



## Abba Hillel Silver Collection Digitization Project

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### **MS-4787: Abba Hillel Silver Papers, 1902-1989.**

Series V: Writings, 1909-1963, undated.

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Prohibited marriages, undated.

PROHIBITED MARRIAGES.





## I. BIBLICAL.

### A. Incestuous Marriages.

#### a. HISTORICAL SURVEY.

1. That the prohibited degrees of marriage among kin enumerated in the Deuteronomic and Priestly Codes were <sup>not</sup> all recognized in pre-prophetic and pre-exilic times is attested by a number of such marriages between very near relatives recorded, without censure, in the historical documents of the Bible.

a. Marriage with half-sister (not uterine) E records the marriage of Abraham to Sarah, who was his half sister. (Gen. 20.12). The story of Amnon and Tamar (II Sam. ~~13~~ <sup>13</sup>. esp. v13) points to the legal character of such marriages. Such marriages were common in Israel even as late as in the days of Ezekiel (Ez. 22.11) though they ~~are now~~ <sup>were then</sup> condemned.

b. Marriage with aunt. (Father's sister). Amram married Jochebed his father's sister and Moses was an offspring of this union. (Ex. 6.20.)

c. Marriage with wife's sister (during lifetime of wife). Jacob married Rachel during lifetime of Leah. (Gen. 29.)



d. Marriage with daughter-in-law. J's narrative of Judah and Tamar (Gen. 38 esp. v. 26) would indicate that the practice of marrying one's daughter-in-law was common and obligatory when there <sup>was</sup> ~~is~~ no brother-in-law to marry her. Ezekiel still has occasion to condemn this practice. (Ez. 22.11.)

e. Marriage with Father's Wife. The case of Reuben and Bilhah (Gen. 35.22), Absalom and the concubines of David (II Sam. 16.21-22.), Adonijah and Abishag (IK. 2.13 ff.), and Rizpah and Ishboseth (II Sam. 3.7) point conclusively to the prevalence of the practice of marriage between son and step-mother. Ezekiel still finds it necessary to denounce it. (Ez. 22.10.). An echo of this is found in the genealogical table of I Ch. 2.24: Caleb marries Ephrath, the wife of his father. (Read with LXX, ἦλθεν κλέβ εἰς Ἐφραθ, and see We. De Gent. 14.)

2. These instances, on the whole, point to the fact that kinship in primitive Israel, as well as among all primitive semitic peoples (cf. W.R. Smith, Kinship and Marriage<sup>2</sup> pp. 191 ff) was through women and that the prohibited degrees of marriage depended on mother and not father kinship. It was the prophetic movement which expressed itself in the Deuteronomic Code <sup>that</sup> ~~which~~ endeavored to extend the law of incest to include kinship in the male line.



b. CODES.

1. The Books of the Covenant are silent on the subject of incestuous or consanguineous marriages. The first statutory expression on the subject of marriage involving incest is found in Deuteronomy.

1. Deuteronomy.

D. 23 mentions but one prohibition - that of marriage with a step-mother (23.1). It cannot be argued *ex silentio* that this was the only degree prohibited in the age of Dt. Perhaps because of the prevalence of such marriages, the Deuteronomist singles them out for special mention, or perhaps this prohibition marks the first in a series of prohibitions developed in the prophetic schools, which series finds its full expression in the Priestly Code. According to the latter theory the silence of C<sub>1</sub> and C<sub>2</sub> would indicate a tacit acceptance of the earlier standards which disregarded kinship in the male line.

Dt. 27.20, 22 and 23 declare God's curse to be upon him who marries his step-mother, his half-sister by either parent and his mother-in-law. At least two of these laws (or implied laws) mark an advance in prohibited degrees in male line, when compared with JE. D. like C<sub>1</sub> and C<sub>2</sub>, does not find it necessary to prohibit marriage between maternal relations. From very earliest times such marriages were not tolerated.



## 2. The Priestly Code.

The Biblical laws of incest find their highest and fullest expression in the Holiness Code. There are expressed prohibitions against a man's marriage with his aunt (his father's sister), or with his wife's sister (during the lifetime of the first wife), or with his daughter-in-law -- which marriages were considered legal by JE. Ezekiel (22.11) is the first to condemn marriage with one's daughter-in-law, and his influence is evident in H. The highest degree in the register of prohibitory marriages is found in H's illegalizing<sup>ation of</sup> the marriage of a man to his father's brother's wife. (Lev. 18.14 and 20.20) The complete table of prohibited degrees or of incestuous marriages included in H is as follows:-

### I. Consanguinity.

1. Mother	Lev. 18.7
2. Daughter	implied in grand-daughter.
3. Granddaughter (son's or daughter's daughter)	Lev. 18.10.
4. Sister	Lev. 18.9; 20.17.
5. Half-sister ( father's or mother's side)	Lev. 18.9,11; 20.17.
6. Father's sister	Lev. 18.12; 20.19.
7. Mother's sister	Lev. 18.13; 20.19.

### II. Affinity.

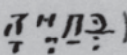
8. Wife's mother	Lev. 20.14; 18.17 (implied)
9. Wife's daughter (step-daughter)	Lev. 18.17; 20.14 (implied)
10. Wife's granddaughter (son's or daughter's daughter)	Lev. 18.17
11. Wife's sister (during lifetime of former)	Lev. 18.18.



12. Father's wife. (step-mother)	Lev. 18.8; 20.11.
13. Father's brother's wife.	Lev. 18.14; 20.20.
14. Son's wife.	Lev. 18.15; 20.12.
15. Brother's wife (except in the case of levirate)	Lev. 18.16; 20.21.

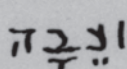
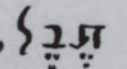
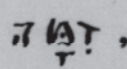
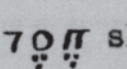
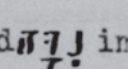
NOTE.

The second list (Lev. 20.11-21) is given for the purpose of appending the punishment specific to each incestuous marriage.

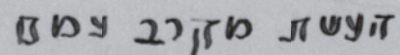
Marriage between uncle and niece, between cousins, and by implication, (Lev. 18.18 ) , between a man and his deceased wife's sister is not prohibited. Marriage with one's mother's brother's wife is not prohibited by Biblical law.



c. STATUS OF INCESTUOUS MARRIAGES.

An incestuous marriage which is variously characterized in the Bible as  , abomination (Lev. 18.26,27,30),  confusion (Lev. 20.12)  , wickedness, (Lev. 20.14),  shame (Lev. 20.17) and  impunity (Lev. 20.21), is null and void and requires no divorce for its dissolution.

d. PUNISHMENT.

D prescribes no punishment for the incestuous marriages which it enumerates. It anathematizes them. In the case of P the first list of prohibited marriages (Lev. 18), which list also includes other unnatural alliances and the offering of one's own children to Molech, closes with the characteristic formula  - "The souls that do them shall be cut off from among their people" (V.29) - an obscure formula which



has a technical meaning in P. It is difficult to determine whether the formula implies the death penalty actually inflicted by the community (as e.g. Ex. 31.13) or by divine interposition (Lev. 17.9). Originally it was probably the formula of capital punishment executed by the community.

Lev. 20 specifies the death penalty for the following incestuous marriages:

1. Father's wife (step-mother)
2. Daughter-in-law.
3. Mother-in-law.
4. Step-daughter.

The punishment <sup>of</sup> ~~for~~ incest with one's sister or half-sister is Karet (excision) **וְנִכְרְתָּ לְעֵינֵי בְנֵי נָשֶׁם**, for incest with one's aunt (paternal or maternal) no punishment is specified - just **וְנָשָׂא יֶשְׁעָ** - "they shall bear their iniquity" and in the case of incest with one's father's brother's wife - **חֲטָאתָ יֶשְׁעָ לְעֵינֵי יִשְׁתְּךָ** "they shall bear their sin, they shall die childless".

The Rabbis, who undoubtedly conserved the older tradition, apply the death penalty also to the following incestuous marriages of the Bible (San. VII, 4; IX, 1).

5. Mother.
6. Daughter.
7. Granddaughter (son's or daughter's daughter).
8. Wife's granddaughter (son's or daughter's daughter)



e. MODE OF PUNISHMENT.

The particular kind of death penalty inflicted upon those guilty of incest is prescribed in only one case - incest with one's mother-in-law (and by implication with one's step-daughter. The guilty ones are to be burnt (Lev. 20.14). In the case of incest with one's step-mother or daughter-in-law the prescription is simply *למיתן* "they shall surely be put to death" (Lev. 20.11-12), adding in both cases *וְדַמְּהוֹן* "their blood shall be upon them". By analogy with other *passages* which employ the same formula and in addition specify the mode of the death penalty (e.g. 20.27) it may be inferred that the death penalty here implied is that of stoning. The Rabbis have in fact adopted this method of analogy - the *אזרח שיהיה* - to define every instance of death penalty occurring <sup>in</sup> ~~to~~ the Pentateuch which does not carry its own specific description. They have accordingly established the nature of the death penalty for each case of incest as follows:

By Stoning.

1. Incest with one's mother.
2. " " " step-mother.
3. " " " daughter-in-law.

By Burning.

1. Incest with one's daughter.
2. " " " granddaughter (son's or daughter's daughter)
3. " " " step-daughter.
4. " " " wife's granddaughter (son's or daughter's daughter).
5. " " " mother-in-law.



Since all incestuous marriages come under the head of crimes involving Karet (excision) Lev. 18.29, those marriages which are not punishable by death are punished by Karet, which according to Rabbinic interpretation, involved scourging.

f. THE OFFSPRING OF INCESTUOUS UNIONS.

The child born of an incestuous alliance is a "mamzer" - a bastard. D defines his status "A mamzer shall not enter into the assembly of the Lord; even to the tenth generation shall none of his enter into the assembly of the Lord" (23.3). Neither he nor his descendants may marry an Israelitish woman. The Rabbis held this injunction to apply to a mamzereth also i.e. neither she nor her descendants may marry an Israelite.

B. Prohibited Marriages. (Not incestuous)

~~There are~~ Some marriages <sup>though</sup> ~~which are~~ not incestuous but <sup>yet</sup> ~~which are~~ not countenanced by the law. They are:

1. MAMZER.

A mamzer, i.e. one born of incest or of adultery ~~is~~ may not marry an Israelitish woman nor a mamzereth an Israelite (V. Supra). The Bible prescribes no punishment for such a union nor defines the status of the offspring, but the Rabbis on the principle that every Biblical prohibition carries with it Malkoth—stripes—as the penalty for disregarding it, subject both parties of such a union to Malkoth. The offspring of such unions are regarded as mamzerim. (Kid. 66b.; Eben Ha-Ezer IV,5.). *Such marriages, though voidable, are not void.*



## 2. SPADONES.

D prohibits the marriage of an Israelitish woman <sup>to</sup> with one who has been violently emasculated (23.2).

## 3. THE DIVORCED WIFE.

According to Dt. 24.1-4, a man is not permitted to remarry his divorced wife after she had been married to another man. Such a union is pronounced *זניית* - an abomination. The offspring of such a union, however, are considered legitimate by the Rabbis.

(~~Yeb.~~ ~~M.~~ Maim. Issure Biah XV. 2.)

## 4. INTERMARRIAGE.

### Note

This subject, judging from the Report, will be treated by another man.

## 5. MARRIAGE INVOLVING A VIOLATION OF THE LEVIRATE.

The widow of a man who died without descendants is not permitted to marry a stranger when her husband is survived by a brother. (Dt.25.5-6). It is the duty of the brother to marry her. The object of such Yibbum marriages is to perpetuate the name of the deceased (Dt.25.6-9) and to keep intact the family property. Should her brother-in-law, however, refuse to marry her, and rather choose to submit to the chalitza ceremony, she is free to marry a stranger.



C. Special Prohibition Affecting Priests.

D, knows of no special marriage prohibitions affecting priests.

The Priestly Code proscribes the following alliances for priests. (Lev.21.7).

1. A Prostitute (  $\pi \dot{\lambda} \dot{\iota}$  )
2. A Profane Woman (  $\pi \zeta \zeta \eta$  ), traditionally defined as one descendant of ~~from~~ an illegitimate marriage of a priest.
3. A Divorced Woman (  $\pi \psi \lambda$  ).

The High Priest was further enjoined from marrying a widow. (Lev. 21.14).