and therefore ~~axx~~ is under the rubric of  
"the law of the nation in which we are living is law" a Talmudic principle which applies to property laws. The divorce issued by the civil courts is therefore complete and sufficient in and of itself, and there is no need for a superfluous religious procedure.



## contemporary Reform guidelines on divorce

### Doppelt and Polish on Divorce:

1. While Jewish law attaches no moral or social stigma to divorce, the spirit of Judaism disapproves it except as a measure of last resort.
2. Couples whose marriage is being endangered by discord or incompatibility should consult with a Rabbi or family counsellor.
3. If a couple have children, a vital factor in the possible dissolution of marriage should be the consequent effect of the divorce on the children.
4. If divorce seems inevitable, the parents should agree on and provide for the continued religious education and upbringing of their children.
5. If one of the parents had been converted to Judaism or had, upon marriage, agreed in writing to the Jewish upbringing of the children, this commitment should not be annulled by divorce and should remain in effect.
6. If, on presentation of a civil divorce, either of the parties requests of a Rabbi a statement certifying his or her legal status and right to remarry according to Judaism, it should be granted. Some Rabbis favor doing this through a Reform Bet Din, an ecclesiastical court.
7. Divorced persons should not remarry within 90 days of their divorce decree, in order to obviate any questions concerning the paternity of the children and out of consideration for the feelings of others. However, divorced persons who have not remarried, may remarry one another at any time.



Two Conservative Rabbi address the problem of the agunah ( a woman who is not legally a widow nor divorced)

Monford Harris interpretes Samuel of Shinav's idea that divorce is an act of love, since in the Jewish tradition love is expressed by acting responsibly towards the other. The husband shows his love of his wife by freeing her to marry a man who will fulfill her, since a woman is only fulfilled by a man.

Rabbi Stanley Rabinowitz calls on the conservative movement to enact new legislation to handle the problem.

An Orthodox thinker suggests a premarital agreement to solve the problem of the agunah

Eliezer Berkovitz outlines three types of conditions on marriage:

- 1) Conditions that apply at the time of marriage  
For example, that the woman has undertaken no vow or commitments that are active at the time of marriage
- 2) Conditions that apply after the marriage and after the death of the husband  
For example, if the husband has an apostate brother and dies without having children, his wife is forced to try to seek a divorce from the brother or remain unmarried (aguna lit. bound lady).  
Her husband can make a retroactive divorce condition against this happening, because if she were divorced, she has no obligation to marry the brother.
- 3) Conditions that apply during the life of the husband after the marriage was contracted.  
For example, see Shabbat 82a - if a man not return from war.

Berkovitz proposes a new condition be written into the marriage contract along these lines:

On condition that two years have passed after the dissolution of the marriage by a civil court, and the husband refuses to give a get to his wife and marries another woman without the knowledge of the Rabbis, or if the husband seeks money from her before he will give her a get, the marriage is annulled retroactively.

An Orthodox thinker suggests a premarital agreement to create a financial loss to a husband who refuses to issue a get

J David Bleich suggests that to relieve the problem of the Agunah (a woman who cannot remarry because not legally divorced or widowed by Jewish law) different steps could be taken. The man could sign a pre-nuptial agreement that he will support his wife within the provisions of Jewish law. He thereby obligated himself to support her until he gives her a religious divorce. This financial obligation will induce him to issue her a divorce when he might otherwise refuse.

Since this agreement is useless if the wife is self-sufficient, Bleich offers another suggestion: the man sign a pre-nuptial agreement agreeing to provide his wife with a certain sum of money every day that she does not share his board. This agreement would include times they are separated voluntarily as well as long-term separation. Again, the financial burden the man thereby incurs until he grants his wife a religious divorce will induce him to issue her the divorce.



a conservative Rabbi's prenuptial agreement nulling the marriage if no get were issued

Antenuptial Agreement

On the..... day of....., 19..... corresponding to  
..... 57....., in.....  
the Groom Mr.....  
and the Bride, M.....  
of their own free will and accord enter into the following agreement with  
respect to their intended marriage

The groom made the following declaration to the bride:

"I WILL BETROTH AND MARRY YOU ACCORDING TO THE LAWS OF MOSES  
AND ISRAEL, SUBJECT TO THE FOLLOWING CONDITIONS:

a. IF OUR MARRIAGE BE TERMINATED BY DECREE OF THE CIVIL COURTS  
AND IF BY EXPIRATION OF SIX MONTHS AFTER SUCH A DECREE I GIVE YOU A  
DIVORCE ACCORDING TO THE LAWS OF MOSES AND ISRAEL (A GET) THEN  
OUR BETROTHAL (KIDDUSHIN) AND MARRIAGE (NISSUIN) WILL HAVE  
REMAINED VALID AND BINDING.

b. BUT IF OUR MARRIAGE BE TERMINATED BY DECREE OF CIVIL COURT  
AND IF BY EXPIRATION OF SIX MONTHS AFTER SUCH A DECREE I DO NOT  
GIVE YOU A DIVORCE ACCORDING TO THE LAWS OF MOSES AND ISRAEL (A  
GET) THEN OUR BETROTHAL (KIDDUSHIN) AND MARRIAGE (NISSUIN) WILL  
HAVE BEEN NULL AND VOID."

The bride replied to the groom:

"I CONSENT TO THE CONDITION YOU HAVE MADE."

We the undersigned, acting as a Beth Din, witnessed the oral statements and  
signatures of the groom and the bride.

(RABBI)  
.....  
.....  
.....

Dina de-Malcuta Dina (The Law of the land is law)

This ruling was apparently an enactment by Samuel .

Historical background:

The Parthians conquered Babylonia in 226 CE. In 241 Shapur I granted cultural and religious autonomy to the people of his realm. Samuel's enactments help establish the legitimacy of the new regime in the eyes of the Jewish community, and helped ingratiate the community to the new government.

this enactment is mentioned four times in the Talmud:

Law of the land is law applies to governmental taxes

BK 113a: Mishnah: No money may be taken in change from the box of the customs-tax collectors...

Gen: In this case of custom-tax collectors, why doesn't Samuel's rule apply? Samuel said, "The law of the land is law"

Samuel's rule ~~applies~~ does not apply to a collector who had no fixed limits to the amounts he could collect.

(Rashi: It applies to one who collects a fixed amount for the government.)

Rabbi ~~Yehoshua~~ Yannai applied the mishnah rule to a collector who acts on his own authority and not from the authority of the government...:

Samuel says, The law of the land is law. Raba said that the proof of this rule is that the government chops down trees (from private land) to build bridges and we use them (while if it were illegal for the government to appropriate them, it would have been illegal to use the bridge.)

This law includes documents and contracts validated in nonJewish courts

Git. 10b:

Mishnah: All documents accepted in nonJewish courts, even if they were witnessed by nonJews, are valid, except for writs of divorce and of emancipation of slaves. Rabbi Shimon said, "Even these are valid if they are drawn up by qualified people."

Gen: This law is comprehensive and does not distinguish between a bill of sale or a registry of a gift.... Samuel said, "The law of the land is law." That is to say, except for documents like a writ of divorce...

Rabbi Shimon's statement refers to the signatures and not to the documents themselves.

(Rashi: "Like a writ of divorce" means any document which is a contract which validates or completes a transaction, like the registry of a gift. )

~~qualification of the rule in a property case~~



qualification of the rule in a property case

BB 55a

Raba said, :Ukba ben Nehemiah the Exilarch told me three enactments of Samuel:

1. The law of the land is law. @. Persians acquire property by 40 years' occupation. 3. One may buy property from the gentry who bought land which the government seized after the original owners defaulted on their taxes. The gentry paid the land tax for it, and the sale is valid.

This rule only applies to property seized for nonpayment of the land tax.

If the land was seized for nonpayment of a head tax, the sale is not valid, since it devolves on the person and cannot be collected as a lien on the property.

(So the Rabbis don't recognize this seizure by the government and the subsequent purchase of this land is invalid. )

Samuel's rule applies to other taxes

Nedar. 28a

Mishnah: One may vow to...a tax collector that produce is terumah (and forbidden to all but the priests) even if it is not terumah...

Gem: But didn't Samuel rule that the law of the land is law. Rabbi Hinena said in Rabbi Cahana's name: Samuel applied this mishnah to a collector whose tax is not limited to a fixed amount. Rabbi Yanai said, "This Mishnah refers to an unauthorized ~~collector~~ collector."

One of the tosefot, the Rashbam, commented on BB 45b:

"As the citizens of a state willingly accept the laws of the state under whose jurisdiction they live, the laws are completely valid."

Biblical evidence for the principle the law of the land is law:

Eccl 8.2: I counsel you: keep the king's command and that in regard of the oath of God.

different rules for applying the law: the law of the land is law

Shulchan Aruk 39.14

~~if someone repays, even though the time of~~

When the lender requests repayment, even though the time of the loan elapsed, it is necessary to wait 30 days after the demand for repayment before the lender can sell the security pledge.

Isserlis: ...Some rule that in a place where the custom is that one who lends to a nonJew cannot sell the pledge in less than a year, this is the law, and even a Jew who lends to another Jew with a pledge must follow this custom.

Sach: This ruling follows from : the law of the land is law....

One authority ruled: a Jewish borrower who leaves a pledge with the lender assumes that the transaction falls under the laws of lending that apply to the nonJews. However, the lender may specify that he will not conduct the transaction according to local custom.

The Ribad felt that nonJewish customs only applied in matters which are not explicitly dealt with in the Torah. Even in this transaction he differed with the stated opinion.

I am still baffled about the decision to wait one year, since by Jewish law it is permissible to sell the pledge after 30 days. How is it possible to take nonJewish rules that cancel laws from the Torah, heaven forbid. This cannot happen, nor was it the intention of those authorities who interpret the law of the land is law.

The authorities interpret: the law of the land is law, to only apply for the benefit of the king but never for personal transactions. Many Rabbis hold this view. It is clear to me, that this principle only applies to cases in which the king makes a law for his benefit, for example, land taxes or head taxes or other similar things. For personal transactions, we may only rule according to our own laws and Rozah, as agreed by other Rabbis.

Even the other authorities, who rule that this principle applies to any matter as long as it does not contradict the laws of our Torah, do not apply this principle for any nonJewish custom which is contrary to Torah law, especially in transactions just between Jews.

So, for example, a case was brought to the Mordechai, of a person who put his books up as security to a lender who sold them after a year. Rabbi Y. bar Peretz ruled that the principle: the law of the land is law, does not apply here. It seems to me that the reason is that Jewish law requires the lender to lodge a formal request for payment of the debt before the security can be sold....The Rashba already has expanded on this issue...regarding the case of a man who marries a woman in a place where the nonJews rule that the husband cannot inherit from his wife. He ruled that the husband may inherit, despite the local law, and the principle the law of the land is law does not apply at all....

So, even for those authorities who rule that this principle applies to any matter, even they only apply it to matters of taxes and other governmental laws. It is clear and evident beyond a shadow of a doubt that the principle never applies to personal transactions, for if so, all the



laws of Torah would be nullified, heaven forbid. They themselves, qualify their remarks to exclude personal transactions....

Isserlis wrote: A man who marries a woman in a place where they are bound by nonJewish law: if the wife dies, they can't inherit from her. That is, every man who marries a woman according to local custom is judged according to nonJewish law, so if his wife should die, her husband cannot inherit from her estate. This is not from the principle of the law of the land is law, since this principle only applies for the benefit of the king or for the general welfare. It does not imply that Jews are under the jurisdiction of non Jewish law, for if so, Jewish law is nullified....

Maybe Isserlis in this case of waiting for a year is using the idea of the general welfare of the community...Yet the principle of the general welfare of the community does not apply to personal transactions, but only to business matters.

The Rik says this principle applies only to matters of the treasury and laws of the king, even if the matter does not directly devolve upon the king, but only the king's laws in the country. If it is not contrary to the laws of Torah, this principle can apply, but not in personal transactions.



The principle that the law of the land is law includes state appointments to religious and juridical office

Shukchan Aruk HM 3.4

If a court have three members, it is a complete court. It is praiseworthy to have more than three members, and better to have 11 than 10. Everyone sitting on the court should be well-versed in Jewish law. It is forbidden to sit on a court until one is satisfied that the others are qualified... A judge who is not an expert, if the litigants don't accept him, even though the head of the Jewish community had appointed him, his judgments are not valid, even if they are correct. The litigants may bring their case before a court if they so desire.

Isserlis: The authority of the king in our day to appoint judges and of officials is void, unless the community accepts the appointee from a written order by the king. If so, he may render judgments.

Shahh: But if the community does not accept these officials of their own free will, they cannot judge. Also, if they receive them from their own free will, but they do not have a written order from the king.

Isserlis: Some rule that these officials can both ~~xxx~~ provide the analysis of the case and render decisions by permission of the king. The king may also appoint an official over the town. This falls under the principle the law of the land is law, that the king may appoint judges and officials whom he desires. In any case, this cannot be done without the permission of the community, so they are not caused ~~xxx~~ anguish or grief, but in the future, he can render decisions.





the principle the law of the land is law, only applies to legitimate governments

Maimonides. Mishnah Torah, Gezalut ch. 5

17. If a king cuts down trees from private property to build a bridge, it is permissible to use it. Similarly, if he razes houses to make a road or city wall, it is permissible to use them, for the king's law is law.

18/ To what do these matters refer? To a king whose coinage is accepted on the markets of his country. This is proof that the people of ~~the~~ his country accept him as their authority, and accept that he is their sovereign and they are his subjects. If his coinage is not accepted, he is a tyrant, and he rules from coercion like a band of thieves. Then his laws are not law, and he and all his officials are considered thieves in all respects.

the principle the law of the land is law does not apply to arbitrary laws

Maimonides Mishnah Torah. Gezulet 5,14

This is the principle: Every law of the king which applies to all and not to one specific individual is legitimate. If he confiscates something from one individual outside of any law which is known to the community, and arbitrarily impounds it, this is robbery.



## Mamzerut

According to Jewish law, a woman who does not receive a get is still married to her husband. If she remarries without a get and has children from the second marriage, her children are mamzerim (sing. mamzer) and have a special lower status in the community:

Deut 23.3: No mamzer shall be admitted into the congregation of the Lord and none of his descendants, even down to the tenth generation, shall be admitted into the congregation of the Lord.





# Prohibited Degrees of Relationship for Marriage

## Appendix III (to Chapter 18)

### BIBLICAL PROHIBITIONS

### TALMUDICAL EXTENSIONS

#### A. CONSANGUINITY

##### a. IN THE ASCENDING LINE

1. Mother

Grandmother (paternal as well as maternal)

##### b. IN THE DESCENDING LINE

2. Daughter (implied in granddaughter)

3. Granddaughter (son's or daughter's daughter)

Son's or daughter's granddaughter

#### C. COLLATERAL CONSANGUINITY

4. Sister and half-sister (either born in wedlock or not)

5. Father's sister

6. Mother's sister

Grandfather's sister

Grandmother's sister

#### B. AFFINITY

##### a. THROUGH ONE'S OWN MARRIAGE

7. Wife's mother

Wife's grandmother

Wife's stepmother not strictly prohibited but objectionable

8. Wife's daughter (stepdaughter)

9. Wife's granddaughter

10. Wife's sister (during the lifetime of the divorced wife)

##### b. THROUGH MARRIAGE OF NEAR BLOOD RELATION

11. Father's wife (stepmother)

12. Father's brother's wife

Father's or mother's stepmother

Mother's brother's wife; father's uterine brother's wife

13. Son's wife

14. Brother's wife (except in the case of levirate)

Grandson's or great-grandson's wife

(From M. Mielziner, *The Jewish Law of Marriage and Divorce*)

## Establishing the status of the child in the Bible

All Biblical evidence up to Ezra assumes that the ancestry of any household is determined by the house of the father and not the house of the mother.

Num 1.18: On the first day of the second month they convened the whole community, who were registered by the families of their father's houses -- the names of those aged twenty years and over were listed individually.

An Israelite could marry anyone, except for the seven nations identified in Deut 7.1, for the Amelakites, who were to be completely destroyed, for people of Amon and Moav.

Deut. 7.1ff: When the Lord your God brings you to the land you are about to invade and occupy, and He dislodges many nations before you -- the Hittites, Girgashites, Amorites, Canaanites, Perizzites, Hivites and Jebusites, seven nations much larger than you -- and the Lord your God delivers them to you and you defeat them, you must doom them to destruction. Grant them no terms and give them no quarter. You shall not intermarry with them: do not give your daughters to their sons or take their daughters for your sons, for they will turn your children away from me to worship other gods. Then will the Lord's anger blaze out against you and He will soon wipe you out. Instead, this is what you shall do to them: you shall tear down their altars, smash their pillars, cut down their sacred posts, and consign their images to the fire..

~~Num~~

Deut. 23.4-7 No Ammonite or Moabite shall be admitted into the congregation of the Lord; none of their descendants, even to the tenth generation shall ever be admitted ~~to~~ into the congregation of the Lord because they did not meet you with food and water on your journey after you left Egypt, and because they hired Balaam son of Beor from Pethor or Aram-naharaim to curse you....you shall never undertake anything for their welfare or benefit as long as you live.

Outside of these prohibited peoples, the nationality of the woman ~~is not terribly~~ *may be politically* important:

Num. 12.1 When they were in Hazerot, Miriam and Aaron spoke against Moses because of the Cushite woman he had married: "He married a Cushite woman."....The Lord called to Moses Aaron and Miriam and said,"....How dare you speak against my servant Moses."

Egypt is never identified as being a nation the Israelites are prohibited from marrying.

Num 25.6 Just then, one of the Israelites came and brought a Midianite woman over to his companions, in the sight of Moses and of the whole Israelite community who were weeping at the entry of the Tent of Meeting. When Phinhas, son of Eleazar son of Aaron the priest, saw this, he left the assembly. Taking a spear in his hand, he followed the Israelite into the chamber and stabbed both of them, the Israelite and the woman, through the belly.

Num. 25.1ff: While Israel was staying at Shittim, the people ~~profaned~~ themselves by whoring with the Midianite women who invited the people to the sacrifices for their god. The people partook of their offerings and worshipped that god. Thus Israel attached itself to Baal-peor, and the Lord was incensed with Israel. The Lord said to Moses, " Take all the ringleaders and have them publicly impaled before the Lord, so that the Lord's wrath may turn away from Israel. So Moses said to Israel's officials, "Let each of you slay those of his men who attached themselves to Baal-peor."

~~(ie, the crime is worshipping idols, not~~



Ex. 2.16-20: Now the priest of Midian had seven daughters...Moses consented to stay with the man. He gave Moses his daughter Zipporah x for a wife. She bore him a son whom he named Gershom, for he said, "I have been a stranger in a foreign land."

Gen 41.45: Pharaoh then gave Joseph the name Zaphenath-paneah and he gave him Asenath the daughter of Poti-fera priest of On x for a wife.

I Kings 11.1-5: King Solomon loved his many foreign wives, the daughter of the Pharaoh, Moabites, Ammonites, Edomites, Sidonites and Hitties, ~~and~~ Women from the nations which the Lord told the Israelites not to intermarry with, because they would ~~tempt~~ entice the Israelites to worship their gods, Solomon also married. He had 700 princesses for wives, and 300 concubines, and they enticed him. When Solomon grew old, his wives enticed him to worship other gods, so that he did not worship the Lord whole heartedly, as his father Daivd had.

Ezra 9.1-2, 10.9ff

...The princes of Israel came before (Ezra) and said, "The people of Israel and the Levites and the priests have not separated themselves from the ~~peoples~~ other peoples, but follow the rites of the Canaanites, the Hittites, the Perizites, the Yebusites, the Moavites, the Egyptians and the Emorites .  
the Ammonites

~~They have married~~ They and their sons have married their women, and mixed their holy seed with the other peoples', and the princes and rulers have been ringleaders. ...Then all the people of Judah and Benjamin gathered in Jerusalem within three days, it was the twentieth day of the ninth month. All the people sat in the open field before the sanctuary, trembling because of this matter and because of the rain. Ezra the priest spoke before them, "You have broken faith and married foreign women and increased the guilt of Israel. Confess to the Lord your God and make expiation according to His will, and separate yourselves from the other peoples and from your foreign wives."

Biblically,

inheritance and tribal affiliation is through the father's house, not the mother's

Num. 34.13-14: Moses charged the Israelites: This is the land which you will inherit by lot...for the tribe of Reuben, according to the father's houses, and the tribe of Gad, according to the father's houses, have already received their inheritance.

Num. 26. 52-55: The Lord told Moses: To these (men of each tribe) the land will be divided for an inheritance, according to the number of names. The larger tribes shall receive a larger inheritance, and the smaller tribes a smaller inheritance, each according to their number. The land shall be divided by lot, according to their father's tribes they will inherit it.

daughters may inherit if there are no sons, but only if they marry within their tribe

~~Num. 36.1-9: The heads of the Giladite family~~

~~Num. 36.1-9: The patriarchs of the family of Gad son of Machir son of Manasseh of the tribe of the sons of Joseph presented their case before Moses and the heads of the father's houses of the Israelites. They said, "My lord was commanded by God to give~~

Num. 36.1-9: The patriarchs of the tribe of Gad son of Machir son of Manasseh of the family of the sons of Joseph presented their case before Moses and the heads of the father's houses of the Israelites. They said, "The Lord commanded my lord to give the land to the Israelites as shares by lot, and my lord was commanded by God to assign the share of our kinsman Zelofchad to his daughters. Now, if they marry men from another Israelite tribe, their share will not be part of our tribal inheritance but will be added to the inheritance of the tribe into which they marry. Thus, our allotted portion will diminish. Even when the Israelites observe the jubilee (and lands return to the original owners) their share will remain added with that tribe into which they marry, and their share will be cut off from ~~xxx~~ the ~~xxx~~ ancestral portion of our tribe."

So Moses, at the Lord's bidding, instructed the Israelites: "The plea of the tribe of Joseph is just. The Lord has commanded concerning the daughters of Zelofchad. They may marry anyone they wish, provided they marry into a clan of their father's tribe. No inheritance of the Israelites may pass over from one tribe to another, but the Israelites must remain bound each to the ancestral portion of his tribe. Every daughter among the Israelite tribes who inherits a share must marry someone from ~~the~~ a clan of her father's tribe, so that every Israelite may keep his ancestral share. Thus no inheritance shall pass over from one tribe to another, but the Israelite tribes shall remain bound each to its portion.



God puts no conditions upon the inheritance of land by daughters

Num. 27.1-11: The daughters of Zelofchad, of the family of Manasseh, son of Hefer son of Gilead son of Machir son of Manasseh son of Joseph—came forward. The names of the daughters were Mahlah, Noah, Hoglah, Milcah and Tirzah. They stood before Moses, Eleazar the priest, the chieftains and the whole assembly, at the entrance of the Tent of Meeting. They said, "Our father died in the wilderness. He was not one of Korah's faction which banded together against the Lord, but died for his own sins. He has left no sons. & Do not let our father's name be lost to his clan just because he had no son. Give us a holding among our father's kinsmen"

Moses brought their case before the Lord. The Lord said to Moses, "The plea of Zelofchad's daughters is just. You should give them a hereditary holding among their father's kinsmen. Transfer their father's share to them.

"Further, tell the Israelites: If a man dies without leaving a son, his daughter shall inherit his property. If he has no daughter, you shall assign his property to his brothers. If he has no brothers, his father's brothers should inherit the property. If his father had no brothers, you shall assign his property to his nearest male relative in his own clan, and he shall inherit it. This shall be the law of procedure for the Israelites, in accordance with the Lord's command to Moses."



## Mamzerut in the Mishnah

prohibition against marrying a mamzer

Yev. 8.3:

It is forbidden to marry a mamzer or a Gibeonite and the prohibition is for all generations, for male or female.

list of classes of Jews

Kid. 4.1:

Ten classes of Jews returned from Babylonia: Priests (cohenim), Levites, Israelites, children of a priest and a wife who had been formerly married (chalalim), converts, freed slaves, mamzerim (sing: mamzer) Gibeonites, shetuki, and foundlings.

Priests, Levites and Israelites may marry each other.

Levites, Israelites, chalahim, converts and freed slaves may marry each other.

Gibeonites, shetuki and foundlings may marry each other.

Shetuki are people whose mother is known, but not their father.

A foundling is a person found on the streets so neither his mother nor his father is known.

rules for designating the class of a child

Kid. 3.12

In every case of marriage which involves no transgression, the status of the child is that of the father. Such cases are a Cohen (priest), Levi or Israelite who marry each other. In any case of a marriage which involves a transgression, the child's status follows that of the inferior party. Such cases are a widow who marries a High Priest, a divorced woman or woman who had to be formally released by her dead husband's brother who marries a priest, a mamzer or Gibeonites who marries an Israelite, whether the man or the woman is the Israelite.

In cases in which the marriage is not valid, but the woman could have contracted a valid marriage with someone else, the child is a mamzer. Such cases are those marriages between relatives forbidden in the Torah, Lev. 18:6-18.

In cases in which the marriage is not valid, and the woman could not contract a valid marriage if she had married someone else, the child has her status.

Such cases are a woman who is a slave or a nonJew.

freeing one's children from mamzer status

Kid. 3.13

Rabbi Tarfon said; A mamzer can change his status. If he marries a slave, their child is a slave. If the child is freed, his status is of a freed slave.

Rabbi Eliezer ruled: He is still a slave and a mamzer.

designating one's child a mamzer

Kid. 4.8

If a man say, : "This child of mine is a mamzer" he is not believed. Even if both parents say that the foetus is a mamzer they are not believed. Rabbi Judah says they are believed.



rules of precedence

Hor. 3.8

A priest has precedence over a Levi, a Levi over an Israelite, an Israelite over a mamzer, a mamzer over a Gibeonite, a Gibeonite over a convert, a convert over a freed slave. This is the case when they are otherwise equal. If, ~~how~~ however, the mamzer was learned in Torah and the High Priest were an ignorant man, the learned mamzer ~~would~~ precede the ignorant High Priest.

Would



## Mamzerut in the Talmud

the rights of a mamzer to inherit

Yev 22a-22b

Mishnah: If a man have any type of son, that son exempts his wife from the requirement to marry her husband's brother if he dies before her. That son is liable to punishment for hitting or cursing his father. ~~Tak~~ That son is considered as his son in every respect. This law excludes -he son of a slave or a nonJew.

Gen: What does "any type of son" include? Rabbi Judah ruled that it includes a mamzer...A mamzer exempts his mother from the requirement to marry her husband's brother ~~if~~ if he dies before her. A mamzer may inherit from his father.

definition of a mamzer

Yev. 23a

Ravina ruled that if a nonJew or slave has a child with a Jewish woman, the child is not a mamzer and not a legitimate Jew, but a tainted Israelite.

~~definition of a mamzer~~

Kid-68b:

permissability of a mamzer marrying a convert

Kid 69 72b: It was ruled: a convert may marry a female mamzeret (fem.form of mamzer). This is Rabbi Joshua's decision. Rabbi Judah ruled that a male convert may not marry a mamzeret...based on the verse "For the community there will be one law for you and for the convert living with you" (Num. 25.15)

Kid. 73a. Rabbi Zera lectured in Mehoza, "A male convert can marry a mamzeret" Everyone pelted him with stones (for insulting converts.) Raba said, "This was not the thing to say in a place where there are many converts." When he came to Mehoza he said, "A convert is permitted ~~xxx~~ to marry a priest." The people gave him gifts of silk. He returned and said, "A male convert may marry a mamzeret." They said, "You have gone back on your first ruling." He answered, "No, this is better for you. If he wants, he may marry a priest's daughter, or if he wants to, he can marry a mamzeret." The law is: a convert can marry a priest's daughter or a mamzeret.

permissability of a mamzer changing the status of his children

Kid. 6 9: Mishnah: Rabbi Tarfon said: A mamzer can change his status. If a mamzer marries a slave, their son is a slave. If he is freed, he is like a freed slave. Rabbi Eliezer said, "He is still a slave and a mamzer."

Gen: It was asked if Rabbi Tarfon meant this ruling to apply from the outset or only after the fact.

The sages pointed out that this system will clear a male mamzer, but cannot apply to a female.



Kid. 69a cont.

(If this procedure was to apply from the outset) a female mamzeret (fem. form of mamzer) could also marry a slave, except that a male slave does not establish the status of his son.

The innkeeper for Rabbi Simlai was a mamzer. Rabbi Simlai said to him, "If I had known you before you married, I would have told you this procedure to remove the stigma from your children." This statement implies that Rabbi Tarfon's procedure applies at the outset. Of it only applied after the fact, Rabbi Simlai could not have advised the innkeeper. ...Rabbi Judah said in Samuel's name: The law is according to Rabbi Tarfon.



the child has the status of the woman when the marriage is invalid

Kid 68b

"Any woman who cannot contract a valid marriage, the child has her status."

How do we know that this applies to a Canaanite slave woman? Rabbi Huna said: It is written "Stay here with (im) the donkey" read it as, "the people (am) like a donkey." So marriage iwth her is invalid.

How do we know the child has her status? When a Hebrew slave is married to a Canaite slave woman and they have children, when the time comes for the husband to be freed, the Torah says, "The woman and her child will remain with the owner." (Ex.21.4) Since the child must remain a slave, it must not be considered an Israelite that would be freed, so it must have her status.

This rule aaso applies to a nonJew. It says in Deut. 7.3: "Do not marry them." How do we know that her child has her status? From the verse "He will turn your son away from me." (Deut. 7.4) Here, the son of an Israelite woman is called your child, but the son of a nonJewish woman is not called "your child."...Ravina said: This proves that the child of your daughter and an idolater is called "your child"....Ravina ruled that the child of a non Jew or slave and an Israelite woman is tainted, that is, not permitted to marry a priest, but not a mamzer.

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זכר אלהים יעקב וישראל



the status of the child of a slave or idolater and a Jewish woman:

Yev. 44b-45a

Ⓐ "All agree that the child of a slave or an idolater and an Israelite woman is a mamzer" This "all" refers to Simon the Yeménite...since the marriage is not valid.

"All agree that the child of a slave or idolater and an Israelite woman is a mamzer." But Rabbi Simon ben Judah said, "A mamzer is only from one of the unions forbidden in Lev.18....Rabbi Dimi ruled according to Rabbi Isaac ben Abudimi in the name of Rabbi Judah the Prince: The child of an idolater or a slave and an Israelite woman is a mamzer."

Rabbi Aha, the governor of the city, and Rabbi Tanhum son of Rabbi Hiya from Akko, freed some captives who were brought from Armon to Tiberias. One of the women was pregnant from an idolater. Abbi Ami told them: Rabbi Yohanan, Rabbi Elazar and Rabbi Hananah all said that the child of a slave or an idolater and an Israelite woman is a mamzer.

Rabbi Joseph said: Rav and Samuel in Babylonia, and Rabbi Joshua ben Levi and Bar Kavra in Israel all said that the child of a slave or an idolater and an Israelite woman is legitimate. Rabbi Judah the Prince did say that the child is a mamzer, according to Rabbi Isaac ben Abudimi.

Rabbi Joshua ben Levi said: "the child is tainted." In what respects? Not for joining the community, since he said the child is legitimate, but the child cannot marry a priest, since all the Talmudic Rabbis agree that the child cannot marry a priest.

Abaye said to Rabbi Joseph, "Don't rule according to Rabbi Dimi, but according to Rabin. Rabin said that Rabbi Nathan and Rabbi Judah the Prince rule that the child is legitimate."

Once, a man asked Rav the status of a child of a slave or an idolater and an Israelite woman. Rav said that the child would be legitimate. "Let me marry your daughter," he said, but Rav refused. Shimi ben Hiya said to Rav, that people don't practice what they preach. Rav said, "Had he been like Joshua, I would not have let him marry my daughter"...

Rabbi Matana ruled that the child is legitimate, as did Rabbi Judah:

When the son of an idolater and an Israelite woman asked Rabbi Judah what to do, he told him to hide his identity and marry an Israelite, or marry a woman from the same type of marriage. When such a man asked Raba, he told him to go abroad and marry an Israelite, or marry a woman from the same type of marriage.

in a mixed marriage, the child's status follows the mother:

Shulchan Aruk EH ch. 4

5. The child of an Israelite man and an idolater has her status. The child of a male idolater and an Israelite woman is legitimate, whether she were married or unmarried. The child is legitimate to enter the community, but cannot marry a priest.

19. The child of an idolater or a slave and a female mamzeret is a mamzer. The child of a male idolater or slave and an Israelite woman, whether she were married or unmarried, is legitimate, but cannot marry a priest.

forbidden marriages and following the status of the mother

~~Ex~~ Arba Turim EH ch. 4

1. An Israelite man may not marry a mamzeret, a netinah, a Gibeonite, an Amonite, a Moabite, an Egyptian or an Edomite...

2. The child of an Israelite man and one of ~~these~~ these has her status. The child of an Israelite woman and a man from one of these cases, except for a mamzer is legitimate to enter the community, but cannot marry a priest. After a person converts, except for the special stringencies for Egyptian and Amonites, the person is immediately considered an Israelite. Maimonides says even Egyptians and Amonites are immediately considered Jews, since after Sennacherib conquered the Middle East and shifted the populations, all the nations were mixed. Rabbi Asher ben Yehiel said that every convert except for an Egyptian is accepted immediately...

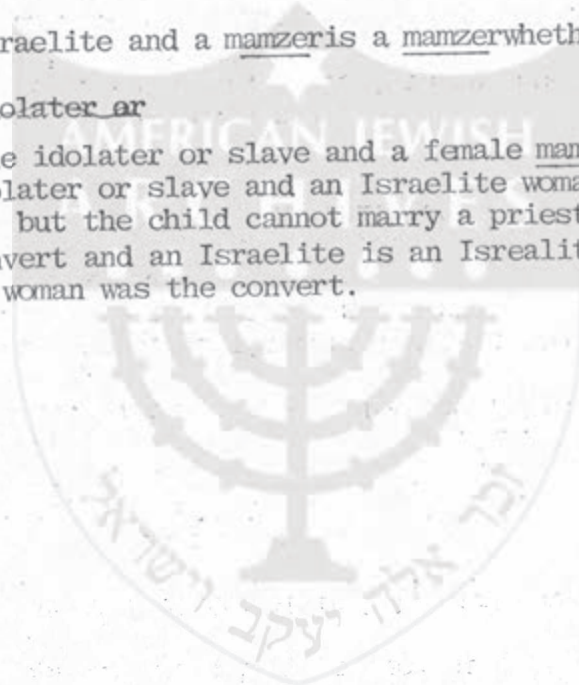
23. ~~Ex~~ The child of a married woman and a man who is not her husband is a mamzer.

26. The child of an Israelite and a mamzer is a mamzer whether the man or the woman was a mamzer.

~~27. The child of an idolater or~~

27. The child of a male idolater or slave and a female mamzeret is a mamzer. The child of a male idolater or slave and an Israelite woman is legitimate, whether or not she was married, but the child cannot marry a priest.

32. The child of a convert and an Israelite is an Israelite in all respects, whether the man or the woman was the convert.





## Mamzerut in the Medieval Period

Maimonides Mishnah Torah, Issurei Biah ch. 15

1. Who is the mamzer referred to in the Torah? All who are the ~~fr~~ offspring of a forbidden relationship...except for a woman who had sexual relations during her period, whether by force or voluntarily, whether on purpose or by mistake, the child is a mamzer. Whether male or female, the person and his descendants may never be admitted into the community, as it says "To the tenth generation..." that is, never.
2. For either a male mamzer who marries an Israelite, or a female mamzeret who marries an Israelite, if the marriage was consummated, they receive the punishment of 40 lashes. If the marriage was not consummated, or they had sex outside of marriage, they do not receive lashes.
3. A nonJew or a slave who has sex with an Israelite; the child is legitimate, whether she is unmarried or married, whether the union was by force or voluntary. If a nonJew or slave has a child by a female mamzeret, the child is a mamzer.
4. This is the general principle: whether the child is from a nonJew or a slave, his status follows the mother and not the father. Therefore, it is permitted for a mamzer to marry a female slave to legitimate his children, for if he frees them, they are as freed slaves. A slave is not prohibited from him, for the sake of raising the status of his children.
7. A mamzer may marry a convert, and the child is a mamzer, whether the mother or the father was the mamzer, for the child follows the parent of inferior status.
9. A convert may marry an Israelite, and the child is an Israelite in all respects, whether the mother or the father was the convert.
8. A convert who marries another convert and has a child, even though his birth and upbringing is all under Jewish law, the child's status is a convert. He may marry a mamzer, and so with his children, until the label of convert is obscured and it is no longer known that he is a convert. Then he is forbidden to marry a mamzer. This rule also applies to freed slaves.
15. A man who admits to being the father of the child of an unmarried woman and says that his child is a mamzer, is believed. But if this child already have children, he is not believed, since the Torah only permits him to impugn his children...
16. As a man is believed about designating his oldest child, so he is believed if he designates a child as a mamzer or the child of a divorcee....If his wife is pregnant, he is believed if he says "This foetus is not my child, but is a mamzer." If one claims that he himself is a mamzer, he is believed and is prohibited from marrying an Israelite...but if he has grandchildren, he does not render them illegitimate, but only to make himself illegitimate.
19. A married woman who is pregnant and says that the foetus is not from her husband, is not believed to render the child illegitimate. The child is legitimate, because the Torah believes the father only. If the father say, "This is not my child, the child is a mamzer" and if she claims she conceived from a nonJew or slave, the child is legitimate, because the husband cannot prove her to be lying.



rules establishing status of children

Maimonides Mishnah Torah, cont.

19.15 Priests, Levites and Israelites may marry each other, and the child's status is that of the father. Levites, Israelites, and children from women forbidden to priests may marry each other, and the child's status is that of the father. This rule is derived from Num 1:18: "...and they were registered by the families of their father's houses..." One is listed by one's father's house, not by his mother's house.

16. Levites, Israelites, children from women forbidden to priests, converts, freed slaves may all marry each other. A male convert or freed slave who marries a Levite or Israelite or child from the priest and a wife forbidden to him (chalalim), the child is an Israelite. A male Israelite, or Levi or Chalalim who marries a convert or freed slave, the child's status follows the father.

17. All families are considered legitimate and may marry freely.

Defining a mamzer

Mishnah: ~~A mamzer is the~~

Defining a mamzer

Mishnah: In cases in which the marriage is not valid, but the woman could have contracted a valid marriage with someone else, the child is a mamzer. Such cases are those marriages between relatives forbidden in the Torah Lev 18:6-18.

Rashi: Only the child of a woman married to another man is called a mamzer.

defining a mamzer

~~Shulchan Aruk.~~ EH ch. 4

13. A mamzer is the child of one of the forbidden relationships, whether it is punishable by death or by excommunication, except for the child of a woman who had sexual relations during her period. In that case, even though the child's status is tainted, he is not a mamzer.

~~14. A woman whose husband was out of the country~~

14. A woman's husband goes out of the country. She remarries, but her first husband is still alive. Her child by the second husband is a mamzer...If the first husband returns and have intercourse with her before she divorces the second husband, this child is a mamzer by Rabbinic ruling.

17th century commentator: If she divorces the second husband and then becomes pregnant from the first, the child is not a mamzer according to Maimonides... However, if the second husband has relations with her after she is divorced from her first husband, the child is a mamzer according to Rabbinic ruling.

18. An Israelite who marries a mamzer, their child is a mamzer whether the mother or the father was the Israelite.

19. A male non-Jew or slave who marries a mamzeret, the child is a mamzer. If they had relations with an Israelite woman, whether unmarried or married, the children are legitimate but are not permitted to a priest.

22. A convert and a freed slave can marry a mamzeret...until the tenth generation. After the label of convert has fallen away, he cannot marry a mamzeret lest people think that an Israelite is marrying a mamzer...as ~~Rambam~~ Maimonides said.

23. A convert may marry an Israelite and the child is an Israelite in all respects and prohibited from marrying a mamzer whether the father or the mother was the convert.

29. A married woman who says that her husband is not the father of her foetus is not believed to illegitimate him. A father who says that the foetus is not his



child, or that one of his children is not his, is believed to render him illegitimate, and he is a mamzer. If this child has ~~children~~ children, he is only believed about his child. A woman who says that she conceived from a Samaritan or a slave is believed and the child is legitimate, since the husband cannot prove her statement false.

Isserlis: An unmarried woman who says, "This is X's child" though he claims that she conceived by a mamzer, he is not believed to render the child illegitimate, but she is believed to make the child legitimate.

30. A person who says about himself, "I am a mamzer" is believed to prohibit himself from marrying an Israelite...but if he has grandchildren, he is only believed to render himself illegitimate.



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• The Agunah

"Agunah" means literally, "bound." It refers in Jewish law to a woman who is not living with her husband, but is still technically married to him, and therefore prohibited from marrying another man. This situation arises in several ways: 1. if there is no proof that her husband is dead, because there must be a witness to his death and not merely to a likely circumstance; for example, it is not enough to see a man fall into water to conclude he drowned. 2. If a woman husband dies without having children, the widow in ancient times had to marry one of his brothers and later still had to receive a release from the brothers before she could marry another man. If she does not receive such a release, she cannot marry again. 3. If the husband refuses to issue his wife a religious divorce, she cannot remarry.

The only evidence of Biblical precedent for the agunah is from Ruth. Naomi tries to dissuade Ruth and Orpah from accompanying her back to Judah: "Return, my daughters, go your own way, for I am too old to have a husband. Even I could say that I have hope that this very night I would be with a man and also have sons, would you wait for them until they were grown? Will you bind yourselves (te-agenah) up for them and not marry? Don't, my daughters, for I am very upset about you, for the power of the Lord is against me."

The problem of the agunah involves the issue of valid witnesses and what comprises valid evidence that her husband is dead.

Deut. 17.6: A person charged with a capital offense is convicted by the testimony of two witnesses or of three witnesses; by the testimony of one witness he shall not be convicted.



## Agunah in the Talmud

a woman who reports her husband's death can remarry if she is not suspected of ulterior motives

Yev. 117a.

Mishnah: Beit Shammai ruled that a woman who reports her husband's death may remarry and may receive her ketuvah. Beit Hillel ruled that she may remarry but she cannot receive her ketuvah....Beit Hillel later changed their decision and ruled as Beit Shammai.

Gemarah: Rabbi Nachman said: If she came to a court and said, "My husband died, give me permission to remarry," permission is granted and she receives her ketuvah. If she said, "Give me my ketuvah" she is not even given permission to remarry. The case of the woman who ~~says~~ says, "Give me my ketuvah and let me remarry" is undecided.

acceptable evidence to establish the husband's death by drowning

Yev. 121a

Mishnah: If a man falls into water, his wife is forbidden to remarry (if the corpse is not found.)

Gem: The authorities ruled: If a man fall into a body of water with visible boundaries, his wife may remarry, but if he falls into water without visible boundaries on all sides, she may not remarry (unless the corpse is found.)...

A man once went out calling, "Is anyone here from the Hasa family? Hasa has drowned." Rabbi Nachman exclaimed, "The fish must have eaten him" Hasa's wife inferred that Rabbi Nachman believed her husband was dead, so she left her husband's house and remarried. No one objected to her actions.

Rabbi Ashi said that it can be deduced from this incident that the ruling: The wife of a man who falls into a body of water without boundaries visible on all sides can't remarry, applies at the outset. After the fact, however, if she remarries, they are not separated.

to alleviate the problem of the agunah, standards for permissible evidence were lowered

Yev. 114b

Mishnah: A woman and her husband went abroad when there was peace between them and peace in the world. If she returned and said that her husband died, she may remarry. If there were peace between them, but war in the world, or discord between them and peace in the world, if she returned and said that her husband died, she is not believed. R. Judah said, "In all these cases, she is not believed unless she come in crying and with her clothes torn.

They said to him: In either case, she may remarry.

Gem: Raba first decided that a famine was not like a war in respect of accepting the wife's evidence, since if he died in a famine, she is not speaking from conjecture, ~~and~~ so her testimony is accepted. He later decided it

was like a war, on the basis of a case ~~where~~ a woman brought to him. She claimed her husband died in a famine. He said to her, "You did well to save yourself. Can it be imagined that he survived on the little bit of flour you left him?" She replied, "You also see that he couldn't have survived," implying that she did not actually see him die. So Raba ruled: A famine is worse than a war. In the case of a war, if a wife claims that her husband died in battle, she is not believed, but if she claims he died in bed, she is believed. In the case of a famine, she is not believed unless she claims that he died and she buried him.

....A case of natural disaster is like a war, because she speaks from conjecture and not as eye-witness to his death.

Rabbi Akiva met Mehemiah of Beit Dali who said that he had a ruling from Rabban Gamiel the Elder that a woman may remarry on the testimony of one witness to her husband's death.

Rabbi Judah the Prince allowed women to remarry based on the testimony given by other women (though women are usually not permitted to give evidence.)





situations in which a woman can testify that her husband is dead

Mishnah: If a man and a woman move away and she returns and says, "My husband is dead." she may marry again... Rabbi Judah said, she is never believed unless she come in weeping and with torn clothes.

gem: (Yev. 116b): A woman once came to Rabbi Judah's court. They told her to mourn and tear her clothes and let down her hair. Did ~~they~~ they teach her to be a fake? No, they agreed that it was not necessary, but they advised this action so that Rabbi Judah would also agree that she could remarry.



easing rules of admissible testimony to alleviate the problem of the agunah

Maimonides Mishnah Torah Gerushin

12.15 If a husband and wife leave the country and there is peace between them and peace in the world, if she returns and says that her husband died, she is believed and can remarry...If she disqualifies herself from her first husband and her current husband, she loses her ketuvah from both and her children and manzerim. In this matter a complaint cannot be registered, since if the first husband is alive, he will eventually return or it will become known that he is alive. So if one witness comes and testifies that her husband died, the wife may remarry on his evidence, because a lie would probably be exposed. Even a servant or a woman or a nonJewish female slave or one who hears from someone else --even one who hears from a servant or slave or relative -- all are believed if they say that ~~so-and-so died~~, and his widow may remarry.

12.21 If a woman testifies that her husband died, but afterwards two valid witnesses testify that he didn't die, she may not remarry, and if she remarried, she must be divorced.

12.18 If one witness testifies that a woman's husband is dead, she is granted permission to remarry on his testimony. If a second person later testifies that the husband is still alive, she can remarry, because one witness is believed for the wife's sake, just as two witnesses in all other cases.

13.3 If it is not known that there is a war, and a woman returns and claims that there was a war in a certain place and that her husband died in that war, she is not given permission to marry at the outset, but if she had remarried, she does not have to be divorced.

13.6 If she claims that nonJews or rabbers fell upon them and her husband was killed but she was spared, she is believed, since it is not their custom to kill women so one can't infer that just as she was spared, so he was spared.

(In the Yerushalmi Talmud, it says: A woman can conceal her identity and claim to be a nonJew, but a man cannot conceal himself and claim to be a nonJew )

13.7 If there is an epidemic and she claims her husband died, she is believed. An epidemic spreads among the people, infecting people indiscriminately, so that strong young people may die while sickly old people escape. Therefore, there is no need to fear that she might be depending on conjecture.

13.15 A witness who testified that he heard that a certain person died, even if he heard it from a woman who heard it from a servant, is accepted as valid testimony for the sake of the wife, and she may remarry on his testimony. But if the witnesses or the woman or the servant said, "I saw that ~~th~~ a certain person is dead." question him: How did you see it? How do you know he is really dead? If he actually saw, he is believed. If he saw only circumstantial evidence, the wife cannot remarry, since there must be an eyewitness to his death.

13.16 If one sees a man falling into water, even into the Mediterranean, one can't give testimony that he is dead, since he might have gotten out in a different spot. But if one sees a man fall into a body of water in which all boundaries are visible, for example, a cistern or a pit, and one waits until he must have died (3 hours) and he does not appear, one can testify that he is dead and his widow may remarry.

Similarly, if a man is thrown into the sea or from a tower and one of his limbs is recovered, this is evidence enough that he died, since it is impossible that it would come from a living person. If witnesses testify to seeing it,



## living with a partner is a sign of marriage

Rambam

On the issue of a man who does not intend his sexual union to be immoral: The essence of the matter is that when he is seen to be having sexual relations with a woman and behaves towards her as a husband, we don't say that he intends his actions to be for the sake of immorality, on the principle of a man does not make his sexual relationships immoral. Because of this principle, one who marries by an object with ~~ka~~ less than a perutah's worth of value, which is not a valid marriage, and he is seen later having sexual relationships with the woman, we say they are not living together by the force of the first marriage, which was invalid, so their relationship is immoral. Rather, we rule that people ~~ka~~ live together in a sexual relationship only in the name of marriage. Their relationship here requires a get when they separate, for the relationship must not depend on the invalid marriage, which would make it immoral. This is what the Rabbis meant when they compared his relationship to an immoral relationship. Since he intends marriage, he does not make his relationship immoral. All Israel falls under this principle until adultery is proved. We are not saying that any man who sleeps with an unmarried woman before witnesses needs to issue her a get, but just under this specific circumstance that they are living together.



admissibility of testimony for a husband's death

Maimonides Mishnah Torah

13.20 If a witness testify that a man drown in the sea or in a body of water without visible boundaries, and the man did not reappear ~~xxx~~ within a time reasonable to suspect that he is still alive, and if all remembrance of him is lost and even his name has been forgotten, his widow may not remarry on the basis of that testimony, but if she remarried, she is not forced to be divorced.

13.11 If a nonJew mentions innocently that a certain man died, his wife may remarry on the basis of that testimony. For example, if a nonJew says, "Poor, dead John Doe. He was a good man and a real help to me." or if he says, "As I was traveling, John Doe, who was traveling with us, dropped dead in the road. What a bizarre thing for him to die so suddenly like that." or some statement like these ~~xxx~~ which shows that he did not intend his words to be formal testimony, then his statement is accepted as formal testimony and the man's wife may remarry.

13.21 A man is found dead. If his forehead and nose and facial features are recognizable so that he can be identified, it can be testified that he is dead. If one of these features are missing, even if there are distinguishing features on his ~~body~~ body or clothes, even a wart or mole, it cannot be testified that he is dead, since the corpse could possibly be of someone else. These rules only apply if the man was found within three days of his death or murder. If he were found after three days, testimony is not accepted, because the facial features change.





ramifications of the prohibition of Rabbi Gershom against a man having more than one wife and against giving a wife a divorce against her will.

Isserlis: In cases where there is a blocking of a mitzvah, for example, if a husband lives with a wife ten years and she doesn't have children so he is not fulfilling the mitzvah of having children, though some authorities differ, the law is that the prohibition of Rabbi Gershom holds and he cannot marry a second wife. He cannot marry a second wife even to fulfill the obligation of marrying his dead brother's widow, ~~משכח ומשכח~~ but must release her in the formal ceremony. ...But this prohibition has not spread out to all countries. In a place where ~~ix~~ it is known that the prohibition has not reached, it is not in effect, but in general the prohibition holds.

Shutchan Aruk: The prohibition only extends to the 16th century.

Isserlis: But in any case, in all these countries the prohibition stands. It is forbidden to marry two wives, and one who does is forced but bans and excommunication to divorce one of them. But some say that presently the court cannot force a man to divorce his second wife, since the rule elapsed at the end of the 16th century and it has elapsed. But this minority opinion is not followed. Some rule that if the wife becomes an apostate, a get can be drawn up for her and held by an agent, so that he can marry another woman. This ~~is~~ procedure is followed in some places. But in places which don't follow the prohibition of Rabbi Gershom, the man can marry a second wife in this case without divorcing his first wife. If a wife goes insane, some Rabbis are more lenient and permit the husband to marry a second wife.

Commentaries: If a man should transgress and marry two wives, the second wife must be divorced if the first does not want to be divorced, so ruled Rabbi Solomon Luria.

The Zemach Tzedek wrote that the husband can issue a get through an agent only if his wife becomes an apostate voluntarily. If she was forced to apostatize, her husband is not permitted to marry another woman.

Our later authorities all agree that if a man marries two wives, he is forced to divorce one. So taught all the wise men of past generations in our country that the get is divided into thirds by an agent, so she can be divorced immediately after he consoles her. This rule holds even if he had permission to marry a second woman, for example, on the testimony of a witness who claimed incorrectly that his first wife had died.

The question of the apostate wife was asked of the Taz, who answered that a man is obligated to remarry and it is not necessary for him to write a get for his first wife. Several other authorities, however, including the Zemach Tzedek, ruled that he could not marry another wife without issuing a get. Further, the Zemach Tzedek was asked if the first wife could be issued a get against her will if she was forced to apostatize. He ~~asked~~ answered that in any case, the husband could issue her a get against her will.



commentaries on Isserlis' presentation of the prohibition of Rabbenu Gershom

B'er Hetev: Though one authority says that it is no longer necessary to get permission from 100 men in three communities in three countries, since the prohibition has lapsed and it is now only a custom that people accept to be more stringent, the Bach disagrees. He wrote that it is a tradition from the wise men of the world who presented the matter before ~~the~~ the greatest scholars of that generation, and they agreed on the necessity for getting permission from 100 Rabbis. They also ruled that the property promised to the wife in the ketuvah and her dowry and the interest from the ketuvah money is divided into thirds by the court, and then the husband may marry a second woman if his first wife has . Also, he wrote in another section that the get is given to a receiving agent who should hold the get until the wife receives it, and he is obligated to provide her a residence for herself and to guard her from loose customs and to provide her food. ...

The rashach wrote about a man who travel from a country where ~~the~~ the prohibition is followed to a country where it is not followed: He is obligated to follow the prohibition if he marries a woman from the place where the prohibition is observed. But if he didn't marry a woman in the place where the prohibition is observed, and he moves to a place where the prohibition is not observed, he is permitted to have two wives there. But Rabbi Judah bar Levi wrote that even if he married in a place where the prohibition did not hold, he is not permitted to take a second wife, since he is from a place where the prohibition holds. Other authorities agree with this second opinion.

A man moves to Israel, but his wife does not move with him. If he wants to marry a woman there, there are reservations because of the prohibition, and he must send a get to his wife by an agent, estimate the time that it would take until she receives it, and only after that time can he marry another woman.

Another Rabbi was baffled about this decision, since there were reservations about the prohibition in regard to marrying two wives, but not in regard to giving the first wife a divorce against her will.

Pitachei teshuvah: In truth, it is more lenient to divorce his first wife against her will than letting him marry two women, as Rabbi M. of Padua saw, too. He ruled correctly that in matters of transgression it is kinder to divorce her against her will than to marry two women. In the case of ~~xxxx~~ a couple who are childless after ten years, it is better to permit him to marry a second wife and not live with the first, for perhaps she will not have children so the second wife will fall under a universal permission. To divorce a woman against her will is still prohibited by the prohibition of Rabbenu Gershom, and it is not abrogated by time. In all case where the wife is not at fault, the husband cannot be given permission to marry another woman without the permission of 100 Rabbis.



Bet Smuel: The Kol Bo ~~wax~~ wrote that the prohibition of Rabbi Gershom can only be superceded by 100 men from three communities in three lands, but another Rabbi wrote that at this time it is no longer necessary to get permission from 100 men since the prohibition has lapsed and is now only a custom which people accept to be more stringent.

Two cases are grouped together: when the wife apostatized and when the marriage is forbidden and the couple must divorce. We deduce that the two cases are parallel: just as the prohibition does not apply to forbidden marriages, and the woman must be divorced against her will, so if the wife becomes an apostate, she may be divorced against her will. The Bach wrote that it is a tradition from the greatest people of the world who presented this case before the greatest scholars of their generation. They agreed that permission is needed from 100 Rabbis, and one third of the ketuvah and the dowry and the interest from the ketuvah ~~x~~ is held by the court. He must issue a get to a receiving agent, who holds it until she takes possession of it. He is obligated to provide her with her own residence, to guard her from loose customs, and obligated for her food, and after this he may marry another woman.

The husband of a woman who becomes an apostate must issue her a get through an agent even in those countries where the prohibition of Rabbi Gershom doesn't hold.

pitchei teshuvah: the Chatam Sofer wrote concerning a childless widow with more property than her husband's brother who refused to undergo the ceremony of release from the brother because she thought she could prevent him from marrying until he released her. She is forced to undergo the ceremony of release against her will, and the prohibition of Rabbi Gershom does not extend to this case.

The Bet Smuel wrote that the case of a wife who becomes an apostate and a forbidden marriage are parallel, but the Shav Jacob writes that they are parallel on the basis that if the woman is not at fault, for example, if a couple has been married ten years and are childless, in any such case, the husband needs permission from 100 Rabbis. These decisions seem contradictory, but they can be resolved: In some situations, it is kinder to issue a woman a divorce against her will than to let the husband marry a second wife.

PROCEDURES IF A WIFE BECOME AN APOSTATE;

<sup>Tamim</sup>  
Otzar Ha-Poskim 1.75: In his Book of Mercy Abraham ~~Thomas~~ wrote: in our countries ~~XXXXXX~~ it is customary to require the husband to issue her a get.

The Eretz Tzvi wrote: The husband is forced to write her a get so that if she has sexual relations with another man, her status is that of an unmarried woman, so she is not committing adultery.

In Ein Iyzchak it is written: even a woman who claims that she does not want a get prepared by a Jewish court, even in this case the husband must issue her a get before he can marry another. The Ohel Moshe quotes Rabbi Haim Wax that the husband is obligated to issue her a get so that if she has sexual relations with another man, she is not a married woman committing adultery. The husband is obligated to save her from this situation, even though she is no longer Jewish, he should still do whatever is in his power to save her from transgression.

1e ~~IX~~ Book of Shining Light discusses the situation of a wife who flees from her husband to live with a nonJew with the intention of becoming an apostate, and it is not known what happened to her. According to one authority, she should be issued a get so that her husband does not transgress the prohibition of Rabbeinu Gershom against having more than one wife. The prohibition applies even to a wife who becomes an apostate. Another Rabbi said that for an apostate wife, the prohibition of Rabbeinu Gershom does not apply. In this view, there is place to permit him to marry another wife even without a get, but he should issue her one nonetheless so she is an unmarried woman.





waiving the permission of 100 Rabbis for an apostate wife

Otzar HaPoskim 1:79

*Tomim*

In his Book of Mercy, Abraham ~~Th~~ cites authorities who agree that if the woman becomes an apostate of her own free will, it is not necessary to obtain permission from 100 Rabbis before the husband can marry another woman. Since she is no longer under Jewish law, there is no need to apply the prohibition of Rabbenu Gershom to her.

The Beit Solomon considered the case of a woman who fled to the ou house of a priest but had not yet become an apostate. He wrote that though it was difficult to let the husband remarry without the permission of 100 Rabbis, because the husband was a young man and because it was fitting to do so, he would waive the need for permission from 100 Rabbis. Other authorities agree.



Permission to divorce a woman against her will:f

Moshe Feinstein, a modern orthodox authority, wrote in his book Igerot Moshe:(ch.115)  
On permission to divorce a wife against her will who was divorced in a secular court and does not want to receive a get:

.... But she may fall under the category of a rebellious wife, so that permission could be granted by 100 Rabbis to divorce her against her will. If she marries another man without receiving a get, she is committing adultery. In this case, a get may be prepared for her and her husband may ~~not~~ marry another woman even without the permission of 100 Rabbis. In a place where it is not possible to present this case to 100 Rabbis, where the woman agreed to be divorced by a ~~secular~~ secular court and does not want to return to her husband, and yet does not want to receive a get, the husband has permission to divorce her against her will. It is even possible that she falls under the category of one who transgresses Jewish law.

