

## מצוה בה יותר מבשלושה: Daf Ditty Kiddushin 41



***Illuminated page from the Rothschild Miscellany of Sefer Mishlei, showing the "Woman of Valor" as the mistress of the house, giving counsel to her husband and sons. The Miscellany is a collection of illuminated texts from Veneto, Northern Italy, circa 1460-80***

הדרן עלך האשה נקנית  
האיש מקדש בו ובשלוה האשה  
מתקדשת בה ובשלוה האיש  
מקדש את בתו כשהיא נערה בו ובשלוה:  
גב' השתא בשלוה מקדש בו מיכניא אבד

<p><b>האשה מתקדשת בה ובשלוחה</b></p> <p><i>A woman can accept קידולין by herself, or through her agent</i></p>	<p><b>האיש מקדש בו ובשלוחו</b></p> <p><i>A man can give קידולין to a woman by himself, or through his agent</i></p>
<p><b>האיש מקדש את בתו כשהיא נערה בו ובשלוחו</b></p> <p><i>A father can accept קידולין for his 12 years old daughter by himself, or through his agent</i></p>	

## הדרו עֶלְךָ הָאִשָּׁה נְקִינִית

May we return to you chapter “a woman is acquired.”

הָאִישׁ מְקַדֵּשׁ בּוֹ וּבְשִׁלּוּחוֹ. הָאִשָּׁה מִתְקַדְּשֶׁת בָּהּ וּבְשִׁלּוּחָהּ.  
הָאִישׁ מְקַדֵּשׁ אֶת בִּתּוֹ כְּשֶׁהִיא נְעִרָה, בּוֹ וּבְשִׁלּוּחוֹ.

**MISHNA: A man can betroth** a woman **by himself or by** means of **his agent**. Similarly, **a woman can become betrothed by herself or by** means of **her agent**. **A man can betroth his daughter** to a man **when she is a young woman**, either **by himself or by** means of **his agent**.

?

**השתא בשלוחו מקדש  
בו מיבעיא**

*Why does the Mishnah need to mention **בו**  
If his שליח can give the Kiddushin  
he certainly can?*

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רב יוסף

**מצוה בו יותר מבשלוחו**

*דכי עסיק גופו במלכות מהכלל סכר טפי  
The reward is greater when one is personally involved in the Mitzvah*

**רב ספרא מחריך רישא  
רבא מלח שיבוטא**

*These ספרא and רבא would prepare the Shabbos meals by  
themselves rather than have others do it.*

**גמ'** השתא בשלוחו מקדש, בו מיבעיא? אמר רב יוסף: מצוה בו יותר מבשלוחו. כי הא דרב ספרא מחריך רישא, רבא מלח שיבוטא.

**GEMARA:** The Gemara starts by questioning the need for the seemingly extraneous *halakha* stated in the mishna: **Now** that the mishna stated that **one can betroth** a woman **by** means of **his agent**, is it **necessary** to state that a man can betroth a woman **by himself**? **Rav Yosef says:** The mishna writes both *halakhot* to teach that although the betrothal is valid either way, it is **more** fitting that the **mitzva** be performed **by** the man **himself than by** means of **his agent**. This is **like that** story of **Rav Safra**, who **would** himself **singe the head** of an animal on Shabbat eve to prepare it to be eaten on Shabbat, and **Rava**, who **would salt a turbot fish** himself, to fulfill the mitzva to prepare for Shabbat, although this could have been done by others.

איכא דאמרי

## בהא איסורא נמי אית בה

אסור לאדם שיקדש את האשה עד שיראנה  
שמא יראה בה דבר מגונה ותתגנה עליו

*He might later find something objectionable about her  
which will cause him to despise her*

ורחמנא אמר ואהבת לרעך כמוך

*However, this reason does not apply to the*

סיפא האשה מתקדשת בה ובשלוחה

*A woman MAY accept*

*Kiddushin from a man she did not see - because*

דאמר ריש לקיש

טב למיתב טון דו מלמיתב ארמלו

*A woman is not particular since she would rather  
be married to anyone than be alone.*

האיש מקדש את בתו כשהיא נערה

*The Mishnah did not mention a קטנה because*

אסור לאדם שיקדש את בתו כשהיא קטנה  
עד שתגדל ותאמר בפלוני אני רוצה

איכא דאמרי: בהא איסורא נמי אית בה, כדרב יהודה אמר רב.  
דאמר רב יהודה אמר רב: אסור לאדם שיקדש את האשה עד  
שיראנה, שמא יראה בה דבר מגונה ותתגנה עליו, ורחמנא אמר:  
"ואהבת לרעך כמוך".

**There are those who say: With regard to this particular mitzva of betrothal, it also involves a prohibition, in accordance with that which Rav Yehuda says that Rav says, as Rav Yehuda says that Rav says: It is forbidden for a man to betroth a woman until he sees her, lest he see something repulsive in her after the betrothal, and she will become repugnant to him, which will cause him to hate her. And to prevent this violation of what the Merciful One states in the Torah:**

יח לא-תקם ולא-תטר את-בני עמך. ואהבת לרעך כמוך: אני יהוה. 18 Thou shalt not take vengeance, nor bear any grudge against the children of thy people, but thou shalt love thy neighbour as thyself: I am the LORD.



**But in this** case of a woman who appoints an agent, **there is no prohibition, as that** which **Reish Lakish** said. **As Reish Lakish said:** Women have a saying: **It is better to sit as two bodies**, i.e., be married, **than to sit** lonely like **a widow**. Once a woman has decided to marry, she will accept any husband whose betrothal her agent accepts on her behalf, and there is no concern that she will find her betrothed repulsive and violate the mitzva of loving one's neighbor like oneself.

הָאִישׁ מְקַדֵּשׁ אֶת בִּתּוֹ כְּשֶׁהִיא נֶעְרָה. כְּשֶׁהִיא נֶעְרָה – אִין, כְּשֶׁהִיא  
קִטְנָה – לֹא. מְסִייעָ לִיהָ לְרַב, דְּאָמַר רַב יְהוּדָה אָמַר רַב וְאִיתִימָא  
רַבִּי אֱלֶעָזָר: אָסוּר לְאָדָם שְׂיִקְדֵּשׁ אֶת בִּתּוֹ כְּשֶׁהִיא קִטְנָה, עַד שֶׁתִּגְדֵּל  
וְתֹאמַר: "בְּפִלּוּנִי אָנִי רוֹצָה".

The mishna teaches: **A man can betroth his daughter** to a man **when she is a young woman**. The Gemara infers: **When she is a young woman, yes**, he can betroth her; **when she is a minor, no**, he cannot betroth her. This statement **supports** the opinion of **Rav, as Rav Yehuda says** that **Rav says, and some say** it was said by **Rabbi Elazar: It is prohibited for a person to betroth his daughter** to a man **when she is a minor, until** such time **that she grows up and says: I want** to marry **so-and-so**. If a father betroths his daughter when she is a minor and incapable of forming an opinion of the husband, she may later find herself married to someone she does not like.

## Summary



## הדרן עלך האשה נקנית

2) **MISHNAH:** The Mishnah discusses the use of an agent for kiddushin.

### 3) Performing kiddushin “personally”

R' Yosef asserts that the Tanna added the word “personally – בּוֹ” to teach that it is better for a person to do kiddushin personally rather than through an agent.

According to a second version it is prohibited for a man to give kiddushin to a woman if he did not see her.

It is noted that according to the second version R' Yosef's teaching was said in reference to a woman sending an agent to accept kiddushin on her behalf.

The Gemara infers from the last case of the Mishnah that a father should not marry off his daughter until she is mature and can agree to the match.

## Introduction to Perek II<sup>1</sup>

This chapter addresses various issues related to betrothal.

The first issue discussed is the efficacy of a betrothal performed by an agent. The Gemara elaborates on the Torah source for the institution of agency, with regard both to betrothal and to other areas of halakha. The Gemara investigates the question of who can appoint an agent, who can be appointed as one, and under which circumstances agency is effective.

The Gemara also examines situations in which there is an error or deviation in the betrothal procedure. This is tangentially related to errors or deviations in other forms of transactions. The Gemara also deals with cases where the betrothal is contingent upon something particular concerning the husband or wife being true or not true, e.g., family lineage or financial status.

In addition, this chapter considers how money effects betrothal. As was taught in the previous chapter, a woman can be betrothed with one peruta or an item worth one peruta. This chapter clarifies the possibility of using items that are in the possession of the groom but are not considered his property for betrothal, e.g., an item from which one is prohibited to derive benefit.

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<sup>1</sup>

<https://www.sefaria.org/Kiddushin.41a.6?lang=bi&with=Introduction%20to%20Perek%20II|Essay&lang2=en>

Finally, the Gemara speaks about betrothal in which the act of acquisition was not performed appropriately, as well as cases where the man tried to betroth multiple women simultaneously but it was prohibited for some of the women to become betrothed to him.

## **Summary of Perek II<sup>2</sup>**

This chapter discusses various halakhot related to betrothal, including betrothal via an agent, stipulations stated at the time of betrothal, and the items via which a betrothal can be performed. The Gemara explains that the act of betrothal can be performed by means of an agent, although it is preferable, as with all mitzvot, to perform this act on one's own. The Gemara concludes that agency can be carried out only by a halakhically competent, adult Jew, and with the consent of the one for whom one is acting. The one designating the agent must also be a halakhically competent, adult Jew. One cannot act as an agent with regard to an area of halakha in which he or she is not obligated. Despite the fact that an agent is considered to be acting on behalf of the one who designated him, this is not so with regard to transgressions, where the full responsibility, with several exceptions, rests upon the agent alone.

If one betroths a woman and explicitly stipulates that a certain condition be met, if the stipulation is not fulfilled, the betrothal does not take effect. This is true whether the stipulation is with regard to the actual act of betrothal, the lineage of the man or woman, their place of residence, their financial status, or another similar condition. It is irrelevant if the existing situation is regarded by the general public to be superior or inferior to the stipulated situation. Additionally, only explicit conditions are taken into account. If one of the parties claims later that he intended for the betrothal to take effect only subject to certain conditions being met, the principle that unspoken matters that remain in the heart are not significant matters applies.

The Gemara outlines certain limitations with regard to the item given to effect the betrothal. There are certain items that, although they are in the possession of a man, he may not use them for betrothal, as he is not in fact their owner. Included in this category is the portion that a priest receives from an offering, or second tithe. Items from which one is prohibited to derive benefit also cannot be used for betrothal. With regard to most items from which one is prohibited to derive benefit, if the man sold them it is permitted for him to betroth a woman with the proceeds from the sale. An exception to this would

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<https://www.sefaria.org/Kiddushin.41a.6?lang=bi&with=Summary%20of%20Perek%20II|Essay&lang=2=en>



be an item which is forbidden because it was used for idol worship. A man can betroth a woman with an item that possesses sanctity, e.g., teruma, tithe, or produce of the Sabbatical Year. Even if the woman will not be able to consume these items herself, as long as she can sell them for at least one peruta, she will be betrothed.

The Gemara also concluded that if a man sends gifts to a woman on the incorrect assumption that he had previously betrothed her, the gifts are not regarded as betrothal money.

Betrothal that is not halakhically given to consummation takes effect nevertheless, and the woman can be released only by receiving a bill of divorce.

### Mishnah Kiddushin 2:1<sup>3</sup>

**A man can betroth a woman by himself or by means of his agent. Similarly, a woman can become betrothed by herself or by means of her agent. A man can betroth his daughter to a man when she is a young woman, either by himself or by means of his agent. In the case of one who says to a woman: Be betrothed to me with this date and adds: Be betrothed to me with that one, then if one of the dates is worth one peruta she is betrothed, but if not, she is not betrothed, since he mentioned betrothal in connection with each date. But if he said: Be betrothed to me with this one, and with this one, and with this one, then even if all of them together are worth one peruta she is betrothed, but if not, she is not betrothed. If he gave her dates with the intention of betrothing her with them, and she was eating them one by one as she received them, she is not betrothed unless one of them is worth one peruta.**

### Introduction<sup>4</sup>

The first half of today's mishnah teaches that betrothal can be contracted through an agent. This means that a man or a woman can appoint an agent to either betroth or be betrothed. The second half of the mishnah refers to the first mishnah of chapter one where we learned that betrothal can be done with money or with something that has value. The value needed is only a perutah, the smallest coin that was in existence. Our mishnah deals with a man who gives a woman date in order to betroth her.

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<sup>3</sup> <https://www.sefaria.org/Kiddushin.41a.3?lang=bi&with=Mishnah%20Kiddushin&lang2=en>

<sup>4</sup> [https://www.sefaria.org/Kiddushin.41a.3?lang=bi&p2=Mishnah\\_Kiddushin.2.1&lang2=bi&w2=English%20Explanation%20of%20Mishnah&lang3=en](https://www.sefaria.org/Kiddushin.41a.3?lang=bi&p2=Mishnah_Kiddushin.2.1&lang2=bi&w2=English%20Explanation%20of%20Mishnah&lang3=en)

**A man can betroth [a woman] through himself or through his agent. A woman may be betrothed through herself or through her agent.**

As explained in the introduction, a man can betroth a woman through an agent. This would mean that the man gives money to an agent to use in betrothing a certain woman. This probably would have been a common means of doing betrothal if the couple lived far apart from one another and was matched by others, as was nearly always the case. Similarly, a woman may appoint an agent to receive her betrothal money.

**A man may give his daughter in betrothal when a young girl [either] himself or through his agent.**

A father has the right to marry off his daughter while she is still a young girl (na'arah). This is defined as a girl between the ages of 12 and 12 1/2 who has already reached puberty. He may also marry her off at a younger age, but not when she is past that age. When marrying her off, he may use an agent to accept her betrothal money.

Basically, the father takes her place in matters of betrothal. I should note that while a father had the legal right to marry off his daughter and not his son, and this right extends only until she reaches 12 1/2, in practice the father played a very large role in arranging matches for both sons and daughters no matter what age they were when they married. The idea that a 12 1/2 year old girl became totally independent of her father was probably as strange of an idea in the mishnaic period as it would be today.

**He who says to a woman, "Be betrothed to me with this date, be betrothed to me with this one" if any one of them is worth a perutah, she is betrothed; if not, she is not betrothed.**

In this case a man gives a woman several dates (palm dates) in an attempt to use the dates as betrothal money. Here he says the words "Be betrothed to me" as he gives each date. The fact that he repeats the formula each time means that each act is a separate act of betrothal. Since they were separate acts, in order for the betrothal to be effective at least one of the dates must be worth a perutah. If each individual date is worth less than a perutah, we do not add the dates up so that together they make a perutah.

**[If he says,] "[Be betrothed to me] with this one and with this one and with this one" if together they are worth a perutah, she is betrothed; if not, she is not betrothed.**

In this case, since he made one betrothal statement, we can add up the dates. If together they are worth a perutah then she is betrothed.

**If she eats them one by one, she is not betrothed unless one of them is worth a perutah.**

This section continues the scenario of the previous section. In this case, while he is giving her the dates, she starts to eat them one at a time (dates are quite delicious, and I guess she just couldn't resist!) Unless one of them is worth a perutah she cannot be betrothed by the combined value of them all because they are never all in her hand at the same time.

## **SUMMARY<sup>5</sup>**

An angry person gains nothing from his anger and all he has from it is the anger itself.

A good person is given a taste of the fruit of his good deeds in this world.

One should disavow any benefit from someone who lacks Mikra, Mishnah and Derech Eretz.

A man may use a Shali'ach to be Mekadesh a woman and a woman may use a Shali'ach to accept her Kidushin.

A father may be Mekadesh his daughter who is a Na'arah.

It is preferable to perform a Mitzvah oneself without using a Shali'ach. (1)

It is forbidden to be Mekadesh a woman without seeing her first. (2)

It is permitted for a woman to use a Shali'ach to accept Kidushin even though she has not seen the Chasan. (3)

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<sup>5</sup> <https://www.dafyomi.co.il/memdb/revdaf.php?tid=20&id=41>

A father may not be Mekadesh his daughter while she is a Ketanah. (4)

A Shali'ach may appoint a second Shali'ach in his place.

A Get may be given against the will of the wife.

If a person is a Shali'ach to separate Terumah he shall separate it in accordance with the generosity of the owner. (5)

If the Shali'ach is not familiar with the generosity for the owner he shall separate a medium amount of 1/50th, however if he separates 1/40th or 1/60th it is a valid separation of Terumah.

Terumah may be separated with Machshavah; one may eye the Terumah on one side and then eat from the other side.

If a Chaburah lost their Korban Pesach and appointed one of the members of the Chaburah to find the Pesach and slaughter it for them if he found the Pesach and Shechted it and the remaining members of the Chaburah also Shechted a Pesach if his Pesach was Shechted first all of them eat from his Korban Pesach. (6)

If a person is Makdish something with Machshavah it is Hekdesh. (7)

A person may not appoint a Nochri as a Shali'ach.

A woman may not appoint a Nochri servant to receive her Get because the Dinim of Gitin and Kidushin don't apply to a servant.

If a Nochri separates Terumah from his own produce and it gets mixed in with Chulin it is forbidden to a non-Kohen and if a non-Kohen eats the Terumah b'Shogeg he is Chayav a Chomesh. (8)

If a sharecropper or a caretaker or anyone besides the owner of the produce separates Terumah without being appointed a Shali'ach it is not a valid Terumah.

## Notes:

- (1). Rav Safra and Rava themselves preformed tasks l'Kavod Shabbos
- (2). Because of the possibility that he will find her unattractive.
- (3). A woman prefers a marriage even with an unattractive husband rather than being single.
- (4). He must wait until she is a Gedolah and gives her consent to the Kidushin. However if he is Mekadesh her it is a valid Kidushin.
- (5). If he knows that the owner is generous, he should separate with a good eye, 1/40th, if he knows the owner is stingy, he should separate with a bad eye, 1/60th.
- (6). Since they made him into a Shali'ach for them they are all included in his Korban Pesach and their Korban Pesach is Pasul.
- (7). If a person thinks to himself that this animal shall be an Olah the animal is an Olah
- (8). R. Shimon argues and he holds that the Terumah of a Nochri is not Terumah at all.

## A MITZVAH FOR A WOMAN

The Gemara says that it is preferable for a woman to accept a Kidushin herself rather than by means of a Shali'ach because it is a greater Mitzvah to do a Mitzvah oneself without a Shali'ach. The Ran asks that marriage is only a Mitzvah for a man, not a woman, because a woman is not commanded in the Mitzvah of Peru u'Rvu. The Ran answers that it is still a Mitzvah for her to marry because she is helping the man perform his Mitzvah. The Korban Nesanel answers that although the Mitzvah of Peru u'Rvu does not apply to a woman, however the Mitzvah of Sheves (settling the world) does apply to her.

## KIDUSHIN BY MEANS OF A SHALI'ACH

A person may appoint a Shali'ach to be Mekadesh a woman whether he

specifies the woman or he instructs her to be Mekadesh any woman. The Shali'ach shall say 'you are Mekudeshes to Ploni.' However, if it is possible for the man to be Mekadesh the woman her himself it is forbidden to Mekadesh her by means of a Shali'ach unless he already knows her because of the concern that he will find her unattractive. However, even if he already knows her it is a Mitzvah to be Mekadesh her himself if possible. (Shulchan Aruch EH 35:1)

Only regarding a Mitzvah do we say that it is a Mitzvah to do it oneself without a Shali'ach, however regarding the Berachah on a Mitzvah one may l'Chatchilah allow another to recite the Berachah. (Chelkas Mechokek)

**Rav Avrohom Adler** writes:<sup>6</sup>

## **Mishna**

A man can betroth a woman by himself or via his agent. A woman can accept kiddushin by herself or via an agent.

A man can accept kiddushin for his daughter when she is a na'arah, both by himself and via an agent.

## **Betrothing through an Agent**

The Gemora asks: If he can betroth through an agent, he can certainly betroth himself!? Rav Yosef answers: It is a mitzvah for him to do so rather than his agent (as by all mitzvos it is preferable for one to perform them oneself than send an agent).

This is like Rav Safra who would personally singe the head of the animal and Rav who would personally salt the fish (before Shabbos in order to honor Shabbos themselves).

Some answer that the Mishna is telling us that there is a possible transgression involved in betrothing through an agent. Rav Yehudah said in the name of Rav: It is forbidden for a person to betroth a woman until he sees her, as perhaps he will see something unseemly about her and she will become disgusting to him.

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<sup>6</sup> [https://dafnotes.com/wp-content/uploads/2016/04/Kiddushin\\_41.pdf](https://dafnotes.com/wp-content/uploads/2016/04/Kiddushin_41.pdf)



The Torah states, "And you should love your friend as yourself." According to those who answer in this fashion, Rav Yosef's statement was regarding the second part of the Mishna. The Mishna states: A woman can become betrothed on her own and via an agent.

The Gemora asks: If she can become betrothed through an agent, she can certainly become betrothed on her own!? Rav Yosef answers: It is a mitzvah for her to accept her kiddushin rather than her agent. This is like Rav Safra who would personally singe the head of the animal and Rav who would personally salt the fish. However, there is no prohibition for her to accept the kiddushin through an agent, as per Rish Lakish's dictum regarding a woman: "It is better to sit together with two (a husband) than to sit by yourself."

### **See her First.**

The Gemora asks: The implication of the Mishna when it says, "A man can accept kiddushin for his daughter when she is a na'arah," is that he should not do so when she is a minor. *[However, we know that he can!?!]*

The Gemora answers: This is proof to Rav's viewpoint that a person should not be mekadesh his daughter when she is a minor, but rather, he should wait until she gets older and chooses to marry a certain person.

### **Shlichus**

The Gemora asks: How do we know that agency works? The Gemora answers: The verse says, "And he will send," implying that he can make an agent. When it adds, "her" it implies that she can also make an agent. The fact that it says these words again indicates that the agent can make an agent. The Gemora asks: These verses are discussing divorce. How do we know that this also applies to kiddushin?

The Gemora answers: We derive it from divorce. If you will tell me that this is problematic because divorce can even be done against her will, we can answer with the teaching of, "And she will go out...and she will be." This teaching tells us that we always compare kiddushin to gittin. Just as by gittin an agent can be made, so too, by kiddushin an agent can be made.

The Gemora asks: There is a Mishna that states that if an agent goes to separate terumah, he should take off the amount that the owner would want. If he does not know how much the owner wants to separate, he should assume the amount a normal person would separate, which is one in fifty. If he took

off one in forty or one in sixty, his taking of terumah is still valid. How do we know that an agent can take terumah for someone else? If you will say we derive this from divorce, it is possible to ask that divorce is different, as it deals with the mundane (*as opposed to terumah which is holy*).

The Gemora answers: The verse, "Also you (plural) shall separate terumah," implies that even an agent can take off terumah. The Gemora asks: Why didn't the Torah suffice with this extra verse regarding terumah, and let us derive gittin and kiddushin from there?

The Gemora answers: Terumah is possibly different, as it can even be designated via one's thoughts.

The Gemora asks: What about the following Mishna? The Mishna states: If a group of people lose their korban pesach, and they tell someone to go slaughter a korban pesach for them, and they also went and slaughtered their own korban pesach, the law depends on the circumstances. If his korban pesach was slaughtered first, they must eat together with him. How do we know this (that agency works for a korban pesach)? If you will say that this is derived from the previous sources, they are considered mundane in comparison to a korban pesach! [*Even though terumah is holy, it is considered less holy than a korban pesach.*]

The Gemora answers: This is derived from Rabbi Yehoshua ben Korchah. He states: How do we know that a person's agent is like himself? The verse states, "And all of the group of the congregation of Israel will slaughter it between the evenings." Does everyone slaughter? Only one person slaughters! Rather, from here we derive that a person's agent is like himself. The Gemora asks: Why didn't the Torah allow us to derive this from the korban pesach to all of the aforementioned topics?

The Gemora answers: Kodoshim (like the korban pesach) are not proof, as most actions done with kodoshim are through an agent (as they are done primarily through Kohanim). The Gemora asks: While we could not have derived this concept from one single source, why couldn't we have derived it from two sources and applied it to other things? Which two? The Gemora suggests that the Torah could have stated this by terumah and gittin, and we would derive that this applies to kodoshim.

However, this cannot be, as kodoshim is holier than either of these (as mentioned above). The Gemora suggests that the Torah could have stated this by kodoshim and terumah, and we would derive this applies to gittin. However, this cannot be, as both of these are affected by a person's thoughts (*kodoshim also are dedicated by definite thought*).

The Gemora suggests that the Torah could have stated this by kodoshim and gittin, and we would derive that this applies to terumah. The Gemora answers: This is indeed possible.

The Gemora asks: If so, what is the verse, "Also you," teaching us (as we no longer need it to teach us that agency is effective for terumah)? The Gemora answers: It is used for the teaching of Rabbi Yannai.

Rabbi Yannai says: "Also you," teaches that just as you are Jewish, so must your agents to take off terumah be Jewish.

The Gemora asks: Why is a verse necessary to teach us this lesson? We can derive this from Rabbi Chiya bar Abba's statement in the name of Rabbi Yochanan. He states: A Canaanite slave cannot be made into an agent to accept a get for a woman from her husband, as he is not himself partial to the topic of gittin and kiddushin. [*Similarly, a gentile is not partial to terumah, as he is not obligated in terumah.?*]

The Gemora answers: The verse is still necessary. A slave who cannot take part in kiddushin at all is different from a gentile whose terumah is indeed considered valid.

The Mishna states: If an idolater or a Cuthean separates terumah, the terumah is considered terumah. We would therefore have thought they can be messengers to separate terumah for a Jew. This is why the verse must tell us that they cannot in fact be agents to separate terumah for a Jew.

The Gemora asks: How does this fit with the opinion of Rabbi Shimon? The Mishna says: The terumah of an idolater which is mixed with regular grain is prohibited by admixture (*dimua - the entire mixture becomes forbidden to all non-Kohanim unless there is a ratio of more than one hundred chulin produce to one terumah*) and an ordinary Jew who accidentally eats it must pay an extra fifth. Rabbi Shimon says: He is exempt (*for an idolater cannot Biblically separate terumah*)!?

The Gemora answers: According to Rabbi Shimon, the verse is still required. One might think that because Mar states: "You" and not sharecroppers, partners, caretakers, or someone who takes off terumah from what is not his, one might also think that agency does not work. This is why the verse tells us that it does work.

## **Honoring Shabbos**

Yourself The Gemora asks: If he can betroth through an agent, he can certainly betroth himself!? Rav Yosef answers: It is a mitzvah for him to do so rather than his agent (as by all mitzvos it is preferable for one to perform them oneself than send an agent).

This is like Rav Safra who would personally singe the head of the animal and Rav who would personally salt the fish (before Shabbos in order to honor Shabbos themselves).

The Shaar Hatziyon (250:9) asks: Why did these Amoraim prepare the food for Shabbos themselves? The halachah is that one is not permitted to be interrupt his Torah studying in order to perform a mitzvah that is possible to be performed by others!

These Amoraim should have instructed others to prepare the Shabbos food on their behalf!? He answers that this is only true by a mitzvah that does not have to be performed by the person himself.

However, the mitzvah of honoring Shabbos must be performed by the person himself, and therefore, they prepared the food themselves, for it is a greater mitzvah when it is done by the person himself.

The sefer Shulchan Shlomo explains that the Shaar Hatziyon does not mean that honoring Shabbos is a mitzvah similar to tefillin and sukkah, for if so, it cannot be given over to an agent at all (*one cannot ask someone else to sit in a sukkah on his behalf*).

Rather, it is a mitzvah that is incumbent upon him, and therefore he himself must be involved with the mitzvah. Alternatively, the Shaar Hatziyon answers that because of the severity of Shabbos, they prepared the food themselves even though it could have been accomplished through another. The sefer Lev Yam asks that if the mitzvah of honoring Shabbos is different than any other mitzvah, and one should perform it himself even if someone else can do it, how does our Gemora bring a proof from these Amoraim that it is a greater mitzvah when he personally performs it more than when he does so through an agent?

Perhaps the reason they prepared the food themselves is because of the uniqueness associated with the mitzvah of honoring Shabbos, but it will not prove anything with respect to other mitzvos!? He cites a Shulchan Aruch Harav that answers this question.

## Terumah More than a Sixth

The Gemora cites a Mishna: If one tells an agent, "Separate terumah for me (without specifying an amount), he should separate according to what the agent perceives is the mindset of the owner (either one-fortieth, one-fiftieth, or one-sixtieth). If he cannot ascertain what the owner would want, he should separate one-fiftieth. If the agent has separated one in forty or one in sixty as terumah, the terumah is nevertheless valid.

The Gemora in Kesuvos asks: It is evident that although the agent has made a mistake, his actions are nevertheless valid! Is that correct? The Gemora answers: By the terumah, the agent has a valid excuse; he can say that he figured that the owner would separate terumah in a stingy manner or generously; however, in this case (where the agent charged too little for the property), the owner may tell the agent, "You should not have made a mistake."

The Beis Yaakov asks: Isn't the case of terumah a case where the agent erred in an amount which is more than a sixth; everyone would agree that the sale is invalid?

He answers: Since it is extremely common to err in this regard when separating terumah; even more than a sixth is regarded as having the same halacha as precisely a sixth.

## Agents in Betrothal; The Agency of Minor Girls Regarding Marriage<sup>7</sup>

Another brief blog tonight as Pesach preparation continues.

We (finally) begin Perek II today, and we begin with a Mishna about agency in betrothal. Both men and women are permitted to appoint agents for the purpose of betrothal. They are also permitted to perform that action themselves. Fathers are permitted to appoint agents to betroth their minor daughters. They are also permitted to do this themselves.

The Gemara makes it very clear that while agents are permitted, it is far more desirable for one to go through the steps of betrothal him/herself. The rabbis

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<sup>7</sup> <http://dafyomibeginner.blogspot.com/2016/04/>

note that people should be certain that they wish to marry the people they will marry. Reish Lakish takes this opportunity to note that women are so eager to marry that they will love any man who is found for them. His opinions seems to be in the minority, however. We learn that even in the case of minor girls, fathers are encouraged to allow the girls to marry only when they are capable of deciding whom they wish to marry. The argument is that we do not want girls to marry men that they do not love; we do not wish to doom relationships to either misery or divorce.

The rabbis continue their discussion of *shlichot*, agents, regarding separating terumah. Terumah is similar in that agents are permitted to separate terumah but that people should attempt to do this themselves. The conversation turns to which agents are permitted to separate terumah, which is an obligation and thus should be performed by a person who is obligated to perform that task. The rabbis believe that Jews must act as agents for other Jews in a number of cases, as they are obligated to perform these mitzvot.

So interesting to add this context to past readings of Masechet Ketubot, where we learn more about the stringencies of betrothal and marriage halacha. The difference between marrying off babies through intercourse and insisting that girls are old enough to choose their own husbands based on their own desire is massive. I wonder whether this changed over the course of the hundreds of years within which the Talmud was created and collected or whether this just reflects different streams of thought.

## **THE MITZVAH A WOMAN FULFILLS BY MARRYING**

**Rav Mordechai Kornfeld** writes:<sup>8</sup>

The Gemara asks why the Mishnah teaches that a man may be Mekadesh a woman himself when it has already taught that a man's Shali'ach may be Mekadesh a woman on his behalf. If the man's Shali'ach may be Mekadesh a woman for him, certainly the man himself may be Mekadesh her! Rav Yosef answers that the Mishnah is teaching the principle of "*Mitzvah Bo Yoser mib'Shelucho*" -- it is considered a greater Mitzvah to do the act oneself than to do it via a Shali'ach.

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<sup>8</sup> <https://www.dafyomi.co.il/kidushin/insites/kd-dt-041.htm>



The Gemara records another version of the question on the Mishnah. The end of the Mishnah says that a woman's Shali'ach may accept Kidushin on her behalf. If a woman's Shali'ach may accept Kidushin on her behalf, why does the Mishnah need to teach that the woman herself may accept Kidushin? Rav Yosef answers that the Mishnah is teaching the principle of "*Mitzvah Bo Yoser mib'Shelucho.*"

*(The first part of the Mishnah is not problematic, because the law is that a man is prohibited from being Mekadesh a woman via a Shali'ach until he has seen her. Accordingly, it is clear why the first part of the Mishnah adds that a man should be Mekadesh a woman himself.)*

The Rishonim explain that the Mitzvah to which the Mishnah refers is that of "Peru u'Revu." Since it is through the act of Kidushin that the Mitzvah of "Peru u'Revu" is fulfilled, the Kidushin is also regarded as a Mitzvah.

However, the Gemara in Yevamos (65b) clearly states that a woman is *exempt* from the Mitzvah of Peru u'Revu. Why, then, does the Gemara here assert that the reason why the Mishnah adds that a woman may accept Kidushin for herself is to teach that "Mitzvah Bo Yoser mib'Shelucho"? The woman performs no Mitzvah when she accepts Kidushin since she is exempt from the Mitzvah of "Peru u'Revu."

(a) The **RAN** explains that although the woman herself is exempt from "Peru u'Revu" and therefore does not fulfill a Mitzvah by marrying, she nevertheless assists her husband in the fulfillment of his Mitzvah. This assistance ("Mesayei'a l'Devar Mitzvah") itself is considered a Mitzvah, and thus the principle of "Mitzvah Bo Yoser mib'Shelucho" indeed applies.

(b) The **SHITAH LO NODA L'MI** compares the Mitzvah of "Peru u'Revu" to the other Mitzvos from which a woman is exempt. The Halachah is that although she is not obligated to fulfill those Mitzvos (such as the Mitzvos of Shofar and Sukah), she still may perform them if she wants and she may even recite a blessing when she performs them. Although she is exempt from the Mitzvah, she may voluntarily perform the Mitzvah and she is credited with the fulfillment of a Mitzvah when she does so.

(c) The **SEFER HA'MIKNAH** suggests that since a woman who lives with a man out of wedlock commits a sin ("Lo Siheyeh Kedeshah"), the act of marriage, which saves her from transgression, is considered a Mitzvah.

## **PERSONAL INVOLVEMENT IN PREPARATIONS FOR SHABBOS**

The Gemara derives from the Mishnah that "Mitzvah Bo Yoser mib'Shelucho," it is considered a greater Mitzvah to do the act oneself than to do it via a Shali'ach. The Gemara proves this principle from the fact that Rava and Rav Safra personally involved themselves in the preparations for Shabbos.

The **RAMBAM** (Hilchos Shabbos 30:8) adds an interesting point when he records this Halachah: "Although he was an Adam Chashuv b'Yoser (an extremely important person) and it is not the manner for such a person to buy things in the marketplace or be involved in the labors of the house, he is obligated to personally perform acts which are for the sake of Shabbos because *this is his honor*." The reasoning the Rambam gives -- "for this is his honor" -- seems superfluous. The Gemara states that the reason why one should involve himself personally ("b'Gufo") in the Mitzvah of honoring Shabbos is the principle of "Mitzvah Bo Yoser mib'Shelucho." Why does the Rambam give an additional reason, that "this is his honor"?

The **BI'UR HALACHAH** (OC 250) explains that the intent of the Rambam is to reconcile a contradiction between the Gemara here and the Gemara in Berachos (20a). The Gemara in Berachos teaches that a Talmid Chacham is not required to perform certain Mitzvos when doing them will cause him disgrace (such as carrying a lost sheep to fulfill the Mitzvah of Hashavas Aveidah). This contradicts the Gemara here which says that a Talmid Chacham is required to take part in menial tasks in preparation for Shabbos, even though such tasks are below his honor. The Rambam answers that there is no greater honor to a Talmid Chacham than to be involved in the preparations for Shabbos.

The **PRI MEGADIM** (see Bi'ur Halachah there) adds that only when the fulfillment of the Mitzvah is not evident, such as when a Talmid Chacham carries a sheep and no one knows why he is carrying it, does the honor of the Talmid Chacham override the fulfillment of a Mitzvas Aseh. In contrast, when it is obvious to all that the Talmid Chacham is involved in the fulfillment of a Mitzvah (such as preparing for Shabbos), he is not subject to disgrace and, on the contrary, "this is his honor."

## **PREFERENCE FOR COMPANIONSHIP**

The Gemara teaches that a father may not marry off his Ketanah daughter until she is old enough to consent. The Rishonim explain that the reason for this decree is the concern that the girl might eventually come to hate her husband and transgress the Mitzvah of "v'Ahavta l'Re'acha Kamocho" (Vayikra 19:18).

The Gemara earlier teaches that although a man is required to see the woman he wants to marry before he is Mekadesh her, a woman is *not* required to see her future husband. This is because of the assumption that every woman prefers to live with a companion, even one who is uncomely, than to live alone ("Tav l'Meisav Tan Du..."). Why does the same assumption not apply to the marriage of a Ketanah? Since every woman prefers to have a companion than to live alone, there should be no concern that she will be disgusted with her husband when she comes of age, even if he is uncomely.

(a) **TOSFOS** (DH Asur) explains that the principle of "Tav l'Meisav Tan Du..." applies only when a woman agrees to a marriage by her own volition. In such a case it is assumed that she is willing to tolerate some unpleasantness in return for the benefit of companionship with a husband. A Ketanah, in contrast, has insufficient intellectual capacity (Da'as) to choose to consent to the marriage which her father arranges. Therefore, it cannot be assumed that she will be willing to suffer in order to have companionship with that man.

(b) The **RASHBA** explains that an adult woman makes a firm decision to marry this man and to tolerate some unpleasantness, and she is committed to her decision. A Ketanah, however, is easily persuaded by others, and thus there is a concern that others will persuade her to demand a divorce from the man.

## Betrothal by Agent

**Steinsaltz (OBM)** writes:<sup>9</sup>

The second *perek* of *Massekhet Kiddushin* begins on **our daf**, and its focus is mainly on the legal relationship created by marriage. The first discussion deals with the act of marriage itself, and specifically with *kiddushin* that is accomplished by means of *sheliaḥ*. This discussion does not only deal with marriage but is a wide ranging investigation into the power of *shelihut*, where it can be used and who can appoint – or be appointed – a *sheliaḥ*.

R Yosef in the Gemara is quick to note that although marriage can be accomplished by means of a messenger, that is not the ideal situation, and that "mitzva bo yoter mi-bi-sheluhō – it is a greater *mitzva* for a person to

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<sup>9</sup> <https://steinsaltz.org/daf/kiddushin41/>

perform the act themselves," rather than have someone else perform the *mitzva* for him. This concept applies not only with regard to the mitzva of marriage, but to other areas of *halakha*, as well. The evidence brought by the Gemara to support this idea are stories of Talmudic sages who were involved in food preparation for *Shabbat*, which they chose to do rather than leave it to their servants.

Others point out that there is a specific problem with regard to having marriage performed through *shelihut*, since Rav is quoted by Rav Yehuda as ruling that a man should not marry a woman until they have met each other, lest he find something displeasing and they turn out to be incompatible. The *rishonim* point out that according to this approach, when the Mishna says, "*Ha-ish mekadesh bo u'bi-sheluh* – a man can marry through his own efforts or through those of an agent," it does not mean to recommend that a messenger carry out the marriage, rather it is teaching that if such a marriage took place it has the full *halakhic* ramifications of marriage.

### *Performing a mitzvah personally*

### מצוה בו יותר מבשלוחו

Rav Yosef teaches that the lesson of the Mishnah illustrating a case of a man presenting kiddushin is that there is a greater mitzvah to perform an act personally rather than to delegate the mitzvah to be done via a messenger.<sup>10</sup>

Rashi explains that the person who does a mitzvah personally receives greater reward for his actions than he would have he assigned an agent to perform the mitzvah for him.

Sefer **לב ים** notes that it seems from Rashi that the mitzvah itself is not a greater or lesser mitzvah either way, but it is rather the person who toils who earns greater reward for having exerted himself in the mitzvah observance.

Therefore, if a person has an opportunity to perform a different mitzvah at the same time, and that mitzvah has a greater reward than the first i.e., study of Torah, which is equal to all other mitzvos together—(כנגד כולם)—, it is clear that the person should delegate performance of the first mitzvah to others, and he should toil in Torah study.

The loss of reward for not having done the first mitzvah personally will be offset by the greater reward he will receive for studying Torah himself. In our

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<sup>10</sup> <https://dafdigest.org/masechtos/Kiddushin%20041.pdf>

Mishnah, the Rishonim discuss the particular mitzvah the man performs for presenting kiddushin directly.

Rambam (Sefer HaMitzvos, Positive #213; and Hilchos Ishus 1:2) writes that giving kiddushin is in and of itself a mitzvah, as someone who wishes to marry a woman must first present her with kiddushin. Rosh writes that presenting kiddushin is a prelude to the mitzvah of procreation (הכשר לפרו ורבו).

Our Gemara also tells us that Rav Safra personally prepared for Shabbos by roasting meat, and Rava salted fish. הגהות ר"א הורביץ (to Shabbos 119a) explains that each of these Amoraim prepared a food that was tasty for himself, in order to best fulfill the mitzvah of עונג שבת—enjoying Shabbos.

The שער הציון asks that one is not allowed to be idle from the mitzvah of Torah study in order to perform a different mitzvah as long as he can delegate that other mitzvah to others. Why, then, did these Amoraim involve themselves in Shabbos preparations which other could have done for them?

He answers that one may delegate only certain types of mitzvot, such as those that are not necessary to be done בגופו—with one's body. Preparing for Shabbos is not an obligation which is completed with one act, but it is incumbent upon each person to continue to work until everything is in place. This cannot be delegated to others.

Rambam (Hilchos Shabbos 30:6) writes that preparing for Shabbos is a form of honoring Shabbos, which everyone must do himself.

*Can a parent protest their child's choice of a spouse?*

אסור לאדם שיקדש את בתו כשהיא קטנה עד שתגדל ותאמר בפלוגי אני רוצה

***It is prohibited for a man to betroth his daughter while she is a minor until she reaches maturity and declares, "I want to marry So-and-so."***

Maharik (1) was asked whether a father has the right to protest his son's choice of a wife. Maharik ruled that it is outside of a father's jurisdiction to protest his son's choice for a wife and offers a number of reasons to support his position.

One reason is that Poskim follow the position that maintains that the child is not obligated to spend money in order to provide his parents with food or

clothing. Kal v'chomer, argues Maharik, that a child is not obligated to undergo the pain (צערא דגופא) of not marrying the woman he yearns to marry.

Another reason why the son is not obligated to listen to his father is based on the statement of our Gemara. The Gemara states that a man is not permitted to betroth a woman until he sees her. The reason is that Chazal wanted a person to marry the wife that finds favor in his eyes.

Therefore, to marry a woman other than the one he wants to marry is akin to betrothing a woman without first seeing her since his heart will not be fully invested in the relationship.

The last reason he offers is that honoring a parent is limited to the child's obligation to provide for the physical needs of his parent but requests or demands made by a parent that do not provide them with any sort of physical benefit are outside of the parameters of the mitzvah to honor a parent.

Thus since the son's choice of a spouse has no bearing on the father's physical needs it remains outside of the scope of the mitzvah and the father has no right to protest his son's choice of a spouse.

This ruling is codified by Rema (2) . Poskim (3) discuss whether the same rationale that permits a son to ignore the protest of his parents to marry the wife of his choosing also applies to a daughter.

The consensus seems to be that a daughter is also permitted to ignore her parents' protests even though she is not commanded in the Biblical mitzvah of pru u'rvu.

Teshuvos Mishpat Tzedek (4) brings proof to this from our Gemara. The Gemara declares that a father should not marry off his daughter when she is a minor; rather he should wait until she reaches the age of maturity and says, "I want to marry So-and-so."

This indicates that the choice of a husband is her jurisdiction and her father does not even have the right to protest the matter.

1. שו"ת מהרי"ק שרש קס"ו אות ג'.
2. רמ"א יו"ד סי' ר"מ סעי' כ"ה.
3. ע"י שו"ת יביע אומר ח"ח יו"ד סי' כ"ב אות א'.
4. שו"ת משפט צדק ח"א ס"ס כ"ג. ■



## *Avoiding anger*

לא עלתה בידו אלא רגזנותא

On *our daf* we find that one who gets angry only damages himself.

The gedolim were always very vigilant to avoid anger. One time, a certain mashgiach approached the Alter of Kelm, zt"l, for advice: "After giving moral direction to a student several times, I feel angry if he disregards my advice—which he often does.

What can I do about this failing of mine?" The Alter replied, "The solution is to ask yourself: Why should I get angry at my student? Am I always successful at rectifying a weakness after two or three times of noticing my failing and applying moral correction?"

On the contrary, pay careful attention and you will realize that it surely takes you longer. If you yourself don't always respond after several promptings, why should you apply a double standard and be angry at your student?"

When the Chofetz Chaim, zt"l, felt that he was veering towards anger, he would use various strategies to rectify this ugly trait. One thing he would immediately do was talk in a lower tone of voice than was his wont. Since this was not that often, his closest students realized that such unusual voice modulation was a strategy to prevent any possibility of anger.

Early one winter morning a certain student found the Chofetz Chaim flat on the ground and rebuking himself in a loud tone of voice regarding anger. This student realized that this was because the Chofetz Chaim had felt a slight push to get angry the day before.

Although he had completely mastered his temper and did not act out, he still rebuked himself to prevent a possible slip into this terrible character trait in the future! (1)

1. משל אבות, חלק ב', עמוד ע"ג-ע"ד

## Betrothal in Absentia

**Dr. Sara Ronis** writes:<sup>11</sup>

On *our daf*, we finish the first chapter of Tractate Kiddushin and jump right into chapter 2, which explores more issues related to betrothal, starting with an extended discussion of if and how one can use an agent in the process. The mishnah begins:

**A man can betroth by himself or by his agent. A woman can become betrothed by herself or by her agent. A man can betroth his daughter when she is a young woman, by himself or by his agent.**

Seems pretty clear: Everyone involved in the process of **betrothal** can either show up and do it themselves, or send a designated agent to do it for them.

But maybe it's ... too clear? The **Gemara** immediately asks why each statement needs two clauses, since obviously, if a person can use an agent in the process, then they can do it on their own! And since that's obvious (at least to the rabbis of the Gemara), then why does the mishnah include extraneous information?

**Rav Yosef says: There is a greater mitzvah by himself than by his agent.**

According to Rav Yosef, the mishnah begins by telling us that a man can affect his betrothal himself in order to tell us that this is actually the preferred route. It is better to perform this mitzvah yourself than to send someone else to do it on your behalf.

The Gemara then offers examples of sages who did a mitzvah themselves rather than appoint someone else as their agent:

**Rav Safra would singe the head, and Rava would salt a turbot fish.**

The medieval commentator Rashi explains that these are preparations for Shabbat. Where one might think that it would be beyond the dignity of a great rabbi to do his own cooking in honor of Shabbat, these two great sages made sure to be involved in the preparations of the family's Shabbat meals rather than designate someone else to do it for them.

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<sup>11</sup> Talmud from my Jewish learning

In general, according to the rabbis, there is a value to doing a mitzvah yourself when possible. But the Talmud continues by noting that the issue is even more pressing when it comes to betrothal.

**There are those who say: With regard to this, it also involves a prohibition, in accordance with that which Rav Yehuda says that Rav says.**

**Rav Yehuda says that Rav says: It is forbidden for a man to betroth a woman until he sees her, lest he see something repulsive in her, and she will become repugnant to him. And (that might lead him to violate what) the Merciful One says: "And you shall love your neighbor as yourself." (Leviticus 19:18)**

Interestingly, here Rav seems to contradict the mishnah by insisting that a man actually cannot betroth a woman through an agent at all. A marriage is supposed to include love and affection, and so a man must at least see the woman he is betrothing to make sure that those feelings are possible.

The Shulchan Aruch (Even HaEzer 35:1) and other early modern Jewish law codes split the difference, insisting that a man can use an agent to betroth a woman only if it is impossible to do so himself (because he lives too far away, for example). Just because it is possible to designate this task to an agent does not mean it is preferred, or a healthy start to a marriage.

**Rabbi Johnny Solomon** writes:<sup>12</sup>

**Our daf** (Kiddushin 41a) informs us that a couple should meet before they marry. And why? Because if this does not occur, then this increases the likelihood of the husband or wife 'seeing something unseemly' in their spouse once they are married which, as a result, would cause them to transgress the positive commandment of *וְאָהַבְתָּ לְרֵעֶךָ כָּמוֹךָ* – 'love your neighbour as yourself' (Vayikra 19:18).

Reflecting on the logic of this Gemara, it seems to be teaching us that we must meet all those towards whom we have a duty to 'love as a neighbour', so we can better understand them, and also so as to avoid misunderstandings which may then cause us to transgress the commandment to love our neighbour. However, this is easier said than done.

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<sup>12</sup> [www.rabbijohnnysolomon.com](http://www.rabbijohnnysolomon.com)

Unfortunately, the way in which Jewish communities operate in the modern age has led to a situation where too many Jews only know Jews like themselves; where too few Jews make the effort to meet Jews different to themselves, and where far too many Jews are quick to judge Jews unlike themselves. And this then leads to an outcome of seeing things unseemly in others – oftentimes due to prejudice and ignorance stemming from the fact that we know very little about the people whom we have pre-judged.

For example, there are Jews who don't know hareidim, and don't go out of their way to meet hareidim, but simply on the basis of prejudicial newspaper articles, they make generalizations about a huge number of people who differ significantly in many different ways. In the same spirit, there are those who do this towards 'Breslovers', or 'Chabadnikim', or 'Mitnachlim', or 'Reformim', or 'Chilonim'. However, anytime we choose not to meet someone towards whom we have a duty to love, which then impacts the way we perceive them, then we have transgressed the positive commandment of 'love your neighbour as yourself'.

Overall, we learn from *our daf* that if we take the mitzvah of 'love your neighbour' seriously, then we must do what we can to meet those towards whom we have a duty to love so we can better know and understand them.



**The Young Bride by Konstantin Jegorowitsch Makowski**

## **Marriage With the Help of an Agent**

**Mark Kerzner** writes:<sup>13</sup>

A man can betroth a woman either personally or through his agent. A woman can accept kiddushin and become betrothed personally or through her agent. A man may give his daughter in betrothal when she is a na'arah (under 12) either personally or through his agent. Performing betrothal, as well as any other mitzvah personally, is the preferred way.

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<sup>13</sup> <https://talmudilluminated.com/kiddushin/kiddushin41.html>

From where in the Torah do we derive the legal concept of agency? From its use of "and he sends her" instead of a more direct, "and he divorces," we learn that both man and woman can appoint an agent.



## Child marriage?

**Shmuly Yanklowitz** writes:<sup>14</sup>

It's true that in the times of the Bible and Talmud that child marriages were permitted. An attempt at marriage initiated by a male minor is nugatory (Kiddushin 50b) and doesn't even require a divorce (Yevamot 112b).

The Talmud, however, teaches that a father can betroth his daughter (on her journey from ketannah to na'arah to bogeret) of only three years and one day old (Sanhedrin 55b, Kiddushin 41). She can later protest (me'un) and get out of the marriage (Even Ha'Ezer 155).

Yet, we also know that, according to many, these betrothals are forbidden because a bride needs to be able to decide whom she wants to marry (and a

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<sup>14</sup> <https://blogs.timesofisrael.com/child-marriage/>



child cannot know that). Tosafot gives economic context to the position in the medieval time:

*Now we are accustomed to marrying off our daughters even when they are minors. This is so because every day the exile becomes stronger. Thus, if a person is able to provide his daughter with a dowry, perhaps at some later time he will be unable to do so, and his daughter will remain a spinster forever.*

Indeed, there are many sources that emphasized the earlier a woman is married off the better the situation for all involved (due to finances, reproduction, and culture), while others challenge this belief. The Shulchan Aruch forbids marrying minors (Even Ha'ezer 37:8), but the Rema quotes the previously mentioned Tosafot (that in exile, early marriages are crucial). However, the Remah teaches that a ba'al nefesh (a spiritual and ethical person) will not be sexually involved with minors (Yoreh Deah, 193:1). In a similar vein, the Yerushalmi (Jerusalem Talmud) recommended 18 as the proper age for marriage and marital relations. Perhaps Rambam was most adamant that children are not married:

*Even though the father has the right to betroth his daughter when she is a minor or when she is a maiden [...i.e., ages 12 to 12.5] to whomever he wishes, it is not fitting that he should do so. Rather, the Sages commanded that one should not betroth his daughter when she is a minor until she matures and says, "I want so-and-so." It is likewise not fit that a man should betroth a minor girl, nor should he betroth a woman until he sees her and she is fit in his eyes, lest she not find favor in his eyes, and he will divorce her or lie with her even though he hates her.*

The language discussing marriage and sexuality in the traditional texts can often feel very foreign and alienating to us today. Jewish law has allowed for great flexibility for leaders of different eras and cultures to adapt based on the needs of the time. Today, it is clear that only adult marriages are appropriate even if some Jewish legal authorities technically permitted child marriage in certain circumstances in the past. There is a very long, complex, and rich discourse about marriage in Jewish law that is far beyond the scope that will be presented here.

In the industrialized western world, child marriage is rare. In 1950 in Israel, the National Rabbinical Conference forbade men to marry women under the age of 16. In the United States, nearly all states allow men and women

to marry without parental consent only at age 18. From about age 16 until 18, parental (or guardian or court) consent is usually required, with pregnancy often being a deciding factor in permitting marriage. Many states will not allow children younger than age 15 to marry, although some states (California, Delaware, Mississippi) have no specified age limit, North Carolina is 14, in New Hampshire, brides can be 13 and grooms can be 14, and, shockingly, in Massachusetts, brides are permitted to be 12 and grooms 14. Nevertheless, these early marriages are extremely rare. The Pew Research Center reported that the average age for a first marriage for Americans is 26.9 for women and 29.8 for men. In industrialized northern Europe, the average age at first marriage is even older. On the other hand, in developing countries the age of first marriage is much younger, such as in Afghanistan, where the average is 20.2 years. Generally, as statistics evidence, the poorer the society, the more prevalent child marriage will be.



Child Marriage (usually defined as marriage before the age 15 for girls) is still a major problem today. In the developing world, more than 10 percent of girls are forcibly married by age 15, and the United Nations estimates that 25 to 50 percent of girls in these areas give birth to their first child before they reach the age of 18. The highest prevalence of child marriage occurs in sub-Saharan Africa (where current estimates suggest that child marriage will double by 2030). The leading cause of death for girls aged 15 to 19 is related to pregnancy and childbirth, and those younger than 15 years old have an especially high mortality rate. According to the International Center for Research on Women, girls younger than 15 (who have undeveloped bodies) are five times more likely than women in their 20s to die in childbirth. These adverse health effects extend to their children as well. According to UNICEF,

the children of mothers younger than 18 are 60 percent more likely to die during their first year of life.

India, which has a lower prevalence of child marriage, nevertheless has the largest single number of child brides in spite of official laws that forbid marriage before age 18. A 2014 Council on Foreign Relations report noted that about 40 percent of the 70 million child brides worldwide are in India, and about 14,000 Indian girls from age 8 to 15 are married each day. The report noted many disadvantages for these child brides:

- Child marriage prevents girls from finishing school, which further diminishes their ability to earn an income and gain power within the family.
- They suffer twice the beatings of other brides, are three times more likely to be raped (8 of 10 child brides surveyed reported that their first sexual experience was forced).
- They are more likely to acquire a sexually transmitted disease and have the highest rate among married women for maternal death.

In 2010, then Secretary of State Hilary Clinton launched a campaign to eliminate child marriage by 2030, noting that unless this was accomplished, other health and economic progress could not take place. In Kenya, for example, if all the girls who were married had instead been educated through secondary school, it would add approximately the equivalent of \$3.4 billion annually to the nation's income, a staggering amount in such a poor nation. The amount of economic, social, and health progress that could be made with that kind of financial resources is unfathomable.

Eliminating child marriage will take a good deal of effort, as girls are often bartered as brides to pay off debts. This is exacerbated in times of economic hardship, such as drought or civil war, which is why in many areas the incidence is predicted to increase. In addition, many poor people have misconceptions concerning child marriage, including the idea that girls will be better off married, that they will have less of a chance of being raped if they are married, and are encouraged to marry their girls early because, if the girl is raped, she will not be acceptable as a bride. Clearly, there is an uphill battle ahead, and it will take the creation of a more just world society with better economic equality and less violence to adequately address this terrible problem.



## Delegate It Yourself: Kiddushin 41

**Rabbi Jay Kelman** writes:<sup>15</sup>

"If you want something done right do it yourself" is a nice idea in theory but one with limited applications. It is not possible for any successful institution to run without delegation of authority. And the bigger and more successful the organization the more partners that are needed and the more work that needs to be delegated. Many a potentially great organization withered and failed due to a 'do it yourself person' at the top who thought that only they could do it right. Even if true that they can do it better than others it is often better to let others do it. Great leaders have an intuitive sense of what they need "to do right" and what others can do instead. The truly great understand that often others can do it even more right than they.

It is hard to imagine that one would not show up to their own wedding. Not because they get cold feet (that is strange enough) but rather because they prefer getting married through an agent. Yet it is precisely this scenario which serves as the basis of the Talmudic discussion on the concept of *shlichut*, of

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<sup>15</sup> <https://torahinmotion.org/discussions-and-blogs/delegate-it-yourself-kiddushin-41>

the parameters of agency in Jewish law. "A man may betroth his wife himself or through a messenger.[1]" (Kiddushin 41a)

While the Mishna is based on the principal of *shelucho shel adam kmoto*, the agent of a person is like the person themselves, the Gemara notes that the Mishna is actually teaching the principal of *mitzva bo yoter mibeshulcho*, that it is a greater mitzva to do something oneself rather than through a messenger. Otherwise there is little reason to teach that a man can betroth his wife himself - such is rather obvious.

The Gemara then quotes a view that the betrothal through an agent may be legally valid but it is forbidden to do so. "Rav Yehuda taught in the name of Rav: It is forbidden for a man to betroth a woman before he has 'seen'[2] her - perhaps he will see something distasteful in her and she will be loathsome to him and the Torah says "you shall love your neighbour as yourself." [3]

While agency is a given in the commercial world which we inhabit the rabbis of the Talmud were unsure of the Biblical source of agency. The Talmud posits four possible areas where the Torah either explicitly or implicitly allows agency, using these as a basis for agency in all areas; namely divorce, *korban pesach*, *terumah* and as our Mishna notes *kiddushin*, betrothal.

That the Torah would single out the delivery of a *get* by an agent is most understandable. The agent reflects the separation and distance between husband and wife, presumably the reason they are getting divorced in the first place. Pesach is the time we join together as one nation and having an agent slaughter the *korban pesach* on behalf of others reflects this unity. In theory "all of Israel" could fulfill his or her obligation with the same animal - except no animal would be large enough.

The entire institution of the *kehuna* is one based on the notion of agency. The kohanim serve as the agents of the Jewish people - in education, in service of G-d and as our civil servants tending to the religious needs of the people. It is most natural that the Torah would specify the notion of agency by *terumah*, the food that only a *kohen* and his family can eat.

What is difficult to comprehend is why the Torah specifies the notion agency regarding marriage. As we have noted in the past the Torah discusses marriage in the context of divorce [4] and the Gemara says the same applies re agency. As agency works by divorce so too by marriage. But in this instance the Mishna is clear that agency is at best frowned upon.

Marriage is the most intimate of relations and is one where agency has no place. It may be legal but is no basis for a marriage. And this message must

begin with the kiddushin, as the couple commits to but has yet to begin their lives together. This may even be more crucial regarding the raising of children where the necessity of many couples to both work often means much of child-rearing is done by others.

The commentaries note that one fulfills the concept of *mitzva bo yoter mibeshulcho*, of doing the mitzva we, even if one only does part of the mitzva. It is not practical for someone to do everything. Doing it right usually means doing it with others. But one must not delegate complete responsibility to others.

We may have to, for example, delegate our responsibility of teaching our children to others but we must still spend a few minutes (or more) each week learning with each of our children.

Agency is a given. But when to take advantage of such requires much wisdom.

[1] While there may be little difference in our minds it is important to note that in Talmudic times the betrothal took place up to a year before the actual nuptials. With the couple still living apart until the *nissuin* it's not quite like appointing a messenger to stand in at the wedding itself.

[2] To "see" in this context means more than just to see. It also means to get to know. Only after having spent some time together is it truly possible to determine if one likes the person well enough to marry. This is especially true in an era such as ours with all too high divorce rates.

[3] While it is possible that one does get to know a woman and then appoint a messenger to carry out the actual betrothal apparently such a possibility was inconceivable to our Sages. The Mishna refers to a case where the couple are geographically separated, travel was difficult and a man sends a messenger to find him a wife. Even so (and let's recall that is how Yitzchak was married) our Sages discouraged and possibly forbade such.

[4] The Torah discusses divorce in the context of a prohibition of remarriage to one's former wife after she had been divorced from her second husband. The idea of experimenting and then deciding the first marriage wasn't so bad after all is one foreign to Judaism where marriage means a firm commitment. Mistakes happen but trial and error does not cut it.\_



## Cracking Down On Kibbud Av Va'Eim

**Rabbi Yair Hoffman** writes:<sup>16</sup>

**Recently, a young lady in high school posed the following question: *My mother doesn't want me to crack my knuckles. I certainly won't do it in front of her, but I am somewhat addicted to it. Is it a violation of Kibbud Av va'Eim to crack them when she isn't around?***

**Recently, a young man in high school posed the following question: *My parents don't want me to smoke. I certainly won't do it in front of them, but I am addicted to it somewhat. Is it a violation of Kibbud Av va'Eim to smoke when they are not around?***

The *Shulchan Aruch* (Y.D. 240:25) cites a fascinating ruling of the *Maharik* (*Shoresh* 166). The question the *Maharik* deals with concerns *shidduchim*. What happens when a young man wishes to marry a young lady of whom his father disapproves? Must the son listen to his father by virtue of the concept of *Kibbud Av va'Eim*, honoring one's parents?

### **The Maharik**

The *Maharik* gives a threefold response. Firstly, he states that regarding the *mitzvah* of *Kibbud Av*, the obligation lies only with the father's monetary

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<sup>16</sup> <https://www.5tjt.com/cracking-down-on-kibbud-av-vaeim/>



funds, not with his own funds. Certainly, in this case, where there is great personal pain if the son would have to marry someone whom he does not desire to marry as much as the first, there would be no obligation.

Secondly, the *Maharik* points out that there is a prohibition in the Talmud (*Kiddushin* 41a) of becoming engaged to a woman one has not actually seen yet. The reason is that the sages ordained that a person only marry someone he desires and who finds grace in his eyes. Through listening to his father in this case, he may be in violation of this *halachah*.

Finally, the *Maharik* explains that the parameters of *kavod* and *moreh* apply to matters that pertain directly to the father or mother. Thus, in regard to his father's sustenance and personal needs, *kavod* does apply. In regard to his personal honor, *moreh*, the issue of not sitting in his father's seat does apply.

## The Percentages

It would seem, at first glance, from this *Maharik* that both high schoolers' questions are answered. Neither would be forced to abide by their parents' views when doing the "forbidden" act not in their presence. But there may be a separate prohibition in regard to the smoking issue, as can be seen from the Talmudic passages that forbid engaging in dangerous activities (see *Shabbos* 129b).

For those who think that there is an exemption for smoking, the responsum of Rav Chaim Ozer Grodzinsky (*Achiezer* Vol. I #23) discusses the concept of "*Shomer pesa'im Hashem*—Hashem watches over fools." He writes that this concept only permits dangerous things when the danger is not uncommon. Since over half a million people die in this country every year from smoking and its related illnesses, that means there is roughly a 1 in 600 chance of dying each year from smoking. Over a 30-year period, the mathematical formula is  $1 - (599/600)^{30}$ . This means that there is a five-percent chance of smoking actually killing a person. The *halachic* position of the *Achiezer* would certainly apply. The *Tzitz Eliezer* Vol. 15 #39 also forbids smoking, as does Rav Moshe Shternbuch in *Teshuvos V'Hanhagos* Vol. III #354. This column, however, deals with the aspects of *Kibbud Av va'Eim*, not other prohibitions.

For many years, it was rumored that cracking knuckles causes arthritis. Thus far, however, there is no evidence that cracking knuckles causes any damage to the knuckle-cracker even over a protracted period of time. A study published in 2011 compared the hands of some 215 people between the ages of 50 to 90 and there was no indication whatsoever of any damage (*Journal of the American Board of Family Medicine* 24 (2): 169–174).



## The Sefer HaMikneh

Rav Pinchas HaLevi Horowitz, author of the *Sefer HaMikneh*, states (*Kiddushin* 31b) that even in matters that do not apply to the father directly, there is still a concept of *moreh*—that one is not permitted to contradict his father. The *Sefer HaMikneh* understands the *Maharik* as only applying when it is such a serious issue like marriage, but regarding other matters, it would be prohibited. He cites further proof to this idea from the fact that the *Maharik* gave three separate arguments to make his point. According to the *Sefer HaMikneh*, it would be forbidden for both the smoker and the knuckle-cracker to proceed, even if their parents are unaware of it.

## Rav Elyashiv's View

The view of Rav Elyashiv, *zt'l*, on the matter was that if it bothered the father, then the son was not permitted to smoke in front of him or in front of someone who might inform the father. In other words, if the father would find out about it, it would be forbidden. This opinion is cited in the *sefer Hiddur Panim* by Rav Refoel Dinner (page 104) in the section of *Kitzur Hilchos Kibbud Aviv v'Imo*. Even then, Rav Elyashiv only permits it for the son if it will cause him great stress if he were to cease smoking. Rav Elyashiv further qualified that by saying that if the father has some further reason why he does not want his son smoking it is still forbidden. In other words, if the father's reasoning is that the son has an additional risk factor, then the son may not smoke even when not in front of him.

Taking this view back to the knuckle-cracker, it would seem that Rav Elyashiv would hold that, ideally, she should not crack her knuckles even when not in front of her mother. However, if this would cause her difficulty, then she may. As an interesting aside, many *poskim* have specifically said that one should not tell his son not to smoke because often these young men have no willpower and it is placing an additional stumbling block upon them of violating *Kibbud Av va'Eim*. Just as the Talmud forbids punishing an older child physically lest he hit his father back, it is likewise forbidden to cause the son to violate *Kibbud Av va'Eim* by stating directly that he is violating his parents' will by smoking.

May Hashem enable all children to make correct decisions.



**Jewish wedding ring. Chased and enameled gold and filigrees, early 14th century, found at Colmar (Alsace, France) in 1863**

## **Matchmaker, Matchmaker, Who Cares About a Matchmaker, anyway?**

### ***Opposing rabbinic conceptions of marriage and matchmaking in Ashkenaz and Sepharad***

**EPHRAIM KANARFOGEL** writes:<sup>17</sup>

Recent studies have traced the parameters of matchmaking in medieval European Jewish society, seeking as well to identify attitudes toward marriage more broadly in both the northern and southern regions (Ashkenaz and Sepharad). Based on the many texts that have been published or are still in manuscript, it is possible to propose an overarching theory that accounts for differences between the two regions, encompassing both those that have been noted heretofore and others that have not yet received attention.

Modern scholarship has detected a striking difference between Sepharad and Ashkenaz regarding the use and prevalence of matchmakers (*shadkhanim*). Spanish rabbinic literature during the 12th and 13th centuries barely refers to matchmakers and does not discuss their function. At the same time, a leading northern French tosafist, Samson ben Abraham of Sens (Rash mi-Shants, who emigrated to Israel c. 1210, where he died in 1214), points to effective *shadkhanim* who were operating freely in northern France by the late 12th century. Moreover, the German tosafist Simḥah of Speyer (d. c. 1230)

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<sup>17</sup> <https://www.tabletmag.com/sections/arts-letters/articles/who-cares-about-a-matchmaker>

writes that it was “common to pay *shadkhanim* quite handsomely,” while a parallel ruling by R. Simḥah’s contemporary, Barukh ben Samuel of Mainz (d. 1221), along with that of Barukh’s son, Samuel Bamberg, confirm the regular presence of such figures. *Sefer Ḥasidim*, the compendium of pietism and ethics that reflects Jewish life in Germany at this time, also acknowledges the role of *shadkhanim*.

Indeed, precisely because matchmaking had become so entrenched in Ashkenaz by the 13th century, Meir ben Barukh (Maharam) of Rothenburg (d. 1293) sought to diminish the exorbitant payments that were being made even to less effective *shadkhanim*, especially in light of an incident that had occurred in Erfurt. Nonetheless, while Maharam’s recommendation, to pay the shadkhan only a base fee for his time, is recorded first in *Sefer Mordekhai* (composed by Mordekhai ben Hillel, Meir’s student), the (earlier) view of Simḥah of Speyer, that the shadkhan must be paid whatever he was promised, is then cited as a counter-position. Moreover, *Sefer Mordekhai* indicates that additional support for R. Simḥah’s position emerges from a ruling by Isaac ben Samuel (R”I) of Dampierre (d. 1189), that a diviner who adjured demons (*shedim*) in order to locate a lost object is entitled to receive the overly large sum that he had been promised, since this is what people expect to pay for such an important and unusual service. As reported by his student R. Judah Sirleon, R”I similarly applied his approach to allow for the overly generous payment of doctors or healers as well.

A subsequent passage in *Sefer Mordekhai* shows that Maharam’s insistence on the successes and standing of a shadkhan as the determinants of his compensation mirrored the thinking of Joseph ben Abraham, the son-in-law of one of R. Meir’s northern French teachers, Yehiel of Paris. Maharam’s conclusion, however, was questioned by another of his own students, Ḥayyim ben Isaac or Zarua. Indeed, Ḥayyim broke with his teacher in this matter and supported the position of Samson of Sens, as his father Isaac ben Moses or Zarua had presented it: Matchmakers are to be paid the agreed upon amount in any case. They are entitled to the large payments proposed by their clients since they possess special abilities.

The discussions that took place between Meir of Rothenburg and his students about the payment of *shadkhanim* document the functioning of matchmakers within Ashkenazic society through the end of the 13th century and beyond. Indeed, by the end of the 14th century, in both Germany and northern France (in the aftermath of the Black Death), the role of shadkhan was often assumed by rabbinic leaders, who commanded large fees.

Matchmakers were welcomed throughout medieval Ashkenaz because they increased the possibilities for finding appropriate mates, irrespective of what

parents and other family members were doing. Indeed, in the initial passage presented above from Samson of Sens, the matchmaker was not hired by the parents but by the prospective bride. As with medical treatment and the locating of lost objects where a specialized agent could accomplish things that others could not, the successful matchmaker, by dint of his charisma, savvy, and persistence, was worth a great deal to his client. However, as noted above, rabbinic authorities in medieval Spain had no discussion of the *shadkhan* and his role, because their communities did not typically employ them.

Several *responsa* by Solomon ben Abraham ibn Adret (Rashba) of Barcelona (c. 1235–1310) stress that it was the parents (and grandparents) who were tasked by Hispano-Jewish society with finding a mate for their children. Rashba rules that the bond or surety that parents often pledged when a proposed marriage was agreed upon (to limit the possibility that either side would withdraw) did not have to be forfeited when a young lady rejected the groom selected by her parents, since this was a rare and unexpected occurrence (ones). In Rashba's words, "Jewish girls are modest, and do not go over the line by choosing their husbands without their fathers' consent." Similarly, a grandfather was released by Rashba from forfeiting the bond that he had pledged in Estella when his granddaughter refused to marry the groom that he had selected, since "he could not have foreseen the possibility of his granddaughter's refusal, because all girls, with rare exception, abide by the wishes of their parents and relatives."

Rashba characterizes the (grand) daughter's refusal as an "unexpected occurrence of the highest order" (*ein lekha ones gadol mi-zeh*). Although Yom Tov Assis is undoubtedly correct in his finding, based on archival evidence, that a greater number of daughters disagreed with their parents' choice than Rashba's various *responsa* suggest, parents (and grandparents, or other immediate relatives) are the only ones involved in seeking a mate for their child, as confirmed by the near total absence of references to *shadkhanim* in medieval Spanish rabbinic literature.

Moreover, there is an additional dimension of rabbinic thought in each region that supports these distinctions regarding *shadkhanim* and the parental role. The leading Spanish authorities during the 13th century, Ramban (d. 1270), Rashba, and Ritva (Yom Tov ben Abraham ibn Ishvili, d. c. 1325), justified the large payments to which medical doctors were entitled (where the patient agreed to make such a payment) in accordance with a Talmudic discussion (Yevamot 106) about making good on inflated payments promised in exchange for relief from acute physical circumstances. Nahmanides comments that a doctor is paid as much as he was promised since when healing the patient, "he sells his wisdom which is worth quite a lot," as opposed to one

who provides a patient with medications but does not devise any therapeutic plan, who receives compensation only for the price of those medications.

Not surprisingly, these Spanish rabbinic authorities do not refer to *shadkhanim* in this context, or to diviners. Ashkenazic talmudists and halakhists, on the other hand, link the high payment of doctors directly to the exorbitant payments that were given to *shadkhanim* and magical diviners as noted above.

In sum, Spanish rabbinic authorities considered medical treatment to be a highly developed science or skill, while finding marriage partners or lost objects was not. Parents were fully capable of securing marriage partners for their children. Ashkenazic rabbinic authorities believed that effectively arranging for marriage partners (like seeking cures and finding lost objects) could be enhanced by turning to someone with unique skills that included a great deal of personal rapport and perhaps even a measure of magical arts.

Avraham Grossman has proposed other reasons that might explain the dichotomy between Sepharad and Ashkenaz regarding the use of *shadkhanim*. The emphasis on impeccable lineage (*yiḥus*) throughout Germany and northern France meant that the stature and economic viability of a family were greatly valued. Matchmakers were able to verify these criteria in the family of the proposed mate, and to locate suitable partners in places near and far whose families possessed these traits. Grossman also suggests that the young ages at which many marriages took place (in particular with brides who were below the age of 12), and the fact that “for the most part, parents did not consult their children at all but rather suggested matches for them based on their own considerations of what was best,” meant that one set of parents might turn to a matchmaker to assess the suitability of the match before moving forward.

However, if matchmakers were particularly necessary (and effective) in overseeing marriages that involved younger couples, we would expect to find matchmakers operating in Spain as well, where evidence for the marriage of girls under the age of 12 is quite extensive (as Grossman had also noted), extending back to the geonic period. Moreover, as Elisheva Baumgarten has argued, the incidence of girls below the age of 12 getting married within medieval Ashkenaz during the 13th century appears to have been much more limited than Grossman and others have imagined. Baumgarten supports her claim about such limitations in northern France with a passage in a Tosafot gloss to Tractate *Kidushin*, and a ruling of Rabbenu Perets that will be discussed presently (both of which, as she noted, were associated with the tosafist academy at Evreux), in addition to arguing for the absence of such marriages in Germany based on two *responsa* by Meir of Rothenburg, one of

which (regarding the marriage of R. Meir's own daughter) will be discussed below. In light of its important implications, the history of this rabbinic allowance and societal practice needs to be carefully examined.

The Tosafot gloss to BT *Kidushin* 41a is the best-known rabbinic text about child marriage in northern Europe. The amora Rav ruled that one should not marry off his daughter until she reaches the age of 12 (even though a father is permitted to do so earlier according to Torah law), since, as the tosafist commentator explains, she might not have agreed to this choice were she of age. The commentator then adds: "But nowadays we are accustomed to marrying off our daughters even under the age of 12 (*ketanot*), because each and every day, the weight of the exile overcomes us. If someone currently has the funds to provide a dowry for his daughter, he may not have enough money later, which will cause his daughter [not to be married and] to remain an 'agunah forever."

Grossman cites a similar justification recorded in the anonymous *Sefer Kol bo*, from Perets ben Elijah of Corbeil (d. 1297) in the name of R"m, whom Grossman identifies as Rabbenu Perets's senior colleague, Meir of Rothenburg: "This ruling [of Rav] was applicable in their day, when many Jews lived in one place. But nowadays when we are small in number, we regularly permit the marriage even of a *ketanah*, lest [when she becomes of age] another will marry her first." Both of these justifications refer to the diminished position of Jews within medieval society. The Tosafot passage seeks mainly to protect brides, while the ruling of Rabbenu Perets is more concerned with the disappointment of the potential groom. Nonetheless, there is quite a bit of common ground between them.

The Tosafot to *Kidushin* were produced (in large measure) in the tosafist study hall at Evreux, which was headed by the brothers Moses, Samuel, and Isaac ben Shne'ur during the second quarter of the 13th century. All three are mentioned in these Tosafot, as is the student of Isaac who apparently edited them. Moreover, the precise section of the Tosafot *Kidushin* passage under discussion is named, in a gloss to the published text of the *Sefer Mordekhai* to *Kidushin* (at sec. 505), as Tosafot Shitah, a textual title or appellation that applies, as far as I can tell, exclusively to Tosafot Evreux or to Tosafot Rabbenu Perets. A more muted form of this allowance is found in Abraham ben Ephraim's *Kitsur semag* (composed c. 1265), in the name of his teacher, Tuvyah of Vienne, along with a less nuanced version of the reasoning enunciated by the tosafist commentator from Evreux. An unremarked 12th-century justification for the marriage of *ketanot* is found in *Sefer Mordekhai* in the name of Elijah ben Judah of Paris, an older contemporary of Rabbenu Tam (d. 1171).

Elijah's name, however, is not mentioned by Tosafot Evreux or in the passage by Rabbenu Perets just discussed, even as the reason that he provided accords precisely with the one given by Rabbenu Perets. Thirteenth-century northern French tosafists were apparently unaware of this earlier justification. Moreover, Rabbenu Tam's leading student and successor in the late 12th century, R"i of Dampierre, explicitly disapproved of such marriages in most cases; only when the father of a ketanah had died could she be married before the age of 12. In all other instances, R"i held that the ruling of Rav was to be followed, and her father was required to wait until she turned 12 so that she could fully acquiesce to the marriage.

Three 12th-century tosafist discussions involving Rabbenu Tam touch upon the marriage of minor girls. Rabbenu Tam questioned an interpretation of Rashi (to BT Ketubot 57b), that the passage at hand can be understood only according to the view of Rav. There is no indication here, however, that Rabbenu Tam thought that Rav's ruling should be not followed in practice. In a case that came before him, Rabbenu Tam's student, Menaḥem ben Perets of Joigny, maintained that a mother and brother could not marry off a young daughter while her father was traveling far away from home, since it is possible that the father had already betrothed her in another locale. Rabbenu Tam argues that if R. Menaḥem's concern was well founded, the subsequent marriage of all daughters at any age would be problematic. Rabbenu Tam's formulation does not suggest that ketanot were typically married off by their fathers, only that there were many instances of men who traveled and subsequently died while away from home, leaving young daughters behind. The sum of the evidence indicates that while justification for the marriage of ketanot was initially proposed in northern France during the 12th century, the phenomenon did not become entrenched in any region until somewhat later. And given the narrow scope of the tosafists who offered justifications during the 13th century, it is difficult to argue that this practice was widespread in northern France even then.

Moreover, even if one were to assume more substantive activity in northern France already during the 12th century, which was then expanded further during the 13th century, nothing of this marriage practice involving minor girls can be found in any German tosafist sources, and German rabbinic figures are hardly mentioned even in theoretical discussions about marrying a ketanah. A passage by Avigdor ben Elijah Katz of Vienna— who was likely born in northern France and lived for a good deal of the 13th century, studying mainly in Germany with Simḥah of Speyer, and teaching there and in Italy before becoming the rabbinic leader of Vienna— demonstrates that the silence in German lands was not coincidental.

In his commentary to the Torah, which includes many halakhic rulings, R. Avigdor writes (on Gen. 24:51, in which Rebecca's family tells Abraham's servant Eli'ezer to take Rebecca and return to Israel so that she could become the wife of Isaac): "[She was sent] even though she was still a *ketanah*. This is the basis for the practice in northern France to marry their daughters off when they are minors, for purposes of modesty." R. Avigdor, who was aware of Jewish practices throughout northern Europe, asserts that marrying minor girls was done only in northern France. This was pointedly not the case in Germany, even though *shadkhanim* were visibly active there from the days of Simḥah of Speyer and throughout the 13th century, no less than in northern France. It would seem, then, that the need to oversee the marriage of young girls (*ketanot*) cannot explain the use of *shadkhanim* as Grossman had posited.

Indeed, the single documented, straightforward case of the betrothal of a minor girl from late 13th-century Germany reflects the hesitation of German rabbinic figures to allow the marriage of minor girls, while requiring the bride's full acquiescence at any age. Meir of Rothenburg writes that when he married off his daughter who was a minor, he "instructed her to accept her *kidushin* (betrothal) only if she so desired." Maharam explains that although it is prohibited for a father to betroth his minor daughter in accordance with the view of Rav, it is permitted to have her accept the *kidushin* for herself. This is precisely what he did in the marriage of his daughter, making certain that she firmly agreed to the betrothal and that she controlled it. Such an approach fully honors the halakhic theory behind Rav's position— Albeit not the practice that he had advocated— and is supported by the analysis of an earlier 13th-century German tosafist as well.

Another significant difference in attitudes toward marriage between Ashkenaz and Sepharad is evident regarding the cancellation of a marriage commitment (known as *bitul shidukhin*). In Spain, the termination of a *shidukh* was not seen as cause for undue regret or embarrassment. This is enunciated most clearly in an early *responsum* which, as Avraham Grossman has suggested, was likely composed by Joseph ibn Avitur (c. 1000): "In this era, there is no embarrassment or blemish [for a terminated *shidukh*], for it is customary that several men speak to Jewish daughters about marriage, but they only marry the one who is meant for them (*she-'olot be-goralan*). For the matching of a woman to a man is surely a heavenly undertaking. The man who had been trying to marry this woman [but failed], what can he do— this was not the one intended for him (*lo' haytah be-goralo*). As the rabbis said, 'A person does not touch what has been set aside for another.'" The larger halakhic context of this passage is that a groom who does not betroth the woman with whom he had a marriage commitment does not have to pay any penalty.



Indeed, the notion that the cancellation of a marriage commitment should not be met with deep concern had already been expressed in a more understated way by Sa'adia Gaon, in a situation where it was unclear as to which daughter the groom had intended to offer marriage: "The first offer by Simeon is to be ignored and no explanation need be provided; for if he had wished to back out of a marriage commitment [in any case], he may do so." The implication is that guaranteeing the establishment of a match is ultimately beyond the control of either the bride or the groom. As such, the dissolution of a match (before the wedding) is considered an acceptable reality rather than a negative occurrence. To be sure, Sephardic rabbinic authorities may have been seeking to cultivate behavior that was not naturally inherent within the larger societal group, but the rabbinic values are clear— this is a matter of fate (*goral*), which is within the divine purview.

A passage in *Sefer ha-Shetarot* by Judah ben Barzilai of Barcelona (c. 1100) notes that a financial condition was commonly imposed on the families of the bride and groom to dissuade either side from backing out, and funds or bills of indebtedness were often placed in escrow for this purpose. This was, however, a monetary arrangement with no other ramifications, as was the *shtar pesikta*, a document that was signed by the parties to ensure that the wedding would not be postponed and that the various financial commitments would be executed. These sanctions were not treated as fines for improper interpersonal behavior, nor were they imposed in every locale. The purely monetary nature of these arrangements in the Sephardic world emerges quite clearly from a formulation of Maimonides in *Mishneh Torah* about economic commitments.

This approach to the payment of fines for breaking a *shidukh*, and the related question of whether there is any embarrassment (*boshet*), is roundly contradicted by a series of *tosafists* in both northern France and Germany. Simcha Emanuel has conclusively demonstrated that in northern France, the fine for breaking a *shidukh* was supplemented by a strong communal ban (*herem*). Ashkenazic sources further assert that the fine represents payment for inflicting personal damages and embarrassment (characterized as *pegam* and *boshet*, respectively), and is not merely compensation for wedding costs or other payments that might have been lost. By consistently referring to these payments as *demei boshet* (payment for embarrassment), Ashkenazic sources indicate that a canceled wedding commitment is a form of real damage that must be made good according to Talmudic law. In the view of Ashkenazic halakhists, a potential mate who has been rejected experiences palpable feelings of shame (as does the larger family) and must be compensated for this damage.

A passage by Samson of Sens describes the handing over of pledges at the time that a *shidukh* was agreed upon, in order to bind the two families to carry

out the wedding and to support the young couple. R. Samson insists, however, that the fine that results from withdrawing from this arrangement (which the security pledges also helped to cover) is not simply an effective means of ensuring that these commitments be honored. Rather, it was meant to redress the embarrassment experienced by one father (or groom or family) if the other backed out. R. Samson compares this to the hiring of a tutor, which is accompanied by a formal commitment that the tutor will be fined if he quits and there is no appropriate replacement, since this disruption causes the student to suffer. Elsewhere, Isaac or Zarua' makes the same point about establishing binding marriage agreements: "Even if there is not a full monetary obligation (kinyan) that binds the two wedding parties, the potential fine is accepted by both sides since the one who reneges embarrasses his friend; [avoiding] this embarrassment is what causes both parties to accept these terms."

Joseph Ibn Avitur and other Sephardic rabbinic scholars sought to establish that there was no cause for boshet in the breakup of an agreed upon shidukh. The fines associated with canceling shidukhin in Spanish Jewish society were purely monetary and were not ubiquitous in any event. The overwhelming opinion in Ashkenaz, however, was that the cancellation of a marriage commitment was a source of palpable embarrassment and suffering. These feelings were substantial enough to provide an iron-clad means of obligation (kinyan) for imposing the fines found throughout Germany, as well as the impetus for the additional *herem* that was in vogue in northern France, which considered the cancellation an affront to the community as a whole. These penalties were imposed, at least in part, because it was not easy for a young man or woman to find another mate after this kind of traumatic breakup, which was therefore seen as causing them real damage. As Meir of Rothenburg put it, "If one backs out on the shidukhim, his fellow acquires all of the funds put aside for that purpose since he was embarrassed by the other and will not be able to easily find as fitting a match moving forward, as would have been the case had this not occurred."

A significant conceptual distinction concerning the nature of Jewish marriage appears to underlie the series of halakhic and procedural differences between Ashkenaz and Sepharad presented here. All agree that the shidukh enterprise is a partnership or an amalgam between the people who were most closely involved with it— the bride and groom, the parents and grandparents, perhaps even siblings— and the Almighty. Spanish rabbinic authorities, going back to the Muslim period and to at least several Geonim in the east as well, maintained that the divine role in bringing husband and wife together was the predominant factor in determining the existence of a marriage. The task of the parents and grandparents was to arrange the marriage within the earthly

realm, of which they were quite capable. However, it was ultimately the divine agency that allowed the marriage to move forward.

Since the parents and family were charged with this responsibility, even the couple themselves had little input. Thus, it was expected that a daughter would always agree to the choice of her father (or grandfather). This also serves to explain why Solomon ibn Adret, as Avraham Grossman has pointed out, remained steadfast in his view that a father could force his minor daughter to marry the man of his choosing, despite the fact that the trend in Christian Europe, from the 12th century onward, was to give the couple themselves more choice and a greater say in the matter. For the Sephardic rabbinic conception, the determination of whether a betrothal and wedding would come to fruition was made and directed within the divine realm, with the parents serving as emissaries. Thus, if a commitment to marry was broken, there was no cause for regret or embarrassment. This was a matter of the heavenly *goral* (fate) of the bride and groom.

Ashkenazic rabbinic authorities, on the other hand, in both northern France and Germany, believed that the driving force behind marriage consisted of the will and efforts of the bride and groom, along with those of others (parents and family members, as well as matchmakers) who acted on their behalf. The Almighty obviously played a crucial if inscrutable role in this process, but it was up to the human participants to expend whatever efforts and means available to bring about a marriage that was appropriate in their view. The cancellation of a marriage commitment was seen as a source of deep disappointment and embarrassment and was to be avoided at almost any cost.

Since the bride and groom were the key actors on their own behalf, the bride had to agree explicitly to her *kidushin* (and even in the not altogether common case that she was still a *ketanah*) in accordance with the position of Rav, which was accepted as normative by an impressive array of *tosafists*. Although *Sefer ḥasidim* advised fathers to marry off their children at a relatively young age so that they would accept the choice of a mate presented to them, it also strongly supported the concept of a marriage entered into on the basis of love or at least on the desire of the couple to marry one another. And, as has been noted, *Sefer ḥasidim* was among the many Ashkenazic works that approved of the use of *shadkhanim* as facilitators to help achieve that goal.

An unnoticed halakhic statement by Rabbenu Tam may also reflect these values. An engaged woman (a *meshudekhet*), whose wedding party had already been invited to the impending marriage ceremony (*ḥupah*), suffered the loss of her brother. Rabbenu Tam allowed her to marry within the initial 30-day mourning period since if the groom could not marry this woman, he would marry no other and his obligation to procreate would remain unfulfilled.

Indeed, Rabbenu Tam asserts that even if this couple were not yet formally committed to each other, he would have allowed them to marry in this situation “since she wants only him, and he wants only her.” Because the groom was committed to this woman and would not marry another, Rabbenu Tam was prepared to allow the couple to be married at this time under any condition.

The two disparate conceptions in medieval Ashkenaz and Sepharad on the nature of Jewish marriage can be detected within the Talmudic corpus and are manifest in other exegetical contexts as well. As noted above, Avigdor Katz of Vienna commented that northern French Jews derived support from the betrothal of Rebecca for allowing a *ketanah* to be married. At the same time, however, Samuel ben Kalonymus *he-ḥasid* of Speyer, father of Judah *he-ḥasid*, maintained, on the basis of a series of midrashic passages (as did several *tosafist* Torah commentaries), that Rebecca was actually 14 when she married Isaac, an interpretation consonant with the practice throughout Germany of not typically allowing *ketanot* to be married.

Rashi, while accepting the standard approach of the *Seder 'olam* that Rebecca was 3 years old when she was betrothed to Isaac, nonetheless stresses that Rebecca’s family made it a point to ask her if she wanted to marry Isaac. Indeed, Rashi asserts that this action demonstrates that a woman can be married only with her consent (*mi-da'atah*), which suggested to others that his approach is fully aligned with the Talmudic view of Rav, that a father should not marry off his daughter as long as she is a *ketanah*. Even in this unique situation, it was necessary for Rebecca to acquiesce and to represent herself (as in the case of Maharam and his daughter noted above). Similarly, while Rashbam understands Genesis 24:50 (“from the Almighty the result has emerged”) to mean that it is difficult to extrapolate from Rebecca because there was an explicit divine intervention that chose her for Isaac, he explains that Rebecca was nonetheless asked if she wanted to return with Eli'ezer to marry Isaac (Gen. 24:58–59) because this was the common practice (*derekh erets*) for all marriage proposals.

On the other hand, Baḥya ben Asher, a student of Ibn Adret in Spain in the early 14th century, interprets Genesis 24:50 to mean that this is the way that all matches are made; they emerge from the divine realm and are determined there. Baḥya adduces a series of Talmudic and midrashic passages to show that the bride and groom, and even their parents, have little to do with initiating or determining who their mate will be. All is in the hands of Heaven, and they can only deal with what comes their way.

In a similar vein, Ashkenazic sources interpreted the Talmudic concept of *shema yekadmenu aḥer be-raḥamim* (BT *Mo'ed Katan* 18b), “lest another,

through the power of his prayers, precede [the intended groom] in marrying this woman," to mean that through prayer, an individual can subvert the heavenly process that designates a woman to be the marriage partner of a particular man. According to the commentary to Mo'ed Katan attributed to a student of Yehiel of Paris, this tactic is effective even with regard to a first marriage, where it surely seems that the heavenly determination, rather than any human action, should be the controlling factor, an approach found also in a Tosafot gloss to Sanhedrin.<sup>68</sup> For these Ashkenazic interpreters, intense efforts undertaken by the suitor can be highly effective.

Spanish commentators, on the other hand, understandably had a difficult time squaring this Talmudic passage with their conception of marriage, since individuals should have no ability to interfere with the heavenly match of others, which is their "religious fate" (goral). How is it possible, then, for one man to take away another's chosen match through prayer? Ritva interprets this passage to mean that only on the basis of improved actions over the long term can a person aspire to a "better" match from Heaven; increasing one's merits over time can cause the original heavenly decree to be redirected. The *rahamim* of which the Talmud speaks does not connote prayer (as it often does) for Ritva, since there is no immediate way for a person to redirect a *shidukh*, an understanding that accords with the larger Sephardic mindset.

With regard to marriage, the Spanish rabbinic posture confidently rendered unto the Almighty what was his and charted the human response accordingly. This is not the only instance in which Ashkenazic and Sephardic authorities (and societies) expressed such differences about individual choice in the face of divine will, suggesting that these differences regarding marital choice and matchmaking reflect more than diverse interpretations of the underlying Talmudic and biblical texts.

There were significant intellectual linkages between Ashkenazic and Sephardic communities during the medieval period, and each cultural area also developed in the context of the majority culture in which it was embedded. However, some differences in social practice between the two regions cannot be attributed to transmission or adaptation or to differing majority contexts, but rather were due to features internal to the development of halakhah and religious values in these areas. This study has shown that the choice of marriage partner is one such example.



## **Legal-Religious Status of the Female According to Age**

**Tirzah Meacham (leBeit Yoreh)** writes:<sup>18</sup>

*Legal status in Judaism is determined by age, sex, legal capacity and, to some extent, by class (kohen, levi, yisrael) and societal status. Legal majority in Jewish law was achieved relatively early in comparison to contemporary standards, Premature babies do not have full human status until they have survived thirty days. Newborns are subject to ritual impurity from the day of their birth including death impurity, leprosy, and genital discharges. As girls enter periods of transition, like puberty, an ample number of halakhic rules concern their bodies as it relates to their legal status. In establishing rules for examining girls' bodies for signs of maturity, the sages appear to have been less worried about women's modesty than about retaining their own legal control.*

### **Status of the Fetus Before and During Birth**

Mishnah *Niddah* 3:7 gives no status to the embryo prior to forty days from conception: it is considered "mere water." At three months after conception,

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<sup>18</sup> <https://jwa.org/encyclopedia/article/legal-religious-status-of-female-according-to-age>

the pregnancy is considered recognizable (*Niddah* 2:4). This does not explicitly change the legal status of the fetus but rather changes that of the mother in terms of legal presumptions concerning her purity status. Some *poskim* do make a distinction in reference to abortion between the first forty days and three months. At seven months after conception, the fetus is considered to be viable, although from the point of view of *realia*, this was unlikely in antiquity. A widespread view in antiquity, accepted by talmudic sages, was that an eighth-month fetus was not viable, while seventh month and ninth-month fetuses were viable (Rambam, *Milah* 1:13).

There is no difference between the status of a female and male fetus in reference to abortion or birth. The fetus is considered “a limb of its mother” without independent legal status, at least prior to the start of the birthing process. At that point some *poskim* give it some level of status, but it does not attain full personhood until the birth of the head or the majority of the body (in a breech birth) of a full-term pregnancy. Until that stage occurs, the child may be sacrificed if the mother’s life is at stake; according to some *poskim*, if both the mother and child will die unless birth occurs immediately, there is a preference for the life of the mother. Some *poskim* have allowed testing of fertilized eggs in the process of in vitro fertilization and have allowed sex selection to prevent certain medical or *halakhic* problems, e.g. selecting the zygotes that will not develop hemophilia or selecting only females to prevent the contested genealogical status of a male child born to a priest’s wife through donor insemination. Prior to the birth of the head or the majority of the body in breech position, the status of the fetus does not equal the status of the mother. It has not attained the status of *nefesh* (Rashi). Some *poskim* consider there to be a change in the legal status once the fetus is “uprooted” at the beginning of labor but still make a distinction between full *nefesh* and the status of the “uprooted” fetus. Consequently the life and, according to many *poskim*, the health of the mother take priority and the fetus can be dismembered in a difficult birth.

## Status of the Newborn

Premature babies do not have full human status until they have survived thirty days. For this reason, they are treated as *muktze* (“excluded” objects forbidden to handle on the Sabbath and festivals), which has some impact on nursing, carrying, etc. (Rambam, *Shabbat* 25:6). If they were to be killed prior to having reached the thirty-day status, it would not be considered a capital crime, but it is, of course, forbidden to do so. It was assumed that babies who were bastards but not recognized as such would not survive for thirty days, but it was forbidden to actively take their lives (JT *Yevamot* 8:3,

9cd), despite the lifelong limitations bastardy places on a person. A number of *poskim* have permitted the abortion of a *mamzer* either by claiming that his life is forfeit because the mother would have been liable for capital punishment upon being found guilty even while still pregnant or because of the great pain such a child would cause a repentant mother. Although *Niddah* 5:3 is phrased in the masculine, one who commits infanticide of a child of either sex is considered a murderer. There is, however, a tendency to presume prematurity in reference to neonatal death to exempt the parents from the laws of mourning.

The laws of the firstborn do not apply to a cesarean birth for a boy in terms of redemption by a priest or to the birth of a female child for either double portion if there were only daughters or for redemption by a priest. Burial of an abortus after forty days of gestation was required for issues of ritual purity. Burial of aborti, stillborns, and premature neonates is generally on the margins of the cemeteries. Mourning laws, including recitation of *kaddish* for eleven months, do not go into effect for them. This reflects both the desire to save the family from the rigors of mourning unless the child is certainly full-term, and the frequency with which such births/deaths occur. There have been several modern attempts, mostly on the part of women, to create some ritual that acknowledges the loss of the pregnancy and neonate in the absence of formal mourning laws.

Newborns are subject to ritual impurity from the day of their birth including death impurity, leprosy, and genital discharges (*Niddah* 5:3). A girl with a uterine discharge of blood can be considered *niddah* from the day of her birth and a *zavah* from day ten (seven days for *niddah* plus three consecutive days to establish abnormal bleeding). This is connected to the hormonal stimulation of the developing fetus by the mother's hormones which ceases at birth and may cause some uterine bleeding in the neonate.

A newborn of either sex exempts the mother whose husband has died without other offspring from *yibbum*, levirate marriage. A newborn boy whose only brother has died without offspring subjects his sister-in-law to levirate marriage or release from it through *halizah* even though the woman must wait until he is thirteen years and a day to perform either levirate marriage or *halizah*. Such a woman is supported from her husband's estate only for the first three months after his demise as she is considered to be "punished by Heaven" (Rambam, *Ishut* 18:17; *Shulhan Arukh* E.H. 160:1). A woman from a non-priestly family who gives birth after the death of her priest (*Kohen*) husband is allowed to eat *terumah* (heave offering) on account of the newborn, whether male or female, but not during the pregnancy. Conversely, the daughter of a *Kohen* pregnant with a child from a non-priest may not



eat *terumah* from the fortieth day after conception and certainly not after the birth of the child, who has no rights to partake of *terumah*.

A newborn boy is a legitimate heir and he inherits even from his deceased mother through the "male offspring," *benin dikhrin*, clause of the *ketubbah* on the first day of his life, and if he subsequently dies, his property is passed on to his legitimate heirs (his father, grandfather, paternal uncles, and brothers). A newborn girl may also inherit and receive gifts from various relatives and others, but she may not inherit from her father if she has paternal brothers, though she may receive gifts from him. His obligation to provide dowry/bridal wealth to her to a certain percentage of his property was considered the exchange for her loss of inheritance rights. Upon her demise, her property is passed to her heirs in the same progression as for a boy.

Infants are to be nursed by their mothers (or by wet nurses if the mother has brought sufficient wealth into the marriage and chooses not to nurse according to Mishnah *Ketubbot* 5:5) for two years but may be nursed up to four or five years (Tosefta *Niddah* 2:3–5). They are entitled to maternal or substitute care necessary for their well-being. Husbands are obligated to provide extra food for their pregnant and nursing wives (Rambam, *Ishut* 21:11). Women are not obligated to nurse twins and the father must provide a wet nurse for one of the children (*ibid.* 21:12). In the event that the mother does not have sufficient milk and a wet nurse cannot be found, the father is obligated to provide substitute nutrition for the infant. Fathers are not legally obligated to maintain their children except during very early childhood (*ketannei ketanim*), until the age of five or six years (BT *Ketubbot* 65b). After the age of early childhood, there was a preference to support female children over their brothers lest they turn to prostitution (*Beit Yosef* E.H. 112:3).

## Stages of Development

The significance of legal status necessitated the clarification of the status during periods of transition or in anomalous cases (such as mental disability or physical abnormalities). Samuel ben Hophni Gaon (RaShBaH [d. 1013]) composed a treatise on transition from legal minority to legal majority entitled *Sefer ha-Bagrut*. A number of other rabbinic sages also composed such treatises, sometimes containing opinions in direct opposition to the positions held by Samuel ben Hophni, for example *Sefer ha-Shanim* by Rav Yehuda Ha-Kohen ben Yosef Rosh haSeder in Egypt in the second half of the twelfth century. RaShBaH set three conditions for legal majority: mental development, which would enable the child to understand the rational mitzvot (this stage could occur prior or subsequent to the other stages and would obligate the person in those *mitzvot*), legal age (which when accompanied by sufficient mental development obligates the performance of

the revealed *mitzvot*), and the appearance of two pubic hairs (*Sefer ha-Bagrut*, Introduction lines 6–18). In the third stage, legal adulthood is attained with all the privileges and obligations, with the exception of service in the Temple (which began only at the age of twenty) and sale of real estate and slaves inherited from one's father, which was delayed until the age of twenty according to most *poskim*, though *Sefer ha-Bagrut* is more lenient.

In addition to the length, spacing, and position of the pubic hairs (*Niddah* 6:12, BT *Niddah* 52b), rabbinic sources discuss the significance of breast development, particularly in the absence of pubic hair. Advanced breast development is considered indicative of the existence of pubic hair (*Niddah* 6:1), and its absence in that case is attributed to its falling out (BT *Niddah* 48a), making the girl a legal adult. A parable mentioned in Mishnah *Niddah* 5:7 compares the stages of development of a woman to the development of a fig: an unripe fig parallels the minor girl (*tinoket* = *ketanah*), while the ripening fig parallels the maiden (*na'arah*), both of whom are under their father's dominion, and the ripe fig parallels the adult (*bogeret*) who is outside her father's authority and will never return to his legal dominion. Mishnah *Niddah* 5:8 describes the size of the breasts in order to be considered a definitive upper sign—all of which represents significant breast development. Nipple development is also considered one of the signs in this mishnah. *Sefer ha-Bagrut* (4: lines 59–60) refers to other definitive puberty signs—menstruation and giving birth. Many legal discussions concerning the appearance of the signs of puberty are based in medical *realia*, including the relationship between weight, labor, personal and familial tendencies, and puberty. At legal majority a girl is obligated in all of the revealed *mitzvot* and can accept *kiddushin* on her own behalf, receive her own *get*, and may undergo *halizah* (release from levirate marriage).

Another method to determine legal status, discussed in BT *Gittin* 65a, 59a (*Sefer ha-Bagrut* 6: lines 17–29), has to do with the ability to make distinctions. If the young child is given a stone and throws it away and a nut and keeps it, he is considered legally capable of acquiring things for himself. The girl who can make that distinction is capable of being married off by a guardian, which would make her eligible for *me'un* (marriage refusal declaration). This is considered to be from the age of six or above (Rambam, *Ishut* 4:7). Prior to that time, *kiddushin* arranged by a guardian is not considered to have taken place and she need not even perform *me'un* to be released from the marriage. Above the age of ten she is considered to have reached an age of discernment and to repudiate a marriage by a guardian requires *me'un*. Between the ages of six and ten, her ability to understand the concept of marriage determines whether *me'un* would be necessary. Similarly, if a minor between the ages of six and ten who has no guardian understands buying and selling values, his/her sales and purchases

of movable objects and the gifts (large and small, on the deathbed or otherwise) are valid (BT *Gittin* 59a; Rambam, *Mekhira* 29:8–10; *Sefer ha-Bagrut* 5: lines 70–87). A girl of this age who understands that divorce means separation from her husband is capable of receiving the get from him from a marriage arranged by her father (Rambam, *Gerushin* 2:18).

Three stages of development define the rabbinic legal status of girls: minor (*ketannah* or *tinoket*), maiden (*na'arah*), and adult (*bogeret*), according to *Niddah* 5:7. Maidenhood (*na'arut*) lasts for only six months before full legal majority is attained (BT *Niddah* 65a; *Sefer ha-Bagrut* 3: lines 8–11; Rambam, *Ishut* 2:12). Both time and physiological development influence the definition of the stages. A girl remains a minor until she reaches the age of twelve years and two pubic hairs have sprouted. This age was probably chosen because the majority of girls have begun to develop pubic hair by that age, and it has remained relatively stable for puberty in the Mediterranean area. Throughout her minority and maidenhood, she is under the absolute authority of her father. He has legal right to anything she finds, her handiwork, and money given for her marriage by the groom or his family (Mishnah *Ketubbot* 4:4; Rambam *Ishut* 3:11). As a minor he may sell her as a maidservant, usually with the understanding that she would become the wife of the master or of his son. In the event that she did not marry one of them, she was released at the appearance of two pubic hairs (Mishnah *Kiddushin* 1:2). The father has biblical authority to marry her to the Jewish man of his choice from the day of her birth (*Niddah* 5:4). The marriage is binding and may only be broken by the death of her spouse or by the acceptance of the writ of divorce (*get*) by her father. The legal bond created by the marriage contracted by her father remains intact even after the death of her husband if he has no offspring. If her spouse dies without offspring and he has brothers through his father, the girl becomes a *yevamah*, who is subject to levirate marriage (*yibbum*) to her brother-in-law or release from the obligation through *halizah*. Her consent is not considered necessary for her marriage or *yibbum* if her father arranged the marriage. Although Rav (third century C.E.) (or R. Elazar according to another tradition) said the father should not marry off his daughter until she says, "I want that man" (BT *Kiddushin* 41a), this statement had no legal effect, and marriage arrangements were generally made for economic or social benefits.

## **Marriage and the Rights of the Father**

If the father has married off his daughter while she was a minor and she was then either widowed or divorced, the father loses his right to contract another marriage on her behalf. At marriage, she left his legal domain, *reshut*, transferred to her husband's legal domain, and cannot return to her father's

legal dominion, although she may return to his household. She is considered an orphan in her father's lifetime (JT *Yevamot* 1:2, 2d). It is possible that this condition was initiated in order to prevent unscrupulous fathers from repeatedly contracting marriage followed by divorce. If the father died, no legal guardian, including the girl's mother or brothers, could contract a biblically binding marriage for her. They could, however, contract a rabbinically binding marriage while the girl was a minor, which would also subject her to the laws of *yibbum*.

The father's right to contract marriage on behalf of his minor daughter has one other limitation: if the mode of acquisition in marriage is by sexual intercourse, she must be at least three years and a day old before her intercourse is considered legal. The reason given is that prior to the age of three years and a day, her hymen (*betulim*) would return (BT *Niddah* 45a). She may be biblically acquired prior to this age by money or document. This is not to say that she would be forbidden to her legal husband if she were acquired by money or by document before that age, only that she cannot be acquired legally by intercourse prior to the age of three years and a day. The fact that the text (BT *Niddah* 45a) deals with the status of her blood before and after she reaches the age of three years and a day, whether it is virginal or menstrual blood, and that chapter 10 of Mishnah *Niddah* and BT *Niddah* deal with marriage prior to menarche, indicates that sexual relations were the expectation. This contradicts the assumption that the father acts with his daughter's welfare in mind when contracting such marriages while she is a minor, if we include her physical and psychological welfare. The minor boy is legally incapable of acquiring a woman for marriage. At the age of nine years and one day, his intercourse has a certain legal status but does not constitute complete biblical acquisition of a woman. He can partially acquire his childless deceased brother's widow (*yevamah*) through this intercourse, but if another paternal brother of legal age also has intercourse with her, the latter's is considered completely legally binding. From that age he may also make a claim on the *yevamah* through a *ma'amar*, an oral declaration that he acquires her. An older brother's intercourse or *ma'amar* sets his aside.

## Public Hair Development

In chapter 4 of *Sefer ha-Bagrut*, R. Samuel ben Hophni enumerates ten situations for which an examination for the existence of two pubic hairs is required. All of these are accompanied by an additional examination to see that the child understands the issues involved and has control over his/her property (Niddah 5:5). These include the giving of a *get* by a boy who had sexual intercourse from the age of nine years and a day with his *yevamah*. That is sufficient for him to acquire her, but he may not release her by divorce

until his majority. *Kiddushin* by the boy and independent *kiddushin* by the girl are valid only when they have reached their respective ages of majority (thirteen years and a day for boys and twelve years and a day for girls) and have brought forth two pubic hairs. *Halizah* requires both age of majority and two pubic hairs for both the boy and the girl. The girl may no longer repudiate her marriage by *me'un* if she has reached the age of majority and has brought forth two pubic hairs. Even if the marriage has been consummated, the girl who performs *me'un* is not considered a divorcée. Some of the *poskim* limit *me'un* to eleven years and a day if she has two pubic hairs (Amram ben Sheshna Otzar Ha-Geonim *Yevamot*, 223:558), while others (Isaac b. Jacob ha-Kohen Alfasi [Rif] *Yevamot* ch. 3) allow her to perform *me'un* even after the age of twelve years and a day if she has not had intercourse after the appearance of two pubic hairs. In order for the court to recognize *me'un* she must undergo a physical examination of her pubic area by the male judges, and a court document is written to attest to her status. According to *Sefer ha-Bagrut* (Chapter 4), if a child has reached the age of majority, sprouted two pubic hairs, understands market prices, and is competent in his/her affairs, the child is released from guardianship. If there are no pubic hairs, the guardianship remains in place until the age of twenty. In the absence of pubic hair development, legal majority is not attained at the normal age of legal majority. For some, this may be a physiological condition where no secondary sexual characteristics develop. If at the proven age of twenty years, one has not sprouted two pubic hairs and has various other signs that indicate an abnormality (for females this includes painful intercourse, lack of breast development and female form, and deeper than normal voice, and for males this includes lack of body and facial hair, lack of body heat, no arc at urination, and a somewhat feminine voice—BT *Yevamot* 80b), the female is declared to be an *ailonit* and the male is declared a *saris*. At that point are legal adults. If they are underweight, they must be given extra food, and if they are overweight, they must diet until they have attained normal weight and are examined again. The *ailonit* is exempt from both levirate marriage and released from it (*halizah*) (Mishnah *Niddah* 5:9; *Sefer ha-Bagrut* 3: lines 75–80).

If, however, no signs of a *saris* or an *ailonit* develop, they remain in an uncertain legal state and cannot be considered full legal adults until the age of thirty-five. Sale of real estate inherited from one's father is possible when a child has reached the age of majority, sprouted two pubic hairs, understands market prices, and is competent in his/her affairs. If the pubic hairs have not sprouted at the age of majority, the right to sell real estate inherited from one's father is delayed until the age of twenty. According to Rambam (*Mekhira* 29:12–13), however, sale of real estate and slaves by an orphan is prohibited even after the age of majority unless it can be demonstrated that the orphan understands the value of property (BT *Baba Batra* 155b–156a). In

the case of real estate inherited from one's father, the sale is not valid until the seller reaches the age of twenty. The same distinctions between *Sefer ha-Bagrut* and Rambam hold for the freeing of slaves inherited from one's father. Testimony concerning the sale of real estate requires age of majority, the presence of two pubic hairs at that age, knowledge of market values, and legal competency. Testimony concerning the sale of movables is more lenient but does require the status of majority. If the child has reached the age of majority, brought forth two pubic hairs, and knows market values, s/he can make a gift even of real estate and such a person's claims and admissions are legally valid.

The claim that all women have hymeneal blood is not accurate physiologically, but the sages were convinced of its existence (Mishnah *Niddah* 9:11). They also connected an abundance of menstrual blood to fertility. Absence of menstrual blood created a legal category called *dor katej*, which was considered a generation cut off (*dor katua*) because it indicated infertility.

## Age of Majority

Minors are not considered capable of taking upon themselves oaths and vows. A year before the age of majority (which is twelve years and a day for girls, thirteen years, and a day for boys), a period of education concerning oaths and vows takes effect. During this time children are tested concerning their knowledge of the repercussions of their oaths. If during this period they understand the significance of their words and to whom they made their vows, the vows may stand (*Niddah* 5:6; *Sefer ha-Bagrut* Ch. 4). After the age of majority, even if they claim not to understand the significance of their words or to whom the vows were made, the vows stand unless they are legally incompetent due to mental illness, insanity, etc. The biblical distinction in Numbers 30 between males and females prevailed in the rabbinic period. Fathers and husbands may annul the oaths and vows of minor daughters and spouses but not those of sons who have reached the age of majority. It is likely that this distinction was established as a mode of control in order to prevent daughters and wives from taking oaths and vows against their fathers' or husbands' desire. This was particularly significant because fathers had exclusive choice of husbands for their daughters. One way in which a girl could object to her father's choice would be to take a vow prohibiting benefit from the designated husband-to-be, which would make marriage impossible. The father could cancel that vow, and similar vows after marriage could be canceled by the husband, keeping the males in control. Only a woman who was totally independent by virtue of attaining single adult status (usually a widow or divorcée) was actually bound by her vows and oaths, since only a sage was able to cancel them if they met the criteria for cancellation (e.g.

made in error). The fact that the rabbinic sages interpreted similar limitations on the vow of the nazirite when no such limitations were placed biblically (Numbers 6) indicates that they desired to impose male control on this aspect of spiritual expression (Chana Safrai, Mishnah *Nazir* 11:9).

## Legal Status of Minors

Minors are generally not subject to punishment by rabbinic law, although they may have been subject to punishment by biblical law (e.g. the rebellious son, *ben sorer u-moreh*, Deuteronomy 21:18–21, Mishnah *Sanhedrin* 8:1–5). If a minor girl is married off by her father, she is subject to all of the laws of adultery but is exempt from punishment because as a minor she is not considered capable of legal consent. If a man other than her husband has sexual relations with her, it is considered adultery and the man is liable to capital punishment. The same exemption from punishment holds for a minor boy and a married adult woman who has sexual relations with him, but she as the adult is, of course, culpable and subject to capital punishment (Mishnah *Niddah* 5:4–5).

Legal majority in Jewish law was achieved relatively early in comparison to contemporary standards. It reflected the standards and generally shorter lifespan of antiquity. There was great concern for virginity. By declaring adulthood at a stage before puberty and strong sexual desire (the appearance of two pubic hairs is generally six months to two years prior to menarche or the ability to ejaculate), the sages attempted to control sexuality and regulate lifestyle through the framework of religious obligation. The choice of pubic hair as a sign created the need for close examination of the pubic area in the situations mentioned above. The conflict between modesty and women's legal status is embodied in the discussion of who examined the girls for the existence of pubic hairs. By creating alternate "upper signs" for breast development, some of the need to examine the girl's pubic area was eliminated. The rabbinic ages, however, did not relinquish all control in the matter, allowing women to examine girls only before or after the critical time, but if during the critical time only in order to disqualify the girl's legal position. If the examination was for the sake of *me'un*, women's testimony was accepted only to disqualify her by claiming she had two pubic hairs. If the examination was for *halizah*, only their claim that she did not have pubic hair was accepted, which disqualified her from *halizah* (BT *Niddah* 48b). The sages appeared to have been less worried about women's modesty than about retaining their own legal control. Women, however, were allowed to examine girls for signs of virginity, which was a much more intimate examination (Tosefta *Niddah* 5:4).



Throughout childhood children were educated. Like a boy, a girl was instructed concerning prohibitions and both underwent a period of training for the fast on Yom Kippur (BT *Yoma* 82a). The expectations for a girl were considerably lower in terms of formal education as she was exempted from positive time-bound *mitzvot*, which is the area in which the greatest effort was expended, particularly in learning Torah. She was trained in women's work and women's *mitzvot*, but cultural expectations, supported by the legal system, were intended to keep women segregated and often within the home.



**"The Wedding II" by Vyacheslav Braginsky<sup>19</sup>**

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<sup>19</sup> Alexander Gallery (ATV Gallery INC). [www.alexandergallery.biz](http://www.alexandergallery.biz)



## Marriage Then . . . and Now

**FAIGY GRUNFELD** writes:<sup>20</sup>

*We tend to think that marriage today is a radically different affair from marriage of the past. Perhaps the dominant narrative about Jewish marriages of the past is that they were primarily utilitarian and characterized by strict traditional gender roles. But that's not necessarily the case. With a more focused lens, a new image of Jewish marriage of the past emerges, one that is surprising in its similarity to contemporary marriages.*

The history of Jewish marriage is somewhat tricky being that marriage is, of course, private. The myriad issues that do become public are often the exception, not the rule. For example, rabbinic responsa (rulings) are important sources for historians when studying a period in Jewish life, particularly the Middle Ages. But when it comes to marriage, responsa tend to reflect the problematic and conflicted marriages, rather than the harmonious and loving ones.

There is no way to truly survey the relationship between Jewish spouses historically, but anecdotal evidence paints an interesting contrast to some of the common stereotypes.

The memoir of Glückel of Hameln, a seventeenth-century Jewess from Germany, describes the deep admiration and love she and her husband had for each other. She writes that they constantly consulted with each other, and how her husband, on his deathbed, told those who asked for instructions regarding his business: "My wife knows everything. She shall do as she has always done."<sup>1</sup>

Perhaps the most tragic line in the memoir is when Glückel reflects: "I truly believe I shall never cease from mourning my dear friend."<sup>2</sup> The writing here is particularly intriguing, as many would assume that referring to a spouse as a "friend" resembles twenty-first century, rather than seventeenth-century, language.

Was Glückel's marriage representative of Jewish marriages at the time? Historians believe that many features of Glückel's life are characteristic of the average seventeenth-century Jewess, so perhaps her marriage was not particularly unique. Furthermore, Glückel does not speak about her relationship as if it were an aberration.

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<sup>20</sup> <https://jewishaction.com/family/relationships/marriage-then-and-now/>

Of particular interest are some of the documents discovered in the Cairo Geniza, a storeroom in an old shul in Fustat, Egypt that contains over 300,000 historical documents. In the Geniza, a handful of letters from husbands to wives were discovered, reflecting a camaraderie and unity that one might not expect. The following are two examples of such letters. Both were written by Jewish men living in the Muslim Empire during the twelfth and thirteenth centuries. The contents are even more surprising, considering that the Jews living in Muslim lands tended to have stricter and more conventional gender roles than those living in Ashkenazic countries.<sup>3</sup> (Unlike the Ashkenazim, Sephardim maintained polygamy throughout this period; however, supporting two wives was expensive, so it was not very prevalent.<sup>4</sup>)

Sephardic men were quite eloquent in expressing appreciation of their wives. One husband, after being abroad for many months, wrote the following:

*Now I know how good your doings are, although I have no mouth to express this in words . . . I am sure you are well, but my well-being is bitter, because of my separation from you.*

Another beseeches his wife to uproot their family and move to a new city, where he believes he can earn a proper living:

*I am writing to you, my lady, my dear, crown of my head and my pride, may I never be deprived of you . . . please do not neglect me . . . there remains no one who loves and encourages me except you.*<sup>5</sup>

While these personal letters do not provide conclusive evidence of what Jewish marriages of the past were like, they should make us rethink the misconception that husbands were traditionally authoritarian or emotionally disconnected from their wives.

## **Investigating a Match in the Middle Ages**

While there were no dating algorithms or *shidduch* résumés centuries ago, the notion of investigating a prospective match is just about as old as the institution of Jewish marriage itself.

Glückel's memoir, describing seventeenth-century Central European Jewry, offers an excellent example of what happens when the job is sloppily done. When one of her daughters was to be engaged, Glückel's husband Chaim was already traveling to sign the agreement with the future *mechutanim* when Glückel received a letter urging her not to go ahead with the *shidduch* because the prospective groom "had many character flaws." Because Glückel couldn't reach her husband in time, he signed the engagement contract before

receiving this information. Then ensued a couple of anxious years during which Glückel boldly wrote to her *mechuteneste*-to-be that they had heard concerning reports about her son, and could they please send him for a visit so she, Glückel, could discredit the reports with her own eyes, to which the lady tartly responded, "Come see him yourself!"

The two families agreed to meet at an inn between their two towns and—surprise! The young man was just wonderful. The reports had gotten it all wrong. The couple married and lived happily ever after. But it could have all gone another way, which is why parents have always made it their business to conduct thorough inquiries.

Marrying for money was frowned upon, as the Talmud says: "Do not marry a woman who is from a higher socioeconomic status than yourself, lest you be rejected by her."<sup>6</sup> Some families, however, in the Middle Ages, tried to keep the family money "in the family."<sup>7</sup> The father of a scholarly son would often seek out a daughter from a rabbinic family, because such a young woman would be more likely to replicate in her new home what she had seen done by her parents.<sup>8</sup>

## Medieval Women Entrepreneurs

In the Middle Ages, daughters' betrothals occurred as early as the age of eight or nine, with marriages following at about age eleven or twelve, for boys of nearly the same age; the trend was related to economic considerations. Tosafot explains:

*Our life in the Diaspora is becoming harder; consequently, if a person is now in a financial position to give his daughter an adequate dowry, he is apprehensive lest after the lapse of some years he will be in no position to do so and his daughter will remain unwed forever.*<sup>9</sup>

Interestingly, despite the severe economic hardship that was the day-to-day reality of most Jews in those days, Jewish women were not completely dependent on men for financial stability. Medieval documents indicate how the vast majority of women were active in the workforce. The Ashkenazic woman could not tie herself to her hearth, willingly or unwillingly, for she was a vital partner in her husband's business. In this role, she had many responsibilities outside of her home. This prompted the Maharshal (sixteenth century) to comment, "Our women now conduct business and represent the husband."<sup>10</sup> This reality no doubt impacted marriages and gave women a certain amount of independence and freedom. Halachic rulings of the time reflect this trend, granting women greater financial responsibility and permitting them to travel alone and to conduct business with gentile men.<sup>11</sup> It was not uncommon for

Medieval women to have their own side businesses, and it was also acceptable for them to keep the profits for themselves.<sup>12</sup>

Interestingly, widowhood was a particularly distinctive position in Medieval Ashkenaz, afflicting a large number of women, as husbands were often older than their wives and had shorter life spans. Widowed women had unique economic and social freedom, often inheriting their husbands' estates, which they used to build new and successful businesses. Glückel of Hameln did just this by opening a sock factory upon her husband's death, and by traveling to local fairs to sell her products. Gitl, another successful businesswoman, was given a vote of confidence in her husband's will:

*She is to deal in all business that there is according to her desire and will . . . because she is the lady of the house, dominant and ruling over the entire estate and business for all of her days.*<sup>13</sup>

This is not to suggest that all widowed and divorced women were financially secure. Once widowed or divorced, it is likely that women saw a dip in their finances, but this is a point of contention among historians.<sup>14</sup>

## **In Search of Marital Bliss**

Another common misconception is that divorce was stigmatized and therefore very rare. Historians such as Avraham Grossman and S.D. Goitein contradict this, suggesting divorce rates of more than 20 percent in Medieval Jewish society.<sup>15</sup> Records from fifteenth-century Nuremberg actually indicate that close to a third of couples got divorced.<sup>16</sup> There are some rabbinic denunciations of this practice, and there is evidence that divorces were instigated by both men and women. Grossman argues that women's involvement in finances gave them greater independence and less of a need to remain in difficult marriages.<sup>17</sup> Apparently the search for marital bliss and compatibility is not a purely modern phenomenon.

## **The *Kollel* Wife—a twentieth-century phenomenon?**

The "*kollel*" wife is not a twentieth-century development. Women supporting their husbands so that they can pursue their Talmudic studies is a fairly old practice.

Eleazer of Worms, the thirteenth-century Rokeach, pays homage to his wife Dulce in a eulogy he wrote after she was murdered by Crusaders. Dulce supported her husband as a moneylender, pooling funds from neighbors to loan to others. She also produced Judaica items. Her husband describes in his

writings: "She was like the merchant ships, feeding her husband, enabling him to study. The women who saw her paid tribute to her good merchandise."<sup>18</sup> In the nineteenth century, there are many examples of Talmudic scholars leaving their families to study in some of the big European *yeshivot*, while their wives ran businesses. In fact, scholarly families would often ask if a potential bride was literate in Russian and Polish, to ascertain whether she would be able to conduct a successful enterprise with the locals.<sup>19</sup> Rabbi Eliyahu Dovid Rabinowitz (the Aderet), who was the *rav* of Ponevezh in the nineteenth century, had a six-year period of "kest" (full board provided to the couple by either set of parents so that the young man could continue his Talmudic studies free from financial worries). However, after this period, the Aderet's wife opened a shop while he traveled to study. He wrote: "I headed for exile in a place of Torah to cling to the profession of my fathers, may they rest in peace."<sup>20</sup> He studied away from home for four years, and then rejoined his family, securing a post as a *rav*.

Rabbi Naftali of Amsterdam, a student of Rabbi Yisroel Salanter, was supported by his wife, who ran a bakery as a source of income. However, in a series of letters to his peer Rabbi Yitzchak Blazer, Rabbi Naftali describes his concern regarding his wife's strenuous work. His letters also convey his loneliness and longing for his family.<sup>21</sup> Some wives of scholars even undertook the gargantuan task of supporting their families and caring for their elderly parents. The "kollel life" of the past was tremendously challenging and demanded astonishing levels of perseverance and *mesirat nefesh* from young couples. These brave young men and women rose to the occasion, setting a precedent for later generations to follow.

Were Jewish marriages of the past so very different than contemporary marriages? Seemingly not. Although different periods saw different norms, camaraderie, deep friendship, and mutual respect seem to characterize marriage of today and yesteryear.<sup>21</sup>

## Notes

1. *The Memoirs of Glückel of Hameln*, trans. Marvin Lowenthal (New York, 1960), 151.

2. *Ibid.*, 152.

3. This distinction is documented by Medieval travelers such as Rabbi Petachiyah of Ratisbon: *The Travels of Rabbi Petachiyah of Ratisbon*, trans. Dr. A. Benisch (London, 1856).

4. Menachem Brayer, *Jewish Women in Rabbinic Literature* (Hoboken, 1986),

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<sup>21</sup> This article was featured in the Summer 2019 issue of Jewish Action

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5. Emily Taitz, et al., *The JPS Guide to Jewish Women* (Philadelphia, 2003), 69.
6. *Yevamot* 63a.
7. Judith R. Baskin, "Jewish Women in the Middle Ages," *Jewish Women in Historical Perspective*, Second Edition, ed. Judith R. Baskin (Detroit, 1998): 97.
8. S.D. Goitein, *A Mediterranean Society* (Berkeley, 2003), 152-5.
9. Tosafot on *Kiddushin* 41a.
10. Taitz, *The JPS Guide to Jewish Women*, 149.
11. In *Even HaEzer*, the twelfth-century work by Rabbi Eliezer of Mainz, section 115, states the following: *In these days women are legal guardians and vendors and dealers and lenders and borrowers, and they pay and withdraw and collect and deposit money, and if we say they cannot swear or affirm their business negotiations, then you will forsake these women and people will begin to avoid doing business with them.*
12. Elisheva Baumgarten, "Medieval Ashkenaz (1096-1348)," *Jewish Women: A Comprehensive Historical Encyclopedia*, 1 March 2009, Jewish Women's Archive, <https://jwa.org/encyclopedia/article/medieval-ashkenaz-1096-1348>.
13. Moshe Rosman, "Poland: Early Modern (1500-1795)," *Jewish Women: A Comprehensive Historical Encyclopedia*, 1 March 2009, Jewish Women's Archive, <https://jwa.org/encyclopedia/article/poland-early-modern-1500-1795>.
14. See Cheryl Tallan, "Medieval Jewish Widows: Their Control of Resources," *Jewish History* 5, no. 1 (1991): 63-74; Avraham Grossman, *Pious and Rebellious* (Waltham, Massachusetts, 2012), 247; and Baumgarten, "Medieval Ashkenaz (1096-1348)."
15. Grossman, *Pious and Rebellious*, 246.
16. Baumgarten, "Medieval Ashkenaz (1096-1348)," 4.
17. Grossman, *Pious and Rebellious*, 247.
18. S. Feldbrand, "Appendix," *From Sarah to Sarah* (New York, 1976).
19. Immanuel Etkes, "Marriage and Torah Study among the Lomdim in Lithuania in the Nineteenth Century," in *The Jewish Family: Metaphor and Memory*, ed. David Kraemer (New York, 1989): 166.
20. *Ibid.*, 164.
21. *Ibid.*, 167-168.
22. Chaim Shapiro, *Once Upon a Shtetl: A Fond Look Back at a Treasured Slice of the Jewish Past* (New York, 1996), 124.