

Captivity, Trauma, and Halakhah

Session II: The Ketubah: A Halakhic Institution of Protection, Redemption, and Rehabilitation

Section A – From Second Temple Judaism to Rabbinic Halakhah: The Changing Marital Status of the Rape Victim

I) Deuteronomy 22: 23–29

<p>23 If there is a young woman, a virgin, who is betrothed to a man, and another man finds her in the city and lies with her,</p>	<p>(כג) כִּי יְהִיָּה נַעֲרָה בְּתוּלָה מֵאֲרָשָׁה לְאִישׁ וּמְצָאָהּ אִישׁ בְּעִיר וְשָׁכַב עִמָּה :</p>
<p>24 then you shall bring both of them out to the gate of that city, and you shall stone them to death—the young woman because she did not cry out in the city, and the man because he violated his neighbor's wife. Thus you shall remove the evil from your midst.</p>	<p>(כד) וְהוֹצֵאתֶם אֹתָם שְׁנֵיהֶם אֶל־שַׁעַר הָעִיר הַהוּא וְסָקַלְתֶּם אֹתָם בְּאֲבָנִים וּמֵתוּ אֶת־הַנַּעֲרָה עַל־דְּבַר אִשָּׁר לֹא־צָעָקָה בְּעִיר וְאֶת־הָאִישׁ עַל־דְּבַר אִשְׁרֵי־עֵנָה אֶת־אִשְׁתּוֹ רַעְהוּ וּבְעֵרַתְּ הָרָע מִקִּרְבְּךָ : ט</p>
<p>25 But if the man finds the betrothed young woman in the open country, and the man seizes her and lies with her, then only the man who lay with her shall die.</p>	<p>(כה) וְאִם־בַּשָּׂדֶה יִמְצָא הָאִישׁ אֶת־הַנַּעֲרָה הַמְאֲרָשָׁה וְהִחְזִיקָבָה הָאִישׁ וְשָׁכַב עִמָּהּ וּמֵת הָאִישׁ אִשְׁר־שָׁכַב עִמָּהּ לְבָדוֹ :</p>
<p>26 To the young woman you shall do nothing; the young woman has committed no offense deserving death. For this case is like that of a man attacking and murdering his fellow,</p>	<p>(כו) וְלַנַּעֲרָה לֹא־תַעֲשֶׂה דָבָר אֵין לַנַּעֲרָה חַטָּא מוֹת כִּי כַּאֲשֶׁר יָקוּם אִישׁ עַל־רֵעֵהוּ וּרְצַחֹו נָפֶשׁ בְּן־הַדָּבָר הַזֶּה :</p>
<p>27 because he found her in the open country. Though the betrothed young woman cried out, there was no one to rescue her.</p>	<p>(כז) כִּי בַשָּׂדֶה מְצָאָהּ צָעָקָה הַנַּעֲרָה הַמְאֲרָשָׁה וְאֵין מוֹשִׁיעַ לָהּ :</p>
<p>28 If a man finds a young woman who is a virgin and is not betrothed, and he seizes her and lies with her, and they are discovered,</p>	<p>(כח) כִּי־יִמְצָא אִישׁ נַעֲרָה בְּתוּלָה אִשָּׁר לֹא־אֲרָשָׁה וּתְפֹשָׁה וְשָׁכַב עִמָּהּ וְנִמְצְאוּ :</p>
<p>29 then the man who lay with her shall give the young woman's father fifty shekels of silver, and she shall become his wife because he has violated her. He may never divorce her all his days</p>	<p>(כט) וְנָתַן הָאִישׁ הַשָּׁכַב עִמָּהּ לְאָבִי הַנַּעֲרָה חֲמִשִּׁים כֶּסֶף וְלוֹ־תִהְיֶה לְאִשָּׁה תַּחַת אִשָּׁר עִנָּה לֹא־יִכָּל שְׁלַחָה כָּל־יָמָיו : ט</p>

II) *The Testament of Reuben* 3: 10–15

<p>1. For had I not seen Bilhah bathing in a secluded place, I would not have fallen into this great sin.</p>	<p>כי לולא ראיתי את בלהה רוחצת במקום סתר כי עתה לא נכשלתי בחטא הגדול הזה.</p>
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2. For once my eyes had been captivated by the sight of the woman's nakedness, I could find no rest until I had committed this abominable deed.	כי כאשר נתפשו מעיני בראותי את ערית האשה לא נתנהשנה לי עד אשר עשיתי את התועבה הזאת .
3. When my father Jacob had gone to visit his father Isaac, while we were at Migdal Eder near Ephrath (Bethlehem), Bilhah became drunk and lay naked in her chamber.	ויהי כאשר הלך יעקב אבי אל יצחק אביו בעת היותנו במגדל עדר על יד אפרת בבית לחם ותהי בלהה שכורה ותשכב ערומה בחדרה ;
4. When I entered, I saw her nakedness and committed this disgraceful act. She was unaware of what had happened, and I left her still asleep and departed.	ואני בבואי וארא את ערותה ואעש את הנבלה והיא לא חשה ואשאירה ישנה ואצא ;
5. Immediately an angel of God revealed my transgression to my father. He came and mourned over my sin, and from that time onward he did not touch Bilhah again.	ומלאך אלהים הודיע מיד לאבי על דבר פשעי ויבא ויתאבל עלי ובה לא נגע עוד .

III) *The Book of Jubilees 33: 1–8*

1. Jacob went to his father Isaac, together with his wife Leah, on the first day of the tenth month.	וילך יעקב אל יצחק אביו הוא ולאה אשתו בראש החדש העשירי .
2. Reuben saw Bilhah, Rachel's maidservant and his father's concubine, bathing in a secluded place, and he desired her.	וירא ראובן את בלהה שפחת רחל פילגש אביו רוחצת במים בסתר ויאהבה .
3. That night he hid himself and entered Bilhah's house by night...	ויתחבא בלילה ויבא אל בית בלהה לילה . . . וישכב עמה ותיקץ ותרא והנה ראובן אֶתה על משכבה וְתַגֵּל כַּנְפֵה וְתַתְּפֶשְׁהוּ וְתַצְעַק וְתִכְפֹּר כִּי ראובן הוא .
4. He lay with her, and she awoke and saw that Reuben was with her in her bed. She uncovered herself, seized him, cried out, and recognized that it was Reuben.	וּתְבוֹשׁ מִפְּנֵיו וְתִנַּח יָדָהּ מִמֶּנּוּ ויברח .
5. She was ashamed before him, released her hold on him, and he fled.	וְתַתְּעַצֵּב עַל הַדְּבָר הַזֶּה מְאוֹד וְלֹא הִגִּידָה לְאִישׁ דְּבָר .
6. She was deeply distressed by what had happened, but she told no one about it.	ויהי כבוא יעקב ויבקשה ותאמר לו , לא טהורה אני לך כי נטמאתי לך כי טמא אותי ראובן וישכב עמי

	בלילה ואני ישנה ולא ידעתי עד-כי גלה כנפי וישכב עמי .
7. When Jacob returned and sought to be with her, she said to him: "I am not fit for you, for I have been defiled with respect to you. Reuben has defiled me, for he lay with me during the night while I was asleep. I did not know until he uncovered my garment and lay with me."	ויחר אף יעקב בראובן מאד על שכבו עם בלהה כי גלה את כסות אביו .
8. Jacob became exceedingly angry with Reuben because he had lain with Bilhah, for he had uncovered his father's bed. Jacob never again approached her, because Reuben had defiled her.	ולא קרב יעקב אליה כי טמאה ראובן

IV) Mishnah Nedarim 11: 12

Originally, the Sages ruled that there were three cases in which a woman could leave her husband and receive her ketubbah:	בראשונה היו אומרים שלש נשים יוצאות ונוטלות כתובה
<ul style="list-style-type: none"> If she said: "I have become defiled to you." (= <i>I was raped</i>) 	האומרת טמאה אני לך
<ul style="list-style-type: none"> If she said: "Heaven stands between me and you." 	שמים ביני לבינך
<ul style="list-style-type: none"> If she said: "I am forbidden to all Jews." 	נטולה אני מן היהודים
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Later, however, they changed the ruling, lest a woman set her eyes upon another man and seek to undermine her marriage. Instead, they ruled:	חזרו לומר שלא תהא אשה נותנת עיניה באחר ומקלקלת על בעלה אלא
<ul style="list-style-type: none"> If she says, "I have become defiled to you," she must produce evidence to substantiate her claim. 	האומרת טמאה אני לך תביא ראיה לדבריה
<ul style="list-style-type: none"> If she says, "Heaven stands between me and you," they should attempt reconciliation between the spouses. 	שמים ביני לבינך יעשו דרך בקשה
<ul style="list-style-type: none"> If she says, "I am forbidden to all Jews," the husband should annul the portion of the vow that pertains to him, and she shall continue marital relations with him, while remaining prohibited to all 999other Jewish men. 	נטולה אני מן היהודים יפר חלקו ותהא משמשתו ותהא נטולה מן היהודים :

V) Mishnah Ketubot 2: 9.

If a city was conquered by a military force all the wives of priests found within it are disqualified from their husbands	עיר שכבשה כרכום כל כהנות שנמצאו בתוכה פסולות
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Section B - The Ketubbah and the Reconfiguration of Marital Responsibility in Cases of Rape and Captivity

VI) Mishnah Ketubot 4: 8–9

If he did not write into her ketubbah:	לא כתב לה
"If you are taken captive, I will redeem you and restore you to me as my wife."	אם תשתבאי אפרקינך ואותבינך לי לאינתו
—or, in the case of the wife of a priest: "I will return you to your native land."	ובכהנת אהדרינך למדינתך
he is nevertheless obligated, for this is a condition established by the court (a <i>tenai beit din</i>).	חייב שהוא תנאי בית דין :
If she was taken captive, he is obligated to redeem her.	נשבית חייב לפדותה
If he says, "Here is your bill of divorce and your ketubbah; redeem yourself," he is not permitted to do so.	ואם אמר הרי גיטה וכתובתה תפדה את עצמה אינו רשאי
If she became ill, he is obligated to provide for her medical treatment.	לקתה חייב לרפאותה
If he says, "Here is your bill of divorce and your ketubbah; pay for your own medical treatment," he is permitted to do so.	אמר הרי גיטה וכתובתה תרפא את עצמה רשאי :

VII) Babylonian Talmud, Ketubot 52a

The Sages taught: If a woman was taken captive during her husband's lifetime and her husband subsequently died: <ul style="list-style-type: none"> If he had previously lived with her (<i>hikkir bah ba'alah</i>), his heirs are obligated to redeem her. 	ת"ר : נשבית בחיי בעלה ואח"כ מת בעלה, הכיר בה בעלה - יורשין חייבין לפדותה, לא הכיר בה בעלה - אין יורשין חייבין לפדותה.
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<ul style="list-style-type: none"> If he had not previously lived with her, his heirs are not obligated to redeem her. 	
Levi intended to render a legal decision in accordance with this baraita.	לוי סבר למיעבד עובדא כי הא מתניתא,
<p>Rav said to him: "Thus my revered teacher said: The halakhah does not follow this baraita. Rather, it follows the following teaching: " If a woman was taken captive after her husband's death, the orphans are not obligated to redeem her. Moreover, even if she was taken captive during her husband's lifetime and he later died, the orphans are not obligated to redeem her, because I can no longer apply to her the ketubbah stipulation: 'I will redeem you and restore you to me as my wife.'</p>	<p>א"ל רב, הכי אמר חביבי: לית הלכתא כי הא מתניתא, אלא כי הא דתניא: נשבית לאחר מיתת בעלה - אין היתומין חייבין לפדותה; ולא עוד, אלא אפילו נשבית בחיי בעלה ואחר כך מת בעלה - אין היתומין חייבין לפדותה, שאין אני קורא בה ואותבינך לאינתו.</p>
<p>The Sages taught: If a woman was taken captive and her husband was asked to pay as much as ten times her value for her redemption, then the first time he is obligated to redeem her. Thereafter, if he wishes, he may redeem her, and if he wishes, he need not redeem her. Rabban Shimon ben Gamliel says: Captives are not redeemed for more than their value, for the sake of the proper ordering of society (<i>mipnei tikkun ha-olam</i>).</p>	<p>תנו רבנן: נשבית, והיו מבקשין ממנו עד עשרה בדמיה - פעם ראשונה פודה, מכאן ואילך, רצה - פודה, רצה - אינו פודה; רבן שמעון בן גמליאל אומר: אין פודין את השבוין יותר על כדי דמיהם, מפני תקון העולם.</p>

Section C - Profiling Captivity: Presumptions of Coercion and Consent

VIII) Mishnah Ketubot 2: 9.

האשה

A woman who was taken into custody by gentiles because of a financial matter remains permitted to her husband.	שנחבשה בידי גוים - על ידי ממון מותרת לבעלה
If she was taken into custody on a capital charge, she is prohibited to her husband.	על ידי נפשות אסורה לבעלה
If a city was captured by a besieging army, all the wives of priests found within it are disqualified from their husbands.	עיר שכבשה כרכום כל כהנות שנמצאו בתוכה פסולות

IX) Babylonian Talmud, Ketubot 51b

Rav Yehudah said: <i>These women who were abducted by brigands are permitted to their husbands.</i>	אמר רב יהודה : הני נשי דגנבו גנבי - שריין לגוברייהו.
The Sages said to Rav Yehudah: But they bring the brigands bread!	אמרי ליה רבנן לרב יהודה : והא קא ממטיאן להו נהמא!
He replied: They do so out of fear.	מחמת יראה.
They challenged him further: But they send them arrows!	והא קא משלחן להו גירי!
He replied: They do so out of fear.	מחמת יראה.
However, if they abandoned their husbands and went to the brigands of their own accord, they are prohibited to their husbands.	ודאי, שבקינהו ואזלן מנפשייהו - אסירן.