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**Jewish and Roman Law in Second Century C.E.: A Socio-anthropological  
Approach**

**Louise-A. Mayer**

**A Thesis  
in  
The Department  
of  
Religion**

**Presented in Partial Fulfillment of the Requirements  
for the Degree of Master of Arts at  
Concordia University  
Montréal, Québec, Canada**

**June 1988**

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## **ABSTRACT**

### **Jewish and Roman Law in the Second Century C.E. : A Socio-anthropological Approach**

**Louise-A. Mayer**

The objective of this research is to investigate, through a socio-anthropological approach, the relationship which is presumed to exist between the literary organization of a document and the kind of society which is projected through the work of its author or editor.

For this purpose, this study will examine two legal documents from the hellenistic period, the Mishnah (200 C.E.) and the Institutes of Gaius (160 C.E.).

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## INTRODUCTION:

The objective of this research is to investigate, through a socio-anthropological approach, the relationship which is presumed to exist between the literary organization of a document and the kind of society which is projected through the work of its author or editor.

For this purpose, this study will examine two legal documents from the hellenistic period, the Mishnah (200 C.E.) and the Institutes of Gaius (160 C.E.)<sup>1</sup>. These originate, respectively, from the Jewish and Roman worlds which co-existed in Palestine for 800 years.

Webster<sup>2</sup> gives the following definition of law,

(1) a binding custom or practice of a community: a rule or mode of conduct or action that is prescribed or formally recognized as binding by a supreme controlling authority or is made obligatory by a sanction ( as an edict, decree, rescript, order, ordinance, statute, resolution, rule, judicial decision or usage) made, recognized, or enforced by the controlling authority (2) the whole body of such customs, practices, or rules constituting the organic rule prescribing the nature and conditions of existence of a state or other organized community.

Laws, as defined by Webster, are important data in many fields of scholarly research. The historian, the jurist, the sociologist and the philosopher all take an interest in the study of laws. While the jurist studies laws for their own sake, the historian, the sociologist and the philosopher use them as important

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<sup>1</sup>For the purpose of the present research, we will be using the Danby's translation of the Mishnah from Hebrew to English (1985). For the Institutes we will use the Reinach's translation from Latin to French (1979) because of its fidelity to the Veronensis 13 manuscript. This manuscript is considered by scholars as the most integral text of the Institutes. Though our study will work with the French translation, the quotations in this essay will be taken from the English translation from AMS Press (1973).

<sup>2</sup>Webster's New Third International Dictionary. Springfield: Mass., 1981

tools in the investigation of their own areas of knowledge. Between all of these fields of research, there exist 'grey zones' of common ground where one field meets the others.

This is presumably what Ortolan meant when he wrote,

Tout historien devrait être jurisconsulte et tout jurisconsulte devrait être historien. (Ortolan 1876, I-IXII)

This is also what Van A. Harvey suggested,

If however, history is not so much a field as a field-encompassing-field, which is to say, made up of diverse kinds of arguments making use of correspondingly diverse data and warrants, then the quest for one theory of historical explanation is seen to be fruitless, creating insoluble paradoxes that paralyze thought. (Van Harvey 1966,55)

The philosopher and the jurist met in the person of Cicero, author of the following dialogue,

Atticus: Then you do not think that the science of law is to be derived from the praetor's edict, as the majority do now, or from the Twelve Tables, as people used to think, but from the deepest mysteries of philosophy.

Marcus<sup>3</sup> : Quite right; for in our present conversation, Pomponius, we are not trying to learn how to protect ourselves legally, or how to answer clients' questions. Such problems may be important, and in fact they are; for in former times many eminent men made a specialty of their solution, and at present one person performs this duty with the greatest authority and skill. But in our present investigation we intend to cover the whole range of universal Justice and Law in such a way that our own civil law, as it is called, will be confined to a small and narrow corner. (De Legibus 1:15-17)

Rudolf von Ihring, disappointed by the approach to the study of laws in his time, wrote about the relationship between them and society,

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<sup>3</sup> Marcus is Cicero in this dialogue.

All this cult of logic that would fain turn jurisprudence into legal mathematics is an error and arises from misunderstanding law. Life does not exist for the sake of concepts but concepts for the sake of life. It is not logic that is entitled to exist, but what is claimed by life, by social intercourse, by the sense of justice whether it be logically necessary or logically impossible. (Cohen 1966, x)

Durkheim used the word 'crystallization' when he wrote about laws,

But a legal rule is no less permanent an arrangement than an architectural style, and yet it is a 'physiological' fact. A simple moral maxim is certainly more malleable, yet it is cast in forms much more rigid than a mere professional custom or fashion. Thus there exists a whole range of gradations which without any break in continuity, joint the most clearly delineated structural facts to those free currents of social life which are not yet caught in any definite mould. This therefore signifies that the differences between them concern only the degree to which they have become consolidated. Both are forms of life at varying stages of crystallization. (Durkheim 1982, 58)

Boaz Cohen, in his Introduction to Jewish and Roman Law: A Comparative Study, explained how a student has to look at laws,

As is well known, a student may approach the study of law from four avenues; the dogmatic, the historical, the philosophical, and the comparative. While the demarcations of these four points of view are sharply marked, a full and complete understanding of the law, in breadth and in depth would require a masterly acquisition of these four disciplines. (Cohen 1966, viii)

The following study positions itself within this general perspective of the interrelation which exists between these different fields of knowledge. Within this larger framework, our research will focus on a particular aspect of the study of laws, comparative research.

From about 100 B.C.E. to 700 C.E., the Roman and Jewish worlds co-existed in Palestine. In the course of history, each of these worlds developed

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its own system of law. Around 200 C.E. the Mishnah came into existence. It is considered the founding document of 'rabbinic' Judaism, because from it, three hundred years later, emerged another Jewish document. This latter document, the Talmud, constitutes the major charter and legal constitution of Rabbinic Judaism. The word 'rabbinic' refers to that Judaism which was, and still is, considered by its adherents as normative Judaism.

The two systems of law present interesting chronological coincidences: the whole body of Roman law covers a period of about 1000 years starting around 450 B.C.E. with the Twelve Tables at about the same time as the renewal of the pledge to the Mosaic law was made by the Jews under the leadership of Ezra. The Institutes of Gaius, which is considered a standard textbook for students of Roman law in late Antiquity, dates from around 160 C.E.<sup>1</sup>, approximately fifty years before the Mishnah itself. The *Corpus Juris Civilis* of Justinian and the Talmud both date back to the sixth century C.E. and consist of legal material going back for centuries before their actual collection. Because of this interesting parallelism and the fact that the two systems offer such similarities and analogies, the comparative approach to these two bodies of law is a very attractive field. Specialists in Jewish and Roman law readily undertook to investigate them both. Cohen said,

To sum up, the advantages of the comparative study of law is that it enables one to achieve a deeper understanding of the nature and complex set up of Jewish law. (1966, xi)

But, it is safe to assert that a scientific and comparative inquiry between the two great systems of law that have wielded such a considerable influence upon Western civilization, should result in an enhanced understanding of the great contributions made by the

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<sup>1</sup>cf Dernberg 1869 as referred to in Reinach 1979.

Jews and the Romans to the thought, the culture, and the legal science and institutions of Europe. (1966, 30)

Most scholars who have been tempted by the comparative study of the two systems have been aware of the many difficulties inherent in such a task. Especially delicate is the evaluation and explanation of the possible influence of one system on the other. Some could be deterred from doing such an investigation for reasons such as those stated by Cohen in the first chapter of his book,

But it may be legitimately questioned whether it is fruitful to indulge in a comparison of two systems of law that apparently have no common origin, no common stock of legal ideas, belonging to people so distinct as the Jews and the Romans, in mood and temperament, in political theories and institutions, in their social arrangements, and in their religious convictions. Furthermore it may be asked whether it is likely that the Jews, resolute in their belief in the divine origin of the Torah, should borrow legal notions, or take juridical suggestions from their conquerors. It is also well known how conservative and proud the Romans were of their system of law, and how difficult it was to impress them with foreign legal institutions. (1966, 2)

and the reason offered by Santayana,

Comparison is the expedient of those who cannot reach the heart of the things compared; and no philosophy is more external and egotistical than that which places the essence of a thing in its relation to something else. In reality, at the center of every natural being there is something individual and incommensurable, a seed with its native impulses and aspirations, shaping themselves as best they can in their given environments. (as quoted in Cohen 1966, xii)

But Cohen continued and wrote,

this peril is more apparent than real for one who is possessed of a sound knowledge of the systems he is comparing. (1966, xii). . . Prerequisite to the undertaking of such an assignment, is a broad

familiarity with the basic rules, principles, framework, and spirit of both Jewish and Roman Law, gained by a thorough acquaintance with the original sources studied in connection with social, economic and religious background of the Jews and Romans. Thus equipped we shall be prepared to accumulate a complete collection of authentic parallels, analogies and resemblances, as well as contrasts, differences and dissimilarities between the two systems of law. (1966, 13)

Our study is concerned more particularly with the content of this last statement, which stipulates the importance of working with the sources in "connection with SOCIAL, economic and religious background". In this smaller framework we will examine the task of those researchers in the comparative field who have to determine the social reality behind the laws of the Jews and those of the Romans.

Our purpose is not to do a comparative study between the two bodies of law, but to propose a theoretical framework and methodology that could help scholars in the comparative field who have to struggle to find the social reality behind laws. Since the question of the influence of one system on the other always remains a matter of interest, our research will concentrate on two documents which by their closeness in time offer the probability of interesting results. As this influence is considered by scholars<sup>1</sup> to have been generally in one direction - from Roman law to Jewish law - the choice of the Institutes, which preceded the Mishnah by half a century, is ideal for our investigation.

As mentioned previously the Mishnah is a Jewish document from the beginning of the third century C.E. It is related (though generally and only implicitly) to the Torah and is primarily concerned with laws pertaining to a

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<sup>1</sup>Cf. Boaz Cohen's statement on pages 7 & 8 of this study.

no longer existing Temple state (the Temple was destroyed by the Romans in 70 C.E.).

Amongst the mishnaic laws, we can distinguish between laws directly linked to the Temple and those which pertain generally to 'civil' matters such as those contained in the Agriculture (*Zeraim*), Women (*Nashim*) and Damages (*Nezikin*) Divisions of the document. Many scholars have examined these 'civil' laws and have pointed out the numerous analogies and similarities between them. This has produced a harvest of comparative works on the subject (Juster 1914, Cohen 1966, Daube 1977, Watson 1977, Jackson 1980).

In the course of the following study, we will encounter examples of analogies and similarities between the two systems of law, especially between laws concerned with marriage. The said similarities and analogies will be analyzed within the theoretical framework and through the methodology which will be explained later.

Most of the scholars who undertook comparative research between the two systems have done so in the intellectual framework hereabove suggested by Boaz Cohen. They implied the interrelationship between law, history, philosophy and sociology. An example of such investigation is the statement made by Cohen concerning the influence of Roman law on the authors of the Talmud.

However it is our feeling that there was an interchange of legal ideas, between Jews and Romans, unacknowledged of course on both sides, even in classical time, that the present state of research has as yet not revealed. The influence was subtle and indirect but none the less real. The rabbis were living in no intellectual ghetto, and were susceptible to the ideas current in the Greco-Roman world. The numerous discussions between learned Jews and pagans, which must have had a stimulating effect upon their

juridical thinking along lines that represented a departure that has as yet not been delineated. (1966,156)

Though the above statement has to be questioned as to the sources for such affirmations, it shows that, for some scholars, the influence of Roman law on Jewish law is quite a matter of fact. Scholars may disagree on the 'How' and 'When' or on the degree of the said influence, but the influence itself appears to be a scholarly assertion.

The study of Roman law in the light of its historical, sociological and cultural background has been made easier by an abundance of corroborative data. We have, besides the laws themselves, the writings of Suetonius, Cicero, Plautus and many others. In fact, specialists in Roman Law had to rely on these extra-legal sources to be able to reconstruct the whole corpus of the law. Allan Watson writes about his book Roman Private Law around 200 B.C.

The period covered by this book, however, is much clearer than the decades on either side of it, thanks to the plays of Plautus. His comedies are studded with legal scenes, legal jokes and comic references to legal terms which enable us to judge the changes which had occurred in the law since the XII Tables. Admittedly since he was no lawyer and his plays are adaptations of Greek originals one cannot rely upon his technical accuracy, especially in details. But his use of appropriate terminology can prove the existence of the legal institution in question; and when he employs an elaborate scene we can be reasonably sure his point was understandable by his not over-educated audience.

Light is shed on aspects of the law of contract by Cato's *de agricultura*, and much striking legal detail is provided by Aulus Gellius, an antiquarian writing in the Empire. A few sober facts are given by Livy, but his lack of interest in all things legal makes him a particularly unhelpful source. A great deal, however, can be learnt from Cicero who on occasion tells us what effect behaviour had before recent innovations and sometimes records early legal discussion. More important still, what he says of law in his own

time can often be used to elucidate the law of an earlier period. (1971, 3-4).

Unfortunately, we do not possess that kind of corroborative data for the Mishnah. The Mishnah stands for itself and remains its sole historical evidence. In fact, the only information we have about the social and cultural milieu of the Mishnah are scattered through the document itself and the historical value of the information is questioned by modern scholars. We find an example of the use of this sort of information in the assertion made by Boaz Cohen regarding the interaction of the rabbis and their Roman counterparts as it appears in the statement above quoted. Such a declaration can only be made when one accepts *prima facie* and *verbatim* the declarations of the Talmud (Cohen 1966, 156 note 150) and believes that, indeed, the rabbis and the Roman jurists met together and therefore influenced each others legal thought. Through the eyes of faith and with religious *a priori* applied to the sources, some scholars have built a whole society of the past.

This manner of reading and understanding the rabbinic sources is the result of a traditional approach. Jacob Neusner, in the preface of one of his recent books, reproves the scholars who still use this approach,

They ignore the canons of criticism that govern academic scholarship. They take for granted that pretty much everything they read is true--except what they decide is not true. They cannot and ordinarily do not raise the question of whether an authorship knows what it is talking about, and they do not address the issue of the purpose of a text . . . In fact, in my view they all remain well within the walls of the old intellectual ghetto. They exhibit the credulity characteristic of the traditional settings of Judaic studies. . . and they take not only as fact but at face value everything in the holy books (1986, 1)

Modern scholars, amongst them, Neusner (1980, 1986) and Lightstone (1984) have developed a new approach. They maintain that before investigating the minute-content of a document, one has to consider its literary traits, which means that the genre, the structural organization, the language, the patterns and formulas seen as a whole will allow the investigator to draw a picture of the document which will give a clue as to the type of document he is confronted with, the possible purpose of its author/editor, and the kind of readers the latter was aiming at.

The context of the text and the text itself are then witness to each other. From the text we have an aperture to its context; from the context, we get a better understanding of the text. The context of the text is also a witness to the author/editor of the document, who, in turn, is a witness to a particular world view.

The specific allegations of a document have to be examined within the contingency of the text itself. The pericopae of the Mishnah, which provide some 'social' information about the early rabbis, have to be seen within the context of the Mishnah as a whole. The consensus today about the nature of the Mishnah does not allow us to give a lot of credibility to the social information it contains. It cannot be used as a mean to investigate the social milieu of the author(s)/editor(s). (Lightstone 1984)

A knowledge of the social milieu of the author/editor is an important tool for the understanding of the laws themselves for as Boaz Cohen said, one has to be "possessed of a sound knowledge of the systems he is comparing", and this knowledge has to be "gained by a thorough acquaintance with the original sources studied in connection with social, economic and religious background".

To elucidate the context of the text from the literary traits of a document could be another way to gain some knowledge about the social milieu. The purpose of this study is to examine this possibility by analyzing the Mishnah and the Institutes within a socio-anthropological theoretical framework similar to that which was developed and used principally by Mary Douglas (1966, 1975, 1978).

The Mishnah is evidence of a Jewish society, a society as seen through the eyes of its author(s)/editor(s) or conceived through his/their mind(s). The society of the Mishnah is explicitly, by the content of most of its laws, a religious society centered on the Temple. But the Temple no longer existed at the time of the redaction of the Mishnah. This society, which is voluntarily projected through the content of the Mishnah, is seen by modern scholars as imaginary and utopic. Lightstone studying the form and content of the Mishnah writes,

Mishnah has couched its content in forms and formulary patterns, assimilating all idiomatic and everyday traits of language to its limited and disciplined modes of speech. Mishnaic language seems intentionally divorced from the 'real' world, creating its own plane of reality at once more subtle and complex, at once more regular, delimited and defined. That world exists only within the rabbinic circles, and even at that, still 'three feet off the ground' of the daily, social world of even that small elite group; Mishnaic hebrew could not have served the mundane requirements of the masters and disciples.

Mishnah's content only reinforces this view of matters. For all its substantive concreteness, its concern with pots and pans, it reflects no real life, and at many junctures could not provide the blueprint for a community. Here too, we find ourselves nowhere (utopia), except in the mind of the rabbis. (1984, 154).

Before us are two legal documents, whose form and content are witnesses of certain social realities. This reality, for the Roman world, finds

corroboration in all the extra-legal data that we possess from the Roman world of late Antiquity. The Jewish reality of the Mishnah appears to be one more of an utopian world than of a real world. There exist no extra-mishnaic data that could furnish additional information about the social reality of the Jewish community which was witness and/or gave birth to the Mishnah. We are left with an 'unknown' value, the Mishnah's social reality, the knowledge of which is essential to effect comparative research between the two bodies of law.

If the two societies, of which the legal systems are compared, are two societies whose realities are completely opposed, what would be the value of a statement that affirms that one society surely borrowed from the other some essential legal concepts or principles? How can such an affirmation not be built on shaky ground? A borrowed legal concept like a borrowed object has to correspond to a need in the borrower for such concept or object. An individual borrows an object with which he will be comfortable, one that fits his own personal lifestyle. So a society should similarly only borrow a legal concept if it has need of it and is comfortable with it. This means that the borrowed concept or principle could be integrated in the whole legal system without disrupting both this system and the society which created it. We are now within a vicious circle: what can we do when we want to compare two systems of law of whose mother societies only one is known? Like in an algebraic equation, we have an 'unknown'; and upon the value of the 'unknown' depends the value of the equation.

Some modern scholars, confronted with such a problem, have offered new ways of utilizing the rabbinic sources in the quest of the social realities hidden behind them. They have come up with more modest and realistic interpretation of these sources. For example, William Scott Green analyzes

the form and content of the Mishnah searching for an 'appropriate' context for the historical understanding and the interpretation of rabbinic literature. The result of his search makes him conclude that by studying the literary *genre* of the Mishnah, he came closer to the reality of the early rabbis, but only close enough to believe that the early Rabbis were, *most probably* an intellectual nucleus of aficionados. He writes,

The identification of the Mishnah's literary genre makes it hard to be sanguine about extracting its social world, for it is difficult to imagine a literary form more removed from social reality and less able to capture anything of it than a list. Jack Gooddy observes, lists "stand opposed to the continuity, the flux, the connectedness of the usual speech forms, that is, conversation, oratory, etc., and substitute an arrangement in which concepts, verbal items, are separated not only from the wider context in which speech always, or almost always, take place, but separated too from one another." (1983, 200)

The most elementary and concise *halakic* statement in the Mishnah or the *gemara* assumes knowledge of a host of implicit rules and behaviours, presumes a universe of tacit understanding. Rabbinic literature is produced from within and is directed to other specialists, the rabbinic *conoscenti*. It virtually ignores the world outside of its own preoccupations and obsessions. (1983, 201)

For these reasons Green discards the search for the social context. He writes,

The social context, the most popular in current academic analysis is the most difficult to construct because the limitations of the sources force an overreliance on theories based on data different from those of the texts themselves. The focus on the intellectual world of rabbinism seems to offer advantages over these other two (the political and the social). It allows us to hover close to the texts themselves and, in some degree, to participate in their activities. (1983, 203)

The methodology of this study, following Green's words, is to "hover close to the texts themselves" and undertake a literary analysis of the general structure of the two documents, the Mishnah and the Institutes.

The results of this analysis will then be evaluated within the above mentioned socio-anthropological framework. One of Mary Douglas' tenets is that in rules, rituals, language and repeated behaviour, is encoded the society's own system of classification.

If language is a code, where is the precoded message? The question is phrased to expect the answer: nowhere. In these words a linguist is questioning a popular analogy. But try it this way: if food is a code, where is the precoded message? Here, on the anthropologist's home ground, we are able to improve the posing of the question. A code affords a general set of possibilities for sending particular messages. If food is treated as a code, the messages it encodes will be found in the pattern of social relations being expressed. (Douglas 1975: 249).

This system of classification is such that it will prompt someone to agree or disagree instinctively, with a 'gut' reaction, to what is or is not 'self-evidently true'.

A self-evident statement is one which carries its evidence within itself. . . The recognition of sameness is firmly anchored in social experience: an individual in the community experiences stimulus-synonymy, which approximates to sameness of conforming experiences and disconfirming experiences. Sameness of meaning is traced to verbal habits which are determined by community-wide collateral information. (Douglas 1975, 277-78)

Texts are written language and as such contain implicitly the system of classification of the society to which the author/editor is a part. This is what Douglas attempted to do in her study of *Leviticus* (1966, 1972).

I have recently analyzed the Israelite rules for altar and table as a particular type of classification-system. When its processes of inclusion and identification have been worked through, the result

is a series of concentric circles, each larger boundary reinforcing the inner one, each inner one enclosing yet another. Everything that seems eligible to stand across any of the boundaries is picked out and put into the set of defilement. Our speculations about the kind of social intention which organises its universe in this way are straightforward. Here is a people who prefer their boundaries to remain intact. (1975, 304)

The cosmology or world-view of an individual<sup>1</sup>, part of a group of individuals, is so intrinsically linked to the social organization of the said group, that, in fact, it replicates it (Durkheim 1915). Applying to the textual language Mary Douglas's contention - that language implicitly encodes the society's system of classification - we should be able to move from the document to the world-view and from the world-view to the society's system, both as projected by the author/editor. Once we have before us a clue to that system, we will be in a better position to apprehend the society's legal system and compare the latter with another one.

In the organization of a document, many levels of structure exist. At the conscious level, the author will organize his thoughts to serve the purpose he is pursuing. He will choose the type of document which is normally used for the message he wants to convey. He will select a 'mould' which he recognizes as having by its structural traits the inner qualifications required to properly project the content of his thoughts. A legal work would not be put in the same kind of document as a work of imagination, a novel, or an epistle.

Once the author/editor has chosen the 'mould' for his thoughts, he will present them by following the established rules of the *genre* for this type of document. This 'mould' or literary *genre* had been devised by the society to whom the author wants to carry his message. By using this mould, he is putting his readers in the proper state of mind to be receptive to the text

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<sup>1</sup> The 'gut' feeling by which man perceives and apprehends his world.

which itself carries his ideas. This genre, which expressly carries the author's ideas also carries implicitly the structures of his society through the literary traits of the document. As Poltzin writes,

The very identity of literature depends upon an individuality and an anatomy largely concentrated on the plane of expression. . . Thus my last conviction concerning the two planes of language: the sign system we call language, the language products we call literature, exist on the two planes of expression and content, upon each of which language simultaneously operates and interacts. This means that content-analysis of a text must somehow complement its expression-analysis. (1977,14)

Following Poltzin's idea of the complementary nature of form and content analysis, this research will examine the literary organization of the Mishnah and the Institutes. By literary organization, we mean the literary layout of the documents i.e. how the different elements of the text are gathered together to express the author/redactor's thoughts. This structural analysis of the documents will only be concerned with the most apparent level of organization, that which is evident before our eyes and which needs only to be outlined in order to be apprehended by the mind. Once this is done, our study will examine this organization within the theoretical framework hereabove described for the purpose of eliciting from it some clue to the social world as apprehended by each author/editor. This literary examination is a combination of form and content analysis for in the course of determining the layouts of the two documents we will come across their content, for both form and content are indissociable within the texts themselves.

For the purpose of this study, our research will aim at certain elements of the content which we believe are the most susceptible to bring results. By choosing certain elements among many, we believe with Durkheim and

Douglas, that the society's structures are contained in the part as it is in the whole. In the part we shall find the basic structures of the whole.

As this work is necessarily limited in space, we have chosen among all the laws, those which are the most susceptible to evince the world-view/social information we are looking for. From our readings of Douglas' researches in the anthropological field, we found that most of the primitive tribes she studied were primarily concerned and ruled by the man-woman relationship that their society had established. In Purity and Danger Douglas writes,

The integrity of the social structure is very much at issue when breaches of the adultery and incest rules are made, for the local structure consists entirely of categories of persons defined by incest regulations, marriage payments and marital status. (1966,131)

About the Walbiri she writes,

When male dominance is accepted as a central principle of social organization and applied without inhibition and with full rights of physical coercion, beliefs in sex pollution are not likely to be highly developed. On the other hand, when the principle of male dominance is applied to the ordering of social life but is contradicted by other principles such as that of female independence, or the inherent right of women as the weaker sex to be more protected from violence than men, then sex pollution is likely to flourish. (1966, 142)

About the Enga,

The whole society is especially likely to be founded on a contradiction if the system is one in which men define their status in terms of rights over women. (1966, 149)

About the Lele,

The Lele are an example of a social system which is continually liable to founder on the contradiction that female manoeuvring gives to male dominance. All male rivalries are expressed in the competition for wives. A man with no wife is below the bottom rung of the status ladder. With one wife he can get a start, by begetting and thus qualifying for entry to remunerative cult associations. (1966, 149)

Accepting Douglas' assumptions we will therefore be looking in the Mishnah and the Institutes for the laws concerned with betrothal and/or marriage. For the purpose of our analysis, we will not consider the ancillary laws which relate to matters connected with marriage. They will, however, be integrated into our study when they are located in pericopae dealing with marriage.

Our methodology for this research will consist in a lengthy perigrination through the two documents. In order to find the literary layouts of the documents, we will wander through them using the laws of marriage as our leading thread. Along the way, we will get acquainted with the content of the text, especially with the laws on marriage. Once these laws are identified and dutifully located within the text, we will analyze these data within the socio-anthropological framework hereabove described.

The present work will be divided in two parts. The first part will present an account of our thorough reading of the Mishnah and the Institutes by offering a general presentation of the literary form of the two documents. The acquaintance with the content of the latter will be done through the presentation of the data collected relative to the laws on marriage<sup>1</sup>.

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<sup>1</sup> The purpose of this study being the study of the literary layouts of the Mishnah and the Institutes, it will not deal with the minute content of each and every law related to marriage. For any account of such content, we suggest to consult Jacob Neusner's History of the Mishnaic Laws in 43 volumes, E.J. Brill.

The second part will outline the respective layout of the documents and analyze it together with the collected data within the socio-anthropological framework as above described.

## PART ONE: LITERARY ANALYSIS OF FORM AND CONTENT

### I - GENERAL PRESENTATION OF THE DOCUMENTS

Before we present the data of our minute reading of the documents, we introduce them by giving some general considerations about their respective literary form.

Both the Mishnah and the Institutes appear to be the results of "one-mind-at-work". In both documents, we find this unity of authorship through consistency in style (concise and dry as we may expect from documents dealing with laws), consistency in language and in use of literary form-patterns. Scott Green writes about the Mishnah,

The Mishnah clearly exemplifies the *list* genre. Its tractates and sub-tractates comprise series of independent units that are paratactically arranged but demonstrate formal and thematic coherence. The list-like character of the Mishnah appears even in the structure of some of its smaller pericopae. It is evident not only in the Mishnah's own brief catalogues, but also in the dispute. The latter usually consists of a topic sentence or phrase, followed by the opinions of two or more rabbis. Normally these opinions conflict and are joined by the simple conjunction "and". No suggestion is made in the form of the dispute that the teachers actually engaged one another in conversation, nor is one opinion given priority over the other through the use of a hypotactic conjunction such as "but". The relevant opinions are simply juxtaposed under an appropriate heading - a formulation that amounts to a short list. (1983, 200).

For example, we read in the Mishnah,

If a man married a woman and found not in her the tokens of virginity, and she said, 'After thou didst betroth me I was forced

and thy field was laid waste', and he said, 'Not so, but [it befell] before I betrothed thee, and my bargain was a bargain made in error', Rabban Gamaliel and R. Eliezer say: She may be believed. R. Joshua says: We may not rely on her word; but she must be presumed to have suffered intercourse before she was betrothed and to have deceived her husband unless she can bring proof for her words. (Ket.1:6)

If she said, 'It was through accident', and he said, 'Not so, but thou hast been trampled of man', Rabban Gamaliel and R. Eliezer say: She may be believed. R. Joshua says: We may not rely on her word, but she must be presumed to have been trampled of man unless she can bring proof for her words. (Ket.1:7)

If they saw her speaking with some man in the street and said to her "What manner of man is this?" [and she answered], 'His name is NN. and he is a priest', Rabban Gamaliel and R. Eliezer say: She may be believed. R. Joshua says: We may not rely on her word, but she must be presumed to have suffered intercourse with a *Nathin* or a bastard unless she can bring proof for her words. (Ket.1:8)

If she was found with child and they said to her, 'What manner of unborn child is this?' [and she answered,] 'It is by one named NN. and he is a priest', Rabban Gamaliel and R. Eliezer say: She may be believed. R. Joshua says: We may not rely on her word, but she must be presumed to be with child by a *Nathin* or a bastard unless she can bring proof for her words. (Ket.1:9)

Reinach writes about the Institutes,

C'est ce caractère de commentaires "dépourvus de tout ornement oratoire" comme le dit Cicéron (Brutus, 75.262), de ceux de César, qu'il faut avoir présent à l'esprit pour comprendre qu'ils ne nous donnent pas, comme le reproche leur en a été fait, un tableau complet de la législation de l'époque. Il s'agit avant tout d'un ouvrage d'enseignement, où le maître ne s'interdit pas, pour expliquer le droit de son temps, les vues historiques ou rétrospectives, qui ne sont pas la partie la moins précieuse de son travail. . . il faut admettre avec Dernberg [1869] suivi par toute la critique moderne que nous avons affaire à un cours magistral. Gaius en effet devait avoir sous les yeux les textes qu'il commentait et ses commentaires ne servaient qu'à lever les

difficultés qu'ils soulèvent: quand le texte est clair, il se borne à y renvoyer <sup>1</sup>

*[ If the interdict has reference to land or houses, the Praetor orders that party to have the preference who, at the time when the interdict was issued, obtained possession from his adversary, neither by force nor clandestinely, nor with his acquiescence.*

*When, however, it has reference to movable property, he orders that party to have the preference who, for the greater part of that year, has held possession against his adversary neither by force, nor clandestinely, or with his acquiescence; and this is sufficiently apparent from the terms of the interdicts themselves. ]* (IV, 150).<sup>2</sup> particulièrement quand il arrive peut-être pressé par le temps, en fin de cours.

*[ Security in certain instances is simple, that is, given without sureties; and in others it is given with sureties; in still other instances, it is given by oath; and in some cases a reference is made to judges, that is to say, if the party does not appear, he may be immediately condemned to pay the amount of the security by the judges; and all these things are explained at length in the Edict of the Praetor ]* (IV, 185). Ailleurs il renvoie à d'autres commentaires particuliers

*[ All that relates to this subject appears to have been sufficiently discussed up to this point; and a more minute explanation will be found in particular commentaries devoted to this subject ]* (III, 54) sans préciser si ces autres commentaires sont ou non de sa plume. Des répétitions, qui seraient inutiles, s'il s'agissait d'un manuel - et qui ne sont même pas textuelles surtout quand il y a renvoi d'un commentaire à un commentaire précédent (Cf. III, 56 et I, 22), - militent encore en faveur de cette thèse. Notons que lorsque la référence se fait à l'intérieur d'un même commentaire, Gaius emploie le mot *supra*. (Cf. I, 113 et I, 119); d'un commentaire à l'autre (Cf. III, 66), il emploie l'expression *alio loco* ou l'expression *suo loco*. Ainsi que le note Dernberg, la fréquence de l'expression *uideamus* est bien la marque d'un enseignement oral. Mais à côté de ces impératifs, nous trouvons des *uideamus* (II, 121; III, 116, 202) à propos desquels s'impose la remarque suivante: *la*

<sup>1</sup> We are using the English translation of the Institutes for the following quotations chosen by Reinach to illustrate his position.

<sup>2</sup> Italics mine. Reinach simply refers the reader to particular articles of law in the Institutes, without quoting them at length. I have supplied the pertinent quotes.

*recherche ainsi annoncée reste en l'air*, comme s'il s'agissait d'un point délicat que le professeur se réserve de traiter à part.

Gaius d'autre part ne tient pas toutes les promesses de son préambule. Alors qu'il nous annonce qu'il indiquera en chaque circonstance la différence entre le droit civil et le droit des gens, cet engagement n'est tenu que dans le premier livre et au début du second. (1979, viii, ix)

Taking into account those comments by Scott Green and Julien Reinach we hesitate to consider the Mishnah and the Institutes as 'codes of laws'. To remain in the realm of legal terminology, we prefer, for the Mishnah, to use professor Lightstone's expression of "study of law" (1988, chap IV)<sup>1</sup> and for the Institutes the term 'commentaries' for the titles *Commentarius Primus*, *Commentarius Secundus*, *Commentarius Tertius* and *Commentarius Quartus* were given by Gaius himself to his work or by its original editor. Concerning the lack of specific titles in the Institutes, Reinach reminds us,

Il ne nous est fait mention que de Commentaires (*Commentarii*). Les Romains ne paraissent pas avoir été très rigoureux en matière de titres. (1979, vii)

The Mishnah refers only implicitly to biblical laws although the biblical laws are the foundations of the mishnaic laws; when a biblical law is referred to explicitly, it is done so in the regular course of the text and only the *conoscenti* (to use S. Green's term 1983, 201) are able to recognize them as such. For example, in Ket.1:6 above quoted, it says: "If a man married a woman and *found not in her the tokens of virginity*" it refers to Deut. 22:14 which reads as follows:

"... and charges her with shameful conduct, and brings an evil name upon her, saying, 'I took this woman, and when I came near her, I did not find in her the tokens of virginity,'"

<sup>1</sup> See also Lightstone's paper "The Talmudization of Aggadah" presented to the Canadian Society of Biblical Studies, Winsor, Ont. May 31st 1988.

Gaius, for his part, mentions the laws by their names, for examples.

It is provide by the *Lex Aelia Sentia* that slaves who have been placed in chains by their masters, ... (I:13)

Slaves manumitted in certain ways are called 'Latini Juniani'; 'Latini' for the reason that they are classes with Latin colonists, 'Juniani' because they received their freedom under the terms of the *Lex Junia*, as before it was passed they were considered slaves. (I:22)

Moreover, by the *Lex Fufia Caninia* a certain limit is established with reference to the manumission of slaves by a will (I:42)

What we have stated, however, with reference to a female Roman citizen marrying a foreigner, and their issue being an alien, is derived from the *Lex Minicia*, ... (I:78)

Therefore, if anyone appoints a guardian for his son and daughter by will, and both should arrive at the age of puberty, the son will cease to have a guardian, but the daughter will nevertheless remain subject to guardianship; for it is only under the *Lex Julia et Papia* that women are released from guardianship ... (I:145)

Formerly, however, according to the Law of the Twelve Tables, females had agnates as legal guardians, but afterwards the *Lex Claudia*, which abolished the guardianship of agnates, ... (I:157)

If there should be no lawful guardian for a person, one is appointed for him under the *Lex Atilia* in the City of Rome by the Urban Praetor and a majority of the tribunes of the people, who is styled an "Atilian guardian": and in the provinces he is appointed by the governor under the *Lex Julia et Titia*. (I:185)

In *Commentarius Secundus, Tertius and Quartus* we find mentions of many of the above quoted laws plus many others.

As the Mishnah refers to different rabbis by their names while presenting their opinions, so does Gaius, who mentions his colleagues in the law business,

A grandson, however, who is begotten after the third sale of a son, is not born under the control of his grandfather; but Labeo holds that he is born under the control of him to whom his father was sold. (I:135)

Jurists differ only upon one point, namely, Sabinius, Cassius and our other preceptors hold that what has been bequeathed in this

manner becomes the property of the legatee as soon as the estate has been accepted, even if he is ignorant that the legacy was left to him; but after he does know it, and has rejected it, the legacy will no longer be valid. Nerva, Proculus and the authorities of the other school, however do not think that the bequest becomes the property of the legatee if he should refuse to accept it. But at present, in accordance with the terms of a Constitution of the Divine Pius Antonius, the opinion of Proculus seems to be the one which has been adopted. (II:195)

Gaius also gives his personal opinion of certain matters, for example, the following comment,

There does not seem to be any good reason, however, why women of full age should be under guardianship, for the common opinion that because of their levity of disposition they are easily deceived, and it is only just that they should be subject to the authority of guardians, seems to be rather apparent than real; for women of full age transact their own affairs, but in certain cases, as a mere form, the guardian interposes his authority, and he is often compelled to give it by the Praetor, though he may be unwilling to do so. (I:190)

Some of his comments are also given in a familiar way of discourse, for example,

Marriage is indeed prohibited between brother and sister, whether they are born of the same father or mother or merely of one of these parents in common; but although legal marriage cannot take place between me and my sister by adoption as long as the adoption continues to exist, still if the adoption is dissolved by emancipation I can marry her, and if I should be emancipated, no impediment to the marriage will exist. (I:61)

Moreover, I cannot marry my former mother-in-law or daughter-in-law, or my step-daughter or step-mother. We make use of the word "former" because if the marriage by which affinity of this kind was established is still in existence, there is another reason why I cannot marry her, for a woman cannot marry two men, nor can a man have two wives. (I:63)

The language of the Mishnah for its part is much more formal and nowhere is there a frank statement of the personal opinion of the author(s). As an example, we refer to the quotations of Ketubot which appear on page 20 of the present study.

Let us now examine how each document develops a legal argumentation. The legal pattern evolved by the Mishnah is that of the 'case' study. It presents a case, then it might state the different possibilities and give the different opinions concerning it. Very often, through an association of thought, it takes a new direction and develops other cases out of the first and so on. For example, from tractate *Gittin* (Divorce) in the *Nashim* (Women) division, we find the following development,

No bill of divorce is valid that is not written expressly for the woman. Thus if a man was passing through the market and heard the scribes calling out, 'Such a man is divorcing such a woman of such a place', and he said, 'That is my name and that is the name of my wife', it is not a valid document wherewith to divorce his wife. Moreover, if he had drawn up a document wherewith to divorce his wife, but he changed his mind, and a man of his city found him and said to him, 'My name is like thy name and my wife's name is like thy wife's name', it is not a valid document wherewith to divorce his wife; moreover if he had two wives and their names were alike and he had drawn up a document wherewith to divorce the elder, he may not therewith divorce the younger; moreover if he said to the scrivener, 'Write it so that I may divorce therewith whom I will', it is not a valid document wherewith to divorce any one. (Gitt. 3:1)

He that writes out copies of the formula of a bill of divorce should leave space for the man, for the woman, and for the date; in bonds of indebtedness he should leave space for the lender, for the borrower, for the sum, and for the date; in deeds of sale he should leave space for the buyer, for the seller, for the price, for the field, and for the date - because of the advantage. R. Judah pronounces them all invalid. R. Eliezer pronounces them all valid, excepting the writs of divorce, for it is written *And he shall write for her* - expressly for her. (Gitt:3:2)

If a man brought a bill of divorce and lost it but straightway found it again, it remains valid; otherwise it becomes invalid. If he found it in a satchel or a bag, and recognized it, it remains valid. If a man brought a bill of divorce, and he had left the husband aged or sick, he must deliver it to her with the presumption that he is still living. If the daughter of an Israelite was married to a priest and her husband went beyond the sea, she may eat of Heave-offering with the presumption that he is still living. If a man sent his Sin-offering from beyond the sea, it is offered with the presumption that he is still living. (Gitt. 3:3)

Three things did R. Eleazar b. Perata declare before the Sages and they confirmed his words: concerning [them that live in] a town that is besieged, or [that travel in] a ship storm-tossed at sea, or a man that is gone forth to be judged - these must be presumed to be still living; but concerning [them that lived in] a town that was overcome after a siege, or [them that travelled in] a ship that was lost at sea, or a man that has been condemned to death, the more stringent rulings for the living and the more stringent rulings for the dead apply to them; [thus whether the wife of such a-one was] the daughter of an Israelite married to a priest, or a priest's daughter married to an Israelite, she may not eat of Heave-offering. (Gitt. 3:4)

If within the Land of Israel a man brought a bill of divorce and fell sick, he may send it by another's hand; but if the husband had said, 'Take from her such a thing for me', he may not send it by another's hand, since it was not the will of the husband that his pledge should fall into another's hand. (Gitt. 3:5)

If a man brought a bill of divorce from beyond the sea and fell sick, the court appoints another and sends him; but the first messenger must say before the court, 'It was written in my presence and it was signed in my presence'; and the other messenger need not to say, 'It was written in my presence and it was signed in my presence'; but he says, 'I am the messenger of the court'. (Gitt. 3:6)

If a man lent money to a priest or a levite or a poor man, so that in its stead he may set apart what would fall to their lot, he may set it apart with the presumption that they are still living, and he need not fear lest the priest or the levite shall have died or that the poor man shall have become rich. If they died he must get permission from the heirs; but if he had lent the money in the presence of the court he need not get permission from the heirs. (Gitt. 3:7)

If a man put aside produce so that by virtue of it he may set apart Heave-offering or Tithes, or if he put aside money so that by

virtue of it he may set apart the Second Tithe, he may, by virtue of them, continue to set apart his dues with the presumption that what he put aside still endures; but if it was lost he must assume [that it had been lost] throughout the past twenty-four hours. So R. Eleazar b. Shammua. R. Judah says: At the three times must they examine wine [that has thus been put aside]: during the east wind that follows the Feast [of Tabernacles], when the berries first appear, and when the juice enters into the unripe grapes. (Gitt. 3:8)

When a general law is stipulated in the Mishnah, it is always after many cases have been presented. For examples,

If a man said, 'I have seduced the daughter of such-a-one', he must pay [compensation for] indignity and blemish on his own admission, but he does not pay the [prescribed] fine. If a man said, 'I have stolen', he must repay the value on his own admission, but he does not make double or fourfold or fivefold restitution. [If he said,] 'My ox has killed such-a-one', he does not make restitution on his own admission. This is the general rule: whosoever must pay more than the cost of damage done does not pay on his own admission. (Ket. 3:9)

If it was received [from the husband] by a minor who became of age [before he delivered it to the wife], or by a deaf-mute whose senses became sound, or by an imbecile who became sane, or by a gentile who became a proselyte, it is still invalid. But if [it was received from the husband by] one of sound senses who then became a deaf-mute and again became of sound senses [before he delivered it to the wife], or by one with sight who then became blind and again received his sight, or by one who was sane who then became an imbecile and again became sane, it is valid. This is the general rule: If at the beginning and at the end an act is performed knowingly, it is valid. (Gitt. 2:6)

Gaius, instead of starting with a specific case, begins by stating a general law. He then develops successively its internal divisions and the respective subdivisions of the latter. The pattern of its development resembles that of a genealogical tree. For example,

All the law which we make use of has reference either to persons, to things, or to actions. Let us first consider persons. (I:8)  
 The principal division of the law of persons is the following, namely, that all men are either free or slaves. (I:9)  
 Again, men who are free are either freeborn or freedmen. (I:10)  
 Freeborn are those who are free by birth, freedmen are those who have been manumitted from legal slavery. (I:11)  
 Moreover, there are three classes of freedmen, namely, Roman citizens, Latins, and *dediticii*. Let us consider each of these separately, and in the first place, *dediticii*. (I:12)

There is another division with reference to the law of persons, for some persons are their own masters, and some are subject to the authority of others. (I:48)

Again, of those persons who are subject to the authority of another, some are in his power, others are in his hand, and others are considered his property. (I:49)

Let us now consider those that are subject to the authority of another, for, when we ascertain who they are, we shall then understand what persons are their own masters. (I:50)

In the first place, let us examine those who are in the power of another. (I:51)

Now let us consider those persons who are in our hand, which right is also peculiar to Roman citizens. (I:108)

Both males and females are under the authority of another, but females alone are placed in the hands. (I:109)

Formerly this ceremony was performed in three different ways, namely by use, by confarreation, and by coemption. (I:110)

A woman came into the hand of her husband by use when . . . etc (I:111)

## II- PRESENTATION OF RELEVANT DATA

As mentioned in our Introduction, the laws which deal with marriage will be the landmarks for our perusal of the two documents. Any law concerning (directly or indirectly) women will of course catch our attention as a first indication of a possible link with marriage.

While searching for laws connected with marriage, we will *ipso facto* become acquainted with the literary traits of the two documents as well as with their content.

Before presenting our material from the Mishnah and the Institutes, we will outline our methodological guidelines. The laws which are our target are those which deal with elements encountered in a marital situation. For example, laws concerning widows alone will not be considered; neither will the laws pertaining to the heirs of husband or wife. Laws related to Divorce will be considered, but laws concerning a woman already divorced will be ignored unless she is seen in the context of remarriage. We will bring special attention to the laws which are related to the creation of the marital bond i.e. laws on or about betrothal.

This research, in the course of applying Mary Douglas' socio-anthropological approach, is only interested in the 'geographical bearings' or in the location of the landmarks within the documents. What will be shown in the list of data which follows, is the location of the laws, not the laws themselves.

The data list shall be understood in the following manner: As laws connected with women could lead us to the laws on marriage, we will give an account of our search by identifying the paragraphs which mention women. If those laws are not only connected with women but also with a marital situation as above explained, it will be indicated as well. If they are not only connected with women and marriage, but also with betrothal or divorce, this will also be indicated. If some of those laws 'bear directly' upon the creation of the matrimonial link (betrothal) they will be transcribed.

The following inscriptions, or any combination of them, will be used:

'Related to women'  
 'Related to marriage'  
 'Related to betrothal'  
 'Related to divorce'

It shall be understood that when a law is identified in the above manner, it does not necessarily mean that it deals ONLY with these specific elements. It may, in fact, be also concerned with other matters but this is not within the scope of this study.

A statistical account of the number of paragraphs for each inscription will be given after each unit of compilation.

We will proceed in the same manner for each commentary of the Institutes.

### THE MISHNAH

Before perusing through the following data, we wish to remind the reader that his (her) attention shall focus on the location and degrees of concentration of the data related to marriage. These facts will serve as the basis for the understanding of the literary layouts of the documents as well as for their further socio-anthropological analysis.

First Division: *Zeraim* ('Seeds'), 655 paragraphs.

First tractate: *Berakoth* ('Benedictions'), 58 paragraphs.

Ber.2:5 : related to marriage.

Ber.3:3 : related to women.

Ber.7:2 : related to women.

Second tractate: *Peah* ('Gleanings'), 69 paragraphs.

No pertinent paragraph.

Third tractate: *Demai* ('Produce not Certainly Tithed'), 53 paragraphs.

No pertinent paragraph.

Fourth tractate: *Kilaim* ('Diverse Kinds'), 77 paragraphs.

No pertinent paragraph.

Fifth tractate: *Shebiit* ('the Seventh Year'), 89 paragraphs.

Shebi.5:9: related to women.

Shebi.8:8: related to women.

Sixth tractate: *Terumoth* ('Heave-offerings'), 101 paragraphs.

Ter.6:4: related to women.

Ter.7:2: related to women and marriage.

Ter.8:1: related to women and marriage.

Ter.8:12: related to women.

Seventh tractate: *Maaseroth* ('Tithes'), 40 paragraphs.

No pertinent paragraph.

Eighth tractate: *Maaser sheni* ('Second Tithes'), 56 paragraphs.

M. Sh.1:7: related to women.

M. Sh.4:4: related to women.

Ninth tractate: *Hallah* ('Dough-offerings'), 38 paragraphs.

Hall.2:2: related to women.

Hall.3:1: related to women.

Hall.3:2: related to women.

Hall.3:3: related to women.

Hall.4:1: related to women.

Hall.4:8: related to women.

Tenth tractate: *Orlah* ('the Fruits of Young Trees'), 35 paragraphs.

No pertinent paragraph.

Eleventh tractate: *Bikkurim* ('First Fruits'), 39 paragraphs.

Bikk.1:5: related to women and marriage.

Out of 655 paragraphs, the first Division, *Zeraim*, contains 18 paragraphs related to women and/or marriage.

Second Division: *Moed* ('Set Feasts'), 656 paragraphs.

First tractate: *Shabbat*, 139 paragraphs.

Shab.6:1: related to women.

Shab.6:3: related to women.

Shab.6:5: related to women.

Shab.6:6: related to women.

Shab.6:7: related to women.

Shab.9:3: related to women.

Second tractate: *Erubin* ('the Fusion of Shabbat Limits'), 96 paragraphs.

Erub.7:6: related to women and marriage.

Third tractate: *Pesachim* ('Feast of Passover'), 88 paragraphs.

Pes.2:7: related to women.

Pes.3:7: related to women and marriage.

Pes.8:1: related to women and marriage.

Pes.8:5: related to women.

Pes.9:4: related to women.

Fourth tractate: *Shekalim* ('the Shekel Dues'), 51 paragraphs.

Shek.1:3: related to women.

Shek.1:5: related to women.

Shek.1:6: related to women.

Shek.2:5: related to women.

Fifth tractate: *Yoma* ('Day of Atonement'), 61 paragraphs.

Yom.2:8: related to women.

Yom.8:5: related to women.

Sixth tractate: *Sukkah* ('Feast of Tabernacles'), 53 paragraphs.

Sukk.2:8: related to women.

Sukk.3:10: related to women.

Sukk.3:15: related to women.

Seventh tractate: *Yom Tov* or *Beitzah* ('Festival Days'), 42 paragraphs.

No pertinent paragraph.

Eighth tractate: *Rosh Hashanah* (Feast of the New Year'), 35 paragraphs.

No pertinent paragraph.

Ninth tractate: *Taanit* ('Days of Fasting'), 34 paragraphs.

Taan.1:5: related to marriage.

Taan.1:7: related to marriage and betrothal.

Tenth tractate: *Megillah* ('the Scroll of Esther'), 33 paragraphs.

No pertinent paragraph.

Eleventh tractate: *Moed Katan* ('mid-festival days'), 24 paragraphs.

M. Kat.1:7: related to women and to betrothal.

M. Kat.3:2: related to women.

M. Kat.3:3: related to marriage and to betrothal.

M. Kat.3:8: related to women.

M. Kat.3:9: related to women.

Twelveth tractate: *Hagigah* (the Festal-offering'), 23 paragraphs.

Hag.1:1: related to women.

Out of 656 paragraphs, the Second Division, *Moed* contains 28 paragraphs related to women and/or marriage and/or betrothal.

Third Division: *Nashim* ('Women'), 576 paragraphs.

First tractate: *Yebamoth* (Sisters-in-law'), 128 paragraphs.

Yeb.1:1: related to women and marriage.

Yeb.1:2: related to women and marriage.

Yeb.1:3: related to women and marriage.

Yeb.1:4: related to women and marriage.

Yeb.2:1: related to women and marriage.

Yeb.2:2: related to women and marriage.  
 Yeb.2:3: related to women and marriage.  
 Yeb.2:4: related to women and marriage.  
 Yeb.2:5: related to women and marriage.  
 Yeb.2:6: related to women and marriage.  
 Yeb.2:7: related to women and marriage.  
 Yeb.2:8: related to women and marriage.  
 Yeb.2:9: related to women and marriage.  
 Yeb.2:10: related to women and marriage.

Yeb.3:1: related to women and marriage.  
 Yeb.3:2: related to women and marriage.  
 Yeb.3:3: related to women and marriage.  
 Yeb.3:4: related to women and marriage.  
 Yeb.3:5: related to women and marriage.  
 Yeb.3:6: related to women and marriage.  
 Yeb.3:7: related to women and marriage.  
 Yeb.3:8: related to women and marriage.  
 Yeb.3:9: related to women and marriage.  
 Yeb.3:10: related to women and marriage.

Yeb.4:1: related to women and marriage.  
 Yeb.4:2: related to women and marriage.  
 Yeb.4:3: related to women and marriage.  
 Yeb.4:4: related to women and marriage.  
 Yeb.4:5: related to women and marriage.  
 Yeb.4:6: related to women and marriage.  
 Yeb.4:7: related to women and marriage.  
 Yeb.4:8: related to women and marriage.  
 Yeb.4:9: related to women and marriage.  
 Yeb.4:10: related to women and marriage.  
 Yeb.4:11: related to women and marriage.  
 Yeb.4:12: related to women and marriage.  
 Yeb.4:13: related to women and marriage.

Yeb.5:1: related to marriage, betrothal and divorce.  
 Yeb.5:2: related to women, marriage and divorce.  
 Yeb.5:3: related to women, marriage and divorce.  
 Yeb.5:4: related to women, marriage and divorce.  
 Yeb.5:5: related to women, marriage, and divorce.  
 Yeb.5:6: related to women, marriage and divorce.

**Yeb.6:1:** related to women, marriage and betrothal. It reads,

If a man had connexion with his deceased brother's wife, whether in error or wantonness, whether under constraint or willingly, or even if he acted in error and she in wantonness, or he in wantonness and she in error, or he under constraint and she not under constraint, or she under constraint and he not under constraint, whether the act was partial or complete - **he has thereby acquired her to wife;** and there is no distinction respecting the manner of connexion.

**Yeb.6:2:** related to women and marriage.

**Yeb.6:3:** related to women, betrothal and divorce.

**Yeb.6:4:** related to women, marriage and betrothal.

**Yeb.6:5:** related to women and marriage.

**Yeb.6:6:** related to women and marriage.

**Yeb.7:1:** related to women and marriage.

**Yeb.7:2:** related to women and marriage.

**Yeb.7:3:** related to women and marriage.

**Yeb.7:4:** related to women and marriage.

**Yeb.7:5:** related to women and marriage.

**Yeb.7:6:** related to women and marriage.

**Yeb.8:1:** related to women.

**Yeb.8:2:** related to woman and marriage.

**Yeb.8:3:** related to women and marriage.

**Yeb.8:4:** related to women and marriage.

**Yeb.8:5:** related to women and marriage.

**Yeb.8:6:** related to women and marriage.

**Yeb.9:1:** related to women and marriage.

**Yeb.9:2:** related to women and marriage.

**Yeb.9:3:** related to women and marriage.

**Yeb.9:4:** related to women, marriage and betrothal.

**Yeb.9:5:** related to women and marriage.

**Yeb.9:6:** related to women and marriage.

**Yeb.10:1:** related to women, marriage and divorce.

**Yeb.10:2:** related to women and marriage.

**Yeb.10:3:** related to women, marriage and divorce.

**Yeb.10:4:** related to women and marriage.

**Yeb.10:5:** related to women and marriage.

Yeb.10:6: related to women, marriage and divorce.  
Yeb.10:7: related to women and marriage.  
Yeb.10:8: related to women and marriage.  
Yeb.10:9: related to women and marriage.

Yeb.11:1: related to women and marriage.  
Yeb.11:2: related to women and marriage.  
Yeb.11:3: related to women and marriage.  
Yeb.11:4: related to women and marriage.  
Yeb.11:5: related to women and marriage.  
Yeb.11:6: related to women and marriage.  
Yeb.11:7: related to women and marriage.

Yeb.12:1: related to women and marriage.  
Yeb.12:2: related to women and marriage.  
Yeb.12:3: related to women and marriage.  
Yeb.12:4: related to women and marriage.  
Yeb.12:5: related to women and marriage.  
Yeb.12:6: related to women and marriage.

Yeb.13:1: related to women, marriage and betrothal.  
Yeb.13:2: related to women, marriage and betrothal.  
Yeb.13:3: related to women and marriage.  
Yeb.13:4: related to women, marriage, betrothal and divorce.  
Yeb.13:5: related to women, marriage, betrothal and divorce.  
Yeb.13:6: related to women, marriage and divorce.  
Yeb.13:7: related to women, marriage, betrothal and divorce.  
Yeb.13:8: related to women and marriage.  
Yeb.13:9: related to women and marriage.  
Yeb.13:10: related to women and marriage.  
Yeb.13:11: related to women and marriage.  
Yeb.13:12: related to women and marriage.  
Yeb.13:13: related to women and marriage.

Yeb.14:1: related to women, marriage and divorce.  
Yeb.14:2: related to women and marriage.  
Yeb.14:3: related to women and marriage.  
Yeb.14:4: related to women, marriage and divorce.  
Yeb.14:5: related to women, marriage and divorce.  
Yeb.14:6: related to women, marriage and divorce.  
Yeb.14:7: related to women, marriage and divorce.  
Yeb.14:8: related to women, marriage and divorce.  
Yeb.14:9: related to women, marriage and divorce.

Yeb.15:1: related to women and marriage.  
 Yeb.15:2: related to women and marriage.  
 Yeb.15:3: related to women and marriage.  
 Yeb.15:4: related to women, marriage and divorce.  
 Yeb.15:5: related to women and marriage.  
 Yeb.15:6: related to women and marriage.  
 Yeb.15:7: related to women, marriage, betrothal and divorce.  
 Yeb.15:8: related to women and marriage.  
 Yeb.15:9: related to women and marriage.  
 Yeb.15:10: related to women and marriage.

Yeb.16:1: related to women and marriage.  
 Yeb.16:2: related to women and marriage.  
 Yeb.16:3: unrelated.  
 Yeb.16:4: related to women and marriage.  
 Yeb.16:5: related to women.  
 Yeb.16:6: related to women and marriage.  
 Yeb.16:7: related to women and marriage.

Out of 128 paragraphs in tractate *Yebamoth*, 1 is unrelated, 126 are related to 'women', whereas 124 are related to 'women and marriage', 12 are related to 'women, marriage and divorce', 9 are related to 'women, marriage and betrothal', 4 are related to 'women, marriage, betrothal and divorce' and 1 is related to 'women, betrothal and divorce'.

Second tractate: *Ketuboth* ('Marriage deeds'), 111 paragraphs.

Ket.1:1: related to women and marriage.  
 Ket.1:2: related to women, marriage betrothal and divorce.  
 Ket.1:3: related to women and marriage.  
 Ket.1:4: related to women, marriage and divorce.  
 Ket.1:5: related to women, marriage and betrothal.  
 Ket.1:6: related to women, marriage and betrothal.  
 Ket.1:7: related to women and marriage.  
 Ket.1:8: related to women.  
 Ket.1:9: related to women.  
 Ket.1:10: related to women and marriage.

Ket.2:1: related to women and marriage.

Ket.2:2: unrelated.  
Ket.2:3: unrelated.  
Ket.2:4: unrelated.  
Ket.2:5: related to women, marriage and divorce.  
Ket.2:6: related to women.  
Ket.2:7: unrelated.  
Ket.2:8: unrelated.  
Ket.2:9: related to women and marriage.  
Ket.2:10: unrelated.

Ket.3:1: related to women.  
Ket.3:2: related to women.  
Ket.3:3: related to women, betrothal and divorce.  
Ket.3:4: related to women.  
Ket.3:5: related to women and marriage.  
Ket.3:6: related to women, betrothal and divorce.  
Ket.3:7: related to women.  
Ket.3:8: related to women.  
Ket.3:9: related to women.

Ket.4:1: related to women.  
Ket.4:2: related to women, betrothal and divorce.  
Ket.4:3: related to women.  
Ket.4:5: related to women and marriage.  
Ket.4:6: related to women.  
Ket.4:7: related to women and marriage.  
Ket.4:8: related to women and marriage.  
Ket.4:9: related to women, marriage and divorce.  
Ket.4:10: related to women and marriage.  
Ket.4:11: related to women and marriage.  
Ket.4:12: related to women and marriage.

Ket.5:1: related to women, marriage, betrothal and divorce.  
Ket.5:2: related to women and marriage.  
Ket.5:3: related to women and marriage.  
Ket.5:4: related to women and marriage.  
Ket.5:5: related to women and marriage.  
Ket.5:6: related to women and marriage.  
Ket.5:7: related to women and marriage.  
Ket.5:8: related to women and marriage.  
Ket.5:9: related to women and marriage.

Ket.6:1: related to women and marriage.

- Ket.6:2: unrelated.  
Ket.6:3: related to women and marriage.  
Ket.6:4: related to women and marriage.  
Ket.6:5: related to women and marriage.  
Ket.6:6: related to women and marriage.  
Ket.6:7: related to women and betrothal.
- Ket.7:1: related to women and marriage.  
Ket.7:2: related to women, marriage and divorce.  
Ket.7:3: related to women, marriage and divorce.  
Ket.7:4: related to women, marriage and divorce.  
Ket.7:5: related to women, marriage and divorce.  
Ket.7:6: related to women, marriage and divorce.  
Ket.7:7: related to women, marriage, betrothal and divorce.  
Ket.7:8: related to women, marriage and betrothal.  
Ket.7:9: related to women, marriage and divorce.  
Ket.7:10: related to women, marriage and divorce.
- Ket.8:1: related to women, marriage and betrothal.  
Ket.8:2: related to women and marriage.  
Ket.8:3: related to women and marriage.  
Ket.8:4: related to women and marriage.  
Ket.8:5: related to women and marriage.  
Ket.8:6: related to women and marriage.  
Ket.8:7: related to women and marriage.  
Ket.8:8: related to women, marriage and divorce.
- Ket.9:1: related to women, marriage and betrothal.  
Ket.9:2: related to women and marriage.  
Ket.9:3: related to women and marriage.  
Ket.9:4: related to women and marriage.  
Ket.9:5: related to women and marriage.  
Ket.9:6: related to women and marriage.  
Ket.9:7: related to women and marriage.  
Ket.9:8: related to women and marriage.  
Ket.9:9: related to women, marriage and divorce.
- Ket.10:1: related to women and marriage.  
Ket.10:2: related to women and marriage.  
Ket.10:3: related to women and marriage.  
Ket.10:4: related to women and marriage.  
Ket.10:5: related to women and marriage.  
Ket.10:6: related to women and marriage.

Ket.11:1: related to women.  
 Ket.11:2: related to women.  
 Ket.11:3: related to women.  
 Ket.11:4: related to women.  
 Ket.11:5: related to women.  
 Ket.11:6: related to women, marriage, betrothal and divorce.

Ket.12:1: related to women and marriage.  
 Ket.12:2: related to women and marriage.  
 Ket.12:3: related to women.  
 Ket.12:4: related to women.

Ket.13:1: related to women and marriage.  
 Ket.13:2: related to women and marriage.  
 Ket.13:3: unrelated.  
 Ket.13:4: unrelated.  
 Ket.13:5: related to women and marriage.  
 Ket.13:6: unrelated.  
 Ket.13:7: unrelated.  
 Ket.13:8: unrelated.  
 Ket.13:9: unrelated.  
 Ket.13:10: related to women and marriage.  
 Ket.13:11: related to women, marriage and divorce.

Out of 111 paragraphs in tractate *Ketuboth*, 13 are unrelated, 98 are related to 'women', whereas 75 are related to 'women and marriage', 13 are related to 'women, marriage and divorce', 9 are related to 'women, marriage and betrothal', 6 are related to 'women, marriage, betrothal and divorce', 3 are related to 'women, betrothal and divorce' and 1 is related to 'women and betrothal'.

Third tractate: *Nedarim* ('Vows'), 90 paragraphs.

Ned.1:1: unrelated.  
 Ned.1:2: unrelated.  
 Ned.1:3: unrelated.  
 Ned.1:4: unrelated.

Ned.2:1: related to women and marriage.  
 Ned.2:2: unrelated.

Ned.2:3: unrelated.  
 Ned.2:4: unrelated.  
 Ned.2:5: unrelated. (?)

Ned.3:1: unrelated.  
 Ned.3:2: unrelated.  
 Ned.3:3: unrelated.  
 Ned.3:4: unrelated.  
 Ned.3:5: unrelated.  
 Ned.3:6: unrelated.  
 Ned.3:7: unrelated.  
 Ned.3:8: related to women.  
 Ned.3:9: unrelated.  
 Ned.3:10: unrelated.  
 Ned.3:11: unrelated.

Ned.4:1: unrelated.  
 Ned.4:2: unrelated.  
 Ned.4:3: related to women and marriage.  
 Ned.4:4: unrelated.  
 Ned.4:5: unrelated.  
 Ned.4:6: unrelated.  
 Ned.4:7: unrelated.  
 Ned.4:8: unrelated.

Ned.5:1: unrelated.  
 Ned.5:2: unrelated.  
 Ned.5:3: unrelated.  
 Ned.5:4: unrelated.  
 Ned.5:5: unrelated.  
 Ned.5:6: related to marriage.

Ned.6:1: unrelated.  
 Ned.6:2: unrelated.  
 Ned.6:3: unrelated.  
 Ned.6:4: unrelated.  
 Ned.6:5: unrelated.  
 Ned.6:6: unrelated.  
 Ned.6:7: unrelated.  
 Ned.6:8: unrelated.  
 Ned.6:9: unrelated.  
 Ned.6:10: unrelated.

Ned.7:1: unrelated.  
 Ned.7:2: unrelated.  
 Ned.7:3: unrelated.  
 Ned.7:4: unrelated.  
 Ned.7:5: unrelated.  
 Ned.7:6: unrelated.  
 Ned.7:7: related to women and marriage.  
 Ned.7:8: related to women and marriage.  
 Ned.7:9: related to women and marriage.

Ned.8:1: unrelated.  
 Ned.8:2: unrelated.  
 Ned.8:3: unrelated.  
 Ned.8:4: unrelated.  
 Ned.8:5: unrelated.  
 Ned.8:6: unrelated.  
 Ned.8:7: related to women, marriage and divorce.

Ned.9:1: unrelated. (?)  
 Ned.9:2: related to marriage. (?)  
 Ned.9:3: related to women and marriage.  
 Ned.9:4: unrelated.  
 Ned.9:5: related to women and marriage.  
 Ned.9:6: unrelated.  
 Ned.9:7: unrelated.  
 Ned.9:8: unrelated.  
 Ned.9:9: related to women, marriage and divorce.  
 Ned.9:10: related to women and marriage.

Ned.10:1: related to women and betrothal.  
 Ned.10:2: related to women and betrothal.  
 Ned.10:3: related to women, betrothal and divorce.  
 Ned.10:4: related to women, marriage and betrothal.  
 Ned.10:5: related to women, marriage and betrothal.  
 Ned.10:6: related to women, marriage and betrothal.  
 Ned.10:7: related to women and marriage.  
 Ned.10:8: related to women and marriage.

Ned.11:1: related to women and marriage.  
 Ned.11:2: related to women and marriage.  
 Ned.11:3: related to women and marriage.  
 Ned.11:4: related to women, marriage and divorce.  
 Ned.11:5: related to women and marriage.

Ned.11:6: related to women and marriage.  
 Ned.11:7: related to women and marriage.  
 Ned.11:8: related to women and marriage.  
 Ned.11:9: related to women, marriage and divorce.  
 Ned.11:10: related to women, marriage and divorce.  
 Ned.11:11: related to women and marriage.  
 Ned.11:12: related to women, marriage and divorce.

Out of 90 paragraphs, 57 are unrelated, 31 are related to 'women',  
 whereas 27 are related to 'women and marriage', 6 are related to 'women,  
 marriage and divorce', 3 are related to 'women, marriage and betrothal', 2  
 are related to 'women and betrothal', 2 are related to 'marriage' and 1 is  
 related to 'women, betrothal and divorce'.

Fourth tractate: *Nazir* ('the Nazirite-vow'), 59 paragraphs.)

Naz.1:1: unrelated.  
 Naz.1:2: unrelated.  
 Naz.1:3: unrelated.  
 Naz.1:4: unrelated.  
 Naz.1:5: unrelated.  
 Naz.1:6: unrelated.  
 Naz.1:7: unrelated.

Naz.2:1: unrelated.  
 Naz.2:2: unrelated.  
 Naz.2:3: related to women.  
 Naz.2:4: unrelated.  
 Naz.2:5: unrelated.  
 Naz.2:6: unrelated.  
 Naz.2:7: unrelated.  
 Naz.2:8: related to women and marriage.  
 Naz.2:9: unrelated.  
 Naz.2:10: unrelated.

Naz.3:1: unrelated.  
 Naz.3:2: unrelated.  
 Naz.3:3: unrelated.  
 Naz.3:4: unrelated.  
 Naz.3:5: unrelated.

Naz.3:6: related to women.  
Naz.3:7: unrelated.

Naz.4:1: related to women and marriage.  
Naz.4:2: related to women and marriage.  
Naz.4:3: related to women and marriage.  
Naz.4:4: related to women and marriage.  
Naz.4:5: related to women and marriage.  
Naz.4:6: related to women.  
Naz.4:7: related to women.

Naz.5:1: unrelated.  
Naz.5:2: unrelated.  
Naz.5:3: unrelated.  
Naz.5:4: unrelated.  
Naz.5:5: unrelated.  
Naz.5:6: unrelated.  
Naz.5:7: unrelated.

Naz.6:1: unrelated.  
Naz.6:2: unrelated.  
Naz.6:3: unrelated.  
Naz.6:4: unrelated.  
Naz.6:5: unrelated.  
Naz.6:6: unrelated.  
Naz.6:7: unrelated.  
Naz.6:8: unrelated.  
Naz.6:9: unrelated.  
Naz.6:10: unrelated.  
Naz.6:11: related to women.

Naz.7:1: unrelated.  
Naz.7:2: unrelated.  
Naz.7:3: related to women.  
Naz.7:4: unrelated.

Naz.8:1: unrelated.  
Naz.8:2: unrelated.

Naz.9:1: related to women and marriage.  
Naz.9:2: unrelated.  
Naz.9:3: unrelated.  
Naz.9:4: unrelated.

Naz.9:5: unrelated.

Out of 59 paragraphs, 47 are unrelated, 12 are related to 'women', whereas 7 are related to 'women and marriage'.

Fifth tractate: *Sotah* ('the Suspected Adulteress'), 66 paragraphs.

Sot.1:1 related to women and marriage.  
 Sot.1:2: related to women and marriage.  
 Sot.1:3: related to women and marriage.  
 Sot.1:4: related to women and marriage.  
 Sot.1:5: related to women, marriage and divorce.  
 Sot.1:6: related to women and marriage.  
 Sot.1:7: related to women and marriage.  
 Sot.1:8: unrelated.  
 Sot.1:9: unrelated.

Sot.2:1: related to women and marriage.  
 Sot.2:2: unrelated.  
 Sot.2:3: related to women and marriage.  
 Sot.2:4: unrelated.  
 Sot.2:5: related to women, marriage and betrothal.  
 Sot.2:6: related to women, marriage, betrothal and divorce.

Sot.3:1: related to women and marriage.  
 Sot.3:2: related to women and marriage.  
 Sot.3:3: related to women and marriage.  
 Sot.3:4: related to women and marriage.  
 Sot.3:5: related to women and marriage.  
 Sot.3:6: related to women and marriage.  
 Sot.3:7: related to women and marriage.  
 Sot.3:8: related to women and marriage.

Sot.4:1: related to women, marriage and betrothal.  
 Sot.4:2: related to women and marriage.  
 Sot.4:3: related to women and marriage.  
 Sot.4:4: related to women and marriage.  
 Sot.4:5: related to women and marriage.

Sot.5:1: related to women and marriage.  
 Sot.5:2: unrelated.  
 Sot.5:3: unrelated.

Sot.5:4: unrelated.

Sot.5:5: unrelated.

Sot.6:1: related to women, marriage and divorce.

Sot.6:2: related to women and marriage.

Sot.6:3: related to women and marriage.

Sot.6:4: related to women and marriage.

Sot.7:1: related to women and marriage.

Sot.7:2: unrelated.

Sot.7:3: unrelated.

Sot.7:4: related to women and marriage.

Sot.7:5: unrelated.

Sot.7:6: unrelated.

Sot.7:7: unrelated.

Sot.7:8: unrelated.

Sot.8:1: unrelated.

Sot.8:2: related to marriage and betrothal.

Sot.8:3: related to marriage.

Sot.8:4: related to marriage and betrothal.

Sot.8:5: related to marriage.

Sot.8:6: unrelated.

Sot.8:7: unrelated.

Sot.9:1: unrelated.

Sot.9:2: unrelated.

Sot.9:3: unrelated.

Sot.9:4: unrelated.

Sot.9:5: unrelated.

Sot.9:6: unrelated.

Sot.9:7: unrelated.

Sot.9:8: unrelated.

Sot.9:9: unrelated.

Sot.9:10: unrelated.

Sot.9:11: unrelated.

Sot.9:12: unrelated.

Sot.9:13: unrelated.

Sot.9:14: unrelated.

Sot.9:15: unrelated.

Out of 66 paragraphs in tractate *Sotah*, 32 are unrelated, 31 are related to 'women', whereas 31 are related to 'women and marriage', 4 are related to

'marriage', 3 are related to 'women, marriage and betrothal', 2 are related to 'women, marriage and divorce', 2 are related to 'marriage and betrothal' and 1 is related to 'women, marriage, betrothal and divorce'.

Sixth tractate: *Gittin* ('Bills of Divorce'), 76 paragraphs.

Gitt.1:1: related to divorce.  
 Gitt.1:2: related to divorce.  
 Gitt.1:3: related to divorce.  
 Gitt.1:4: related to divorce.  
 Gitt.1:5: related to divorce.  
 Gitt.1:6: related to women, marriage and divorce.

Gitt.2:1: related to divorce.  
 Gitt.2:2: related to divorce.  
 Gitt.2:3: related to divorce.  
 Gitt.2:4: related to women, marriage and divorce.  
 Gitt.2:5: related to women, marriage and divorce.  
 Gitt.2:6: related to divorce.  
 Gitt.2:7: related to women, marriage and divorce.

Gitt.3:1: related to women, marriage and divorce.  
 Gitt.3:2: related to women, marriage and divorce.  
 Gitt.3:3: related to women, marriage and divorce.  
 Gitt.3:4: related to women and marriage.  
 Gitt.3:5: related to divorce.  
 Gitt.3:6: related to divorce.  
 Gitt.3:7: unrelated.  
 Gitt.3:8: unrelated.

Gitt.4:1: related to women, marriage and divorce.  
 Gitt.4:2: related to divorce.  
 Gitt.4:3: related to women and divorce.  
 Gitt.4:4: unrelated.  
 Gitt.4:5: related to women and marriage.  
 Gitt.4:6: unrelated.  
 Gitt.4:7: related to women, marriage and divorce.  
 Gitt.4:8: related to women, marriage and divorce.  
 Gitt.4:9: unrelated.

Gitt.5:1: related to women and divorce.

- Gitt.5:2: unrelated (?)  
 Gitt.5:3: related to women.  
 Gitt.5:4: unrelated.  
 Gitt.5:5: related to women, marriage and divorce.  
 Gitt.5:6: related to women and marriage.  
 Gitt.5:7: unrelated.  
 Gitt.5:8: unrelated.  
 Gitt.5:9: related to women.
- Gitt.6:1: related to women, marriage and divorce.  
 Gitt.6:2: related to women, marriage and divorce.  
 Gitt.6:3: related to women, marriage and divorce.  
 Gitt.6:4: related to women, marriage and divorce.  
 Gitt.6:5: related to women, marriage and divorce.  
 Gitt.6:6: related to women, marriage and divorce.  
 Gitt.6:7: related to women, marriage and divorce.
- Gitt.7:1: related to women, marriage and divorce.  
 Gitt.7:2: related to women, marriage and divorce.  
 Gitt.7:3: related to women, marriage and divorce.  
 Gitt.7:4: related to women, marriage and divorce.  
 Gitt.7:5: related to women, marriage and divorce.  
 Gitt.7:6: related to women, marriage and divorce.  
 Gitt.7:7: related to women, marriage and divorce.  
 Gitt.7:8: related to women, marriage and divorce.  
 Gitt.7:9: related to women, marriage and divorce.
- Gitt.8:1: related to women, marriage and divorce.  
 Gitt.8:2: related to women, marriage and divorce.  
 Gitt.8:3: related to women, marriage, betrothal and divorce.  
 Gitt.8:4: related to women, marriage and divorce.  
 Gitt.8:5: related to women, marriage and divorce.  
 Gitt.8:6: related to women and marriage.  
 Gitt.8:7: related to women and marriage.  
 Gitt.8:8: related to women, marriage and divorce.  
 Gitt.8:9: related to women, marriage betrothal and divorce.  
 Gitt.8:10: related to divorce.
- Gitt.9:1: related to women, marriage and divorce.  
 Gitt.9:2: related to women, marriage and divorce.  
 Gitt.9:3: related to women and divorce.  
 Gitt.9:4: related to women, marriage and divorce.  
 Gitt.9:5: related to women and divorce.

Gitt.9:6: related to divorce.  
 Gitt.9:7: related to divorce.  
 Gitt.9:8: related to divorce.  
 Gitt.9:9: related to women, betrothal and divorce.  
 Gitt.9:10: related to women, marriage and divorce.

Out of 76 paragraphs in tractate *Gittin*, 9 are unrelated, 50 are related to 'women', whereas 43 are related to 'women and marriage', 36 are related to 'women, marriage and divorce', 15 are related to 'divorce', 2 are related to 'women, marriage and betrothal', 2 are related to 'women, marriage, betrothal and divorce' and 1 is related to 'women, betrothal and divorce'.

Seventh tractate: *Kiddushin* ('betrothals'), 46 paragraphs.

This tractate deals principally with the laws of betrothal which are the main target of this research. It also happens that these laws offer stunning similarities and analogies with Roman law. For these reasons, we believe it is of interest to reproduce all the pericopae which relate to betrothal and/or present those similarities and analogies. We will present the data in the same manner as above, with the exception that all pertinent pericopae will be fully transcribed.

Kidd.1:1: related to women and betrothal (analogy with Roman law)

By three means is the woman acquired and by two means she acquires her freedom. She is acquired by money or by writ or by intercourse. By money - the School of Shammai say: By a *denar* or a *denars* worth. And the School of Hillel say: By a *perutah* or a *perutahs* worth. And how much is a *perutah*? The eighth part of an Italian *issar*. And she acquires her freedom by a bill of divorce or by the death of her husband. A deceased brother's wife is acquired by intercourse and she acquires her freedom by *halizah* or by the death of her deceased husband's brother.

Kidd.1:2: related to women.

A hebrew bondman is acquired by money or by writ; and he acquired his freedom by [service lasting six] years, or by [the entering in of] the year of Jubilee or by [redeeming himself at] his outstanding value. The Hebrew bondmaid has the advantage of him in that she acquires her freedom also through [manifesting] the tokens [of puberty]. The bondman that has his ear bored through is acquired by the act of boring, and he acquires his freedom by [the entering in of] the year of Jubilee or by the death of his master.

Kidd.1:3: unrelated (but analogy with Roman law)

A Canaanitish bondman is acquired by money or by writ or by usucaption; and he acquires his freedom by money paid by others or by a writ [of indebtedness] uttered by himself. So R. Meir. But the Sages say: By money paid by himself or by a writ uttered by others, provided that the money is that of others.

Kidd.1:4: unrelated (but analogy with Roman law)

Large cattle are acquired by the act of delivery and small cattle by the act of lifting up. S. R. Meir and R. Eliezer. But the Sages say: Small cattle are acquired by the act of drawing.

Kidd.1:5: unrelated (but analogy with Roman law)

Property for which there is security can be acquired by money or by writ or by usucaption; and that for which there is no security can be acquired only by the act of drawing. Property for which there is no security in conjunction with property for which there is security can be acquired by money, by writ, or by usucaption and imposes the need for an oath also on property for which there is security.

Kidd.1:6: unrelated.

Kidd.1:7: related to women.

Kidd.1:8: related to women and marriage.

Kidd.1:8: unrelated.

Kidd.1:10: unrelated.

Kidd.2:1: related to women and betrothal.

A man may betroth a woman either by his own act or by that of his agent; and a woman may become betrothed either by her own

act of by that of her agent. A man may give his daughter in betrothal while she is still in her girlhood either by his own act or by that of his agent. If a man said to a woman 'Be thou betrothed to me with this date, or be thou betrothed to me with this', and one of them was worth a *perutah*, her betrothal is valid; otherwise it is not valid. If [he said 'Be thou betrothed to me] with this and with this and with this', and they were together worth a *perutah*, her betrothal is valid; otherwise it is not valid. If he was eating them one after the other, her betrothal is not valid unless one of them was worth a *perutah*.

Kidd.2:2: related to women and betrothal.

[If he said,] 'Be thou betrothed to me with this cup of wine', and it was found to be honey; or 'with this cup of honey' and it was found to be wine; or 'with this silver *denar*', and it was found to be gold; or 'with this golden *denar*', and it was found to be silver; or [if he said, 'Be thou betrothed to me] on the condition that I am rich', and he was found to be poor; or 'that I am poor', and he as found to be rich; her betrothal is not valid. R. Simeon says: If he deceived her to her advantage her betrothal is valid.

Kidd.2:3: related to women and betrothal.

[If he said, 'Be thou betrothed to me] on the condition that I am priest', and he was found to be a levite; or 'that I am a levite', and he was found to be a priest; or 'that I am a *Nathin*', and he was found to be a bastard; or 'that I am a bastard', and he was found to be a *Nathin*; or 'that I am from a town', and he was found to be from a city; or 'that I am from a city', and he was found to be from a town; or 'on the condition that my house is near to a bath-house', and it was found to be far off; or 'that it is far off from a bath-house', and it was found to be near; or 'on the condition that I have a daughter or bondwoman that is a hairdresser', and he had them not; or 'on condition that I have them not', and he had them; or 'on condition that I have no children' and he had them; or 'on condition that I have them', and he had them not; - in all such cases even though she said, 'It was in my heart to be betrothed to him', her betrothal is not valid. And so, too, if it was she that deceived him.

Kidd.2:4: related to women and betrothal.

If he said to his agent, 'Go and betroth to me such a woman at such a place', and he went and betrothed her at another place, her betrothal is not valid; but if he had said, 'Lo, she is at such a place', and he betrothed her at another place, her betrothal is valid.

Kidd.2:5: related to women, marriage, betrothal and divorce.

If a man betrothed a woman on the condition that she lay under no vow, and she was found to be under a vow, her betrothal is not valid. If he married her making no conditions, and she was found to be under a vow, she may be put away with her *Ketubah*. If [he betrothed her] on the condition that there were no defects in her, and defects were found in her, her betrothal is not valid. If he married her making no conditions and defects were found in her, she may be put away without her *Ketubah*. All blemishes which disqualify priests disqualify women also.

Kidd.2:6: related to women and betrothal.

If a man betrothed two women with what was worth a *perutah* or one woman with what was worth less than a *perutah* the betrothal is not valid, even if he afterward sent her presents, since he sent them by reason of the first betrothal. So, too, if a minor betrothed a woman [and sent her presents after he came of age].

Kidd.2:7: related to women and betrothal.

If a man betrothed a woman and her daughter or a woman and her sister at the same time, their betrothal is not valid. It once happened to five women among which were two sisters, that a man took a basket of figs that belonged to them and that contained Seventh Year produce, and said, 'Lo, ye are all betrothed to me, with this basketful'. And one of them accepted it on behalf of them all. And the Sages said: The betrothal of the sisters was not valid.

Kidd.2:8: related to women and betrothal.

If a man betrothed a woman with his portion of either the Most Holy Things or the Lesser Holy Things, her betrothal is not valid. If [he betrothed her] with Second Tithe, whether in error or wantonly, the betrothal is not valid. So R. Meir. R. Judah says: If he acted in error the betrothal is not valid, but if wantonly the betrothal is valid. If it was with dedicated produce and he acted

wantonly the betrothal is valid, and if in error the betrothal is not valid. So R. Meir. R. Judah says: If in error the betrothal is valid, but wantonly the betrothal is not valid.

Kidd.2:9: related to women and betrothal.

If a man betrothed a woman with *Orlah*-fruit or Diverse Kinds of the Vineyard, or with an ox condemned to be stoned, or with a heifer whose neck was to be broken, or with unconsecrated beasts slaughtered in the Temple Court, the betrothal is not valid. But if he had sold them and betrothed her with their price her betrothal is valid.

Kidd.2:10: related to women and betrothal.

If a man betrothed a woman with Heave-offering or Tithes or [Priests'] Dues or Sin-offering water or the ashes of the Sin-offering, her betrothal is valid, even if he was an Insraelite.

Kidd.3:1: related to women and betrothal.

If a man said to his fellow, 'Go, and betroth to me such-a-woman', and he went and betrothed her to himself, her betrothal is valid. So, too, if a man said to a woman, 'Be thou betrothed to me after thirty days' time', and another came and betrothed her during the thirty days, she is betrothed to the second; and if she was the daughter of an Israelite and he a priest she may eat of Heave-offering. [If he said, 'Be thou betrothed to me] from now and after thirty days', and another came and betrothed her during the thirty days, she is betrothed and she is not betrothed; and if she was the daughter of an Israelite and he a priest, or if she was the daughter of a priest and he an Israelite, she may not eat of Heave-offering.

Kidd.3:2: related to women and betrothal.

If a man said to a woman, 'Be thou betrothed to me on the condition that I give thee 200 *zuz*,' her betrothal is valid, but he must give it to her; [if] 'on condition that before thirty days I give it thee', and he gave it her within the thirty days, the betrothal is valid; otherwise it is not valid. [If he said, 'Be thou betrothed to me ] on the condition that I have 200 *zuz*,' the betrothal is valid if he has them; [if he said], 'on the condition that I show thee 200 *zuz*,' the betrothal is valid, but he must show her them; and if he

showed her them on a [money-changer's] table, her betrothal is not valid.

Kidd.3:3: related to women and betrothal.

[if he said, 'Be thou betrothed to me] on the condition that I have a *kor's* space of land', her betrothal is valid if he has it; [if he said,] 'on the condition that I have land in such a place', and he has it in such a place, her betrothal is valid; other wise it is not valid. [If he said, 'Be thou betrothed to me] on the condition that I show thee a *kor's* space of land', the betrothal is valid if he shows it to her; but if he showed her [land] in the valley [which was not his] her betrothal is not valid.

Kidd.3:4: unrelated.

Kidd.3:5: related to women and betrothal.

If a man betrothed a woman and said, 'I had thought that she was the daughter of a priest and, lo, she is the daughter of a levite', or 'that she was poor and, lo, she is rich', 'that she was rich and, lo, she is poor', her betrothal is valid, since it was not she that deceived him. If a man said to a woman, 'be thou betrothed to me after that I shall become a proselyte', or 'after that thou shalt become a proselyte', or 'after that I shall have been freed', or 'after that thou shalt have been freed', or 'after that thy husband dies', or 'after that thy sister dies', or 'after that thou hast performed *halizah* with thy deceased husband's brother', her betrothal is not valid. So, too, if a man said to his fellow, 'If thy wife bears a female child let it be betrothed to me' her betrothal is not valid. But if his fellow's wife was with child and her pregnancy was manifest, his words hold good, and if she bore a female child her betrothal is valid.

Kidd.3:6: related to women and betrothal.

If a man said to a woman, 'Be thou betrothed to me on the condition that I speak on thy behalf to the governor', or 'that I work with thee as a labourer', and he spoke on her behalf to the governor or worked with her as a labourer, her betrothal is valid; otherwise her betrothal is not valid. [If he said, 'Be thou betrothed to me] on the condition that my father consents'; and his father consented, her betrothal is valid; otherwise it is no valid. If the father died her betrothal is valid. But if the son died, they instruct the father to say that he did not consent.

**Kidd.3:7:** related to women, marriage, betrothal and divorce.

[If a man said,] 'I gave my daughter in betrothal but I do not know to whom I gave her', and one came and said, 'I betrothed her', he may be believed. If one said, 'I betrothed her', and another said, 'I betrothed her', they must both give a bill of divorce; but if they were so minded the one may give her a bill of divorce and the other may marry her.

**Kidd.3:8:** related to women, betrothal and divorce.

[If a man said,] 'I gave my daughter in betrothal', or 'I gave her in betrothal and accepted her bill of divorce while she was yet a minor', and she is [still] a minor, he may be believed. [If he said,] 'I gave her in betrothal and accepted her bill of divorce while she was yet a minor' and she is now of age, he may not be believed. [If he said,] 'She was taken captive and I ransomed her', whether she was yet a minor or whether she was of age, he may not be believed. If at the hour of his death a man said, 'I have children', he may be believed; [if he said,] 'I have brothers', he may not be believed. If a man gave one of his daughters in betrothal and did not stipulate which, they that were already past their girlhood are not taken into account.

**Kidd.3:9:** related to women and betrothal.

If a man had two groups of daughters by two wives, and he said, 'I have given one of my elder daughters in betrothal but I do not know whether it was the eldest of the older group or the eldest of the younger, or the youngest of the older group that is older than the eldest of the younger group', they are all forbidden excepting the youngest on the younger group. So R. Meir. R. Jose says: They are all permitted excepting the eldest of the older group. [If a man said,] 'I gave one of my younger daughters in betrothal but I do not know whether it was the youngest of the younger group of the youngest of the older group, or the eldest of the younger group that is younger than the youngest of the older group', they are all forbidden excepting the eldest of the older group. So R. Meir. R. Jose says: They are all permitted excepting the youngest of the younger group.

**Kidd.3:10:** related to women, marriage and betrothal.

If a man said to a woman, 'I betrothed thee', and she said, 'Thou didst not betroth me', he is forbidden in marriage to her near of kin, but she is permitted to his near of kin. If she said, 'Thou didst betroth me', and he said, 'I did not betrothed thee', he is permitted in marriage to her near of kin, but she is forbidden to his near of kin. [If he said,] 'I betrothed thee', and she said, 'Thou didst betroth none save my daughter', he is forbidden to the near of kin of the older woman but she is permitted to his near of kin; and he is permitted in marriage to the near of kin of the younger woman and she is permitted to his near of kin.

Kidd.3:11: related to women, marriage and betrothal.

[If he said,] 'I betrothed thy daughter', and she said, 'Thou didst betroth none save me', he is forbidden to the near of kin of the younger woman, but the younger woman is permitted in marriage to his near of kin; he is permitted in marriage to the near of kin of the older woman, but she is forbidden to his near of kin.

Kidd.3:12: related to women, marriage and betrothal.

Kidd.3:13: related to women and marriage.

Kidd.4:1: related to marriage.

Kidd.4:2: unrelated.

Kidd.4:3: related to marriage.

Kidd.4:4: related to marriage.

Kidd.4:5: related to marriage.

Kidd.4:6: related to women and marriage.

Kidd.4:7: related to women and marriage.

Kidd.4:8: related to women.

Kidd.4:9: related to women, marriage, betrothal and divorce.

If a man empowered his agent to give his daughter in betrothal and he himself went and gave her in betrothal [to another], if the betrothal by him came first it is valid, and if the betrothal by his agent came first, that is valid; if it is not known, both must give her a bill of divorce, and the other may marry her. So, too, if a woman empowered her agent to give her in betrothal and she herself went and betrothed herself [to another], if her own betrothal came first, it is valid; and if the betrothal by her agent came first, that is valid; if it is not known, both must give her a bill of divorce; but if they were so minded the one may give her a bill of divorce and the other may marry her.

Kidd.4:10: related to women and marriage.  
 Kidd.4:11: related to women and marriage.  
 Kidd.4:12: related to women and marriage.  
 Kidd.4:13: related to women and marriage.  
 Kidd.4:14: related to women and marriage.

Out of 46 paragraphs in tractate *Kiddushin* 8 are unrelated whereas 3 present analogies with Roman law ( these specific paragraphs will be dealt with later on), 4 are related to 'marriage', 34 are related to 'women' whereas 16 are related to 'women and betrothal', 9 are related to 'women and marriage', 3 are related to 'women, marriage, betrothal and divorce', 3 are related to 'women, marriage and betrothal' and 1 is related to 'women, betrothal and divorce' and 2 are related to 'women' only.

Fourth Division: *Nezikin* ('Damages'), 687 paragraphs.

First tractate: *Baba Kamma* ('the First Gate'), 79 paragraphs.

B.K.1:3: related to women.  
 B.K.4:7: related to women.  
 B.K.5:4: related to women.  
 B.K.8:4: related to women.  
 B.K.8:6: related to women.

Second tractate: *Baba Metzia* ('the Middle Gate'), 101 paragraphs.

B.M.1:5: related to women.  
 B.M.5:9: related to women.  
 B.M.7:6: related to women.  
 B.M.9:13: related to women.

Third tractate: *Baba Bathra* ('the Last Gate'), 86 paragraphs.

B.B.3:3: related to women and marriage.  
 B.B.8:8: related to women and marriage.  
 B.B.9:2: related to women and marriage.  
 B.B.9:3: related to women.

- B.B.9:5: related to women and marriage.
- B.B.9:9: related to women and marriage.
- B.B.10:3: related to women, marriage and divorce.
- B.B.10:4: related to marriage and betrothal.
- B.B.10:7: related to women, marriage and divorce.

Fourth tractate: *Sanhedrin* ('the Sanhedrin'), 71 paragraphs.

- Sanh.2:1: related to women and marriage.
- Sanh.2:2: related to women and marriage.
- Sanh.2:4: related to women and marriage.
- Sanh.3:4: related to women and marriage.
- Sanh.7:4: related to women.
- Sanh.7:9: related to women and betrothal.
- Sanh.9:1: related to women and marriage.
- Sanh.11:1: related to women and marriage.

Fifth tractate: *Makkoth* ('Stripes'), 34 paragraphs.

- Makk.1:1: related to women and divorce.
- Makk.3:1: related to women, marriage and divorce.

Sixth tractate: *Shevuoth* ('Oaths'), 62 paragraphs.

- Shebu.3:8: related to women.
- Shebu.3:11: related to women.
- Shebu.4:7: related to women.
- Shebu.5:1: related to women.
- Shebu.7:7: related to women and marriage.

Seventh tractate: *Eduyoth* ('Testimonies'), 74 paragraphs.

- Eduy.1:1: related to women.
- Eduy.1:12: related to women and marriage.
- Eduy.1:13: related to women and marriage.
- Eduy.2:7: related to women.
- Eduy.3:6: related to women.
- Eduy.4:7: related to women, marriage, betrothal and divorce.
- Eduy.4:8: related to women and marriage.
- Eduy.4:9: related to women, marriage and divorce.
- Eduy.4:10: related to women and marriage.
- Eduy.5:4: related to women.
- Eduy.5:5: related to women, marriage and divorce.

Eduy.5:6: related to women and marriage.  
 Eduy.6:1: related to women and marriage.  
 Eduy.8:3: related to women and marriage.

Eighth tractate: *Abodah Zarah* ('Idolatry'), 50 paragraphs.

A.Zar.2:1: related to women.  
 A.Zar.3:6: related to women.

Ninth tractate: *Aboth* ('the Fathers'), 110 paragraphs.

Ab.1:5: related to women.  
 Ab.3:19: related to women.

Tenth tractate: *Horoyoth* ('Decisions'), 20 paragraphs.

Hor.2:4: related to women.  
 Hor.3:7: related to women.

Out of 687 paragraphs in Division *Nezikin* 52 are related to 'women' whereas 18 are related to 'women and marriage', 5 are related to 'women, marriage and divorce', 1 is related to 'women, marriage, betrothal and divorce', 1 is related to 'marriage and betrothal', 1 is related to 'women and betrothal' and 1 is related to 'women and divorce'.

Fifth Division: *Kodashim* ('Holy things'), 589 paragraphs.

First tractate: *Zebahim* ('Animal offerings'), 101 paragraphs.

Zeb.3:1: related to women.  
 Zeb.5:5: related to women.  
 Zeb.5:7: related to women and marriage.

Second tractate: *Menahoth* ('Meal offerings'), 92 paragraphs.

Men.1:1: related to women and marriage.  
 Men.1:4: related to women and marriage.  
 Men.2:5: related to women and marriage.  
 Men.9:3: related to women and marriage.  
 Men.9:8: related to women.

Third tractate: *Hullin* ('Animals killed for food'), 74 paragraphs.

No pertinent paragraph.

Fourth tractate: *Bekharoth* ('Firstlings'), 73 paragraphs.

Ber.1:7: related to women and marriage.  
 Ber.3:1: related to women.  
 Ber.8:1: related to women and marriage.  
 Ber.8:3: related to women and marriage.  
 Ber.8:4: related to women and marriage.  
 Ber.8:5: related to women and marriage.  
 Ber.8:6: related to women and marriage.  
 Ber.8:9: related to women and marriage.  
 Ber.8:10: related to women and marriage.

Fifth tractate: *Arakhin* ('Vows of valuation'), 50 paragraphs.

Arak.1:1: related to women.  
 Arak.1:4: related to women.  
 Arak.2:1: related to women.  
 Arak.2:4: related to women and marriage.  
 Arak.3:4: related to women.  
 Arak.3:5: related to women.  
 Arak.4:4: related to women.  
 Arak.6:1: related to women and marriage.  
 Arak.6:2: related to women and marriage.  
 Arak.6:3: related to women and marriage.  
 Arak.6:5: related to women and marriage.  
 Arak.8:5: related to women.

Sixth tractate: *Temurah* ('the Substituted offering'), 35 paragraphs.

Tem.1:1: related to women.

Seventh tractate: *Kerithoth* ('Extirpation'), 43 paragraphs.

Ker.1:1: related to women.  
 Ker.1:3: related to women.  
 Ker.1:4: related to women.  
 Ker.1:6: related to women.  
 Ker.1:7: related to women.

Ker.2:1: related to women.  
 Ker.2:3: related to women and marriage.  
 Ker.2:4: related to women.  
 Ker.3:1: related to women.  
 Ker.3:5: related to women.  
 Ker.3:6: related to women.  
 Ker.3:7: related to women.  
 Ker.3:10: related to women.  
 Ker.4:1: related to women.  
 Ker.6:5: related to women.

Eighth tractate: *Meilah* ('Sacrilege'), 38 paragraphs.

Meil.5:1: related to women.

Ninth tractate: *Tamid* ('Daily Whole-offering'), 34 paragraphs.

No pertinent paragraph.

Tenth tractate: *Middoth* ('measurements'), 34 paragraphs.

No mention.

Eleventh tractate: *Kinnim* ('the Bird-offerings'), 15 paragraphs.

Kinn.2:2: related to women.  
 Kinn.2:3: related to women.  
 Kinn.3:2: related to women.  
 Kinn.3:3: related to women.  
 Kinn.3:6: related to women.

Out of 589 paragraphs in Division *Kodashim*, 51 are related to 'women' whereas 19 are related to 'women and marriage'.

Sixth Division: *Taharoth* ('Cleannesses'), 1001 paragraphs.

First tractate: *Kelim* ('Vessels'), 255 paragraphs.

Kel.1:3: related to women.  
 Kel.1:4: related to women.

Second tractate: *Ohaloth* ('Tents'), 133 paragraphs.

Ohol.7:4: related to women.  
 Ohol.7:6: related to women.  
 Ohol.18:7: related to women.

Third tractate: *Negaim* ('Leprosy-signs'), 115 paragraphs.

Neg.3:2: related to marriage.  
 Neg.6:7: related to women.  
 Neg.14:12: related to women and marriage.

Fourth tractate: *Parah* (the Red heifer'), 96 paragraphs.

Par. 12:10: related to women.

Fifth tractate: *Tohoroth* ('Cleannesses'), 90 paragraphs.

Toh.2:1: related to women.  
 Toh.4:13: related to women.  
 Toh.5:8: related to women.  
 Toh.7:4: related to women and marriage.  
 Toh.7:9: related to women.  
 Toh.8:5: related to women and marriage.

Sixth tractate: *Mikwaoth* ('Immersion pools'), 71 paragraphs.

Mikw.8:3: related to women.  
 Mikw.8:4: related to women.  
 Mikw.8:5: related to women.  
 Mikw.9:2: related to women.  
 Mikw.9:3: related to women.

Seven tractate: *Niddah* ('the Menstruant'), 79 paragraphs.

Nidd.1:1: related to women.  
 Nidd.1:2: related to women.  
 Nidd.1:3: related to women.  
 Nidd.1:4: related to women.  
 Nidd.1:5: related to women.  
 Nidd.1:6: related to women.  
 Nidd.1:7: related to women.

Nidd.2:1: related to women.  
 Nidd.2:2: related to women.

Nidd.2:3: related to women.  
 Nidd.2:4: related to women and marriage.  
 Nidd.2:5: related to women.  
 Nidd.2:6: related to women.  
 Nidd.2:7: related to women (?)

Nidd.3:1: related to women.  
 Nidd.3:2: related to women.  
 Nidd.3:3: related to women.  
 Nidd.3:4: related to women.  
 Nidd.3:5: related to women.  
 Nidd.3:6: related to women.  
 Nidd.3:7: related to women.

Nidd.4:1: related to women.  
 Nidd.4:2: related to women.  
 Nidd.4:3: related to women.  
 Nidd.4:4: related to women.  
 Nidd.4:5: related to women.  
 Nidd.4:6: related to women.  
 Nidd.5:7: related to women.

Nidd.5:1: related to women.  
 Nidd.5:2: unrelated.  
 Nidd.5:3: related to women.  
 Nidd.5:4: related to women, marriage and betrothal.

A girl three years old and one day may be betrothed by intercourse; her deceased childless husband's brother can acquire her by intercourse; and by connexion with her a man can be culpable by virtue of the law of a married woman, and him that has connexion with her [while she is a menstruant] she renders unclean so that he conveys uncleanness to what is beneath him in like degree as [he that has a flux conveys uncleanness] to what lies above him; if she is married to a priest she may eat of Heaven-offering; if one that is ineligible has connexion with her he renders her ineligible for marriage with a priest; if any of the forbidden degrees prescribed in the Law had connexion with her they are put to death on her account, but she is not culpable. If she is younger than this, it is as one that puts a finger in the eye.

Nidd.5:5: related to women, marriage and divorce.

If a boy nine years old and one day had connexion with his childless brother's widow, he has **acquired** her to wife, and he cannot give her a bill of divorce until he comes of age; he can contract uncleanness by [connexion with] a menstruant so that he conveys uncleanness to what is beneath him in like degree as [he that has a flux conveys uncleanness] to what lies above him; he can render [a woman] unqualified but cannot render [a woman] qualified to eat of Heave-offering; he can render cattle invalid for the Altar; and a beast can be stoned because of him: and if he has connexion with any of the forbidden degrees prescribed in the Law they are put to death on his account, but he is not culpable.

Nidd.5:6: related to women.

Nidd.5:7: related to women.

Nidd.5:8: related to women.

Nidd.5:9: related to women.

Nidd.6:1: related to women and marriage.

Nidd.6:2: unrelated.

Nidd.6:3: unrelated.

Nidd.6:4: unrelated.

Nidd.6:5: unrelated.

Nidd.6:6: unrelated.

Nidd.6:7: unrelated.

Nidd.6:8: unrelated.

Nidd.6:9: unrelated.

Nidd.6:10: unrelated.

Nidd.6:11: related to women and marriage.

Nidd.6:12: unrelated (?)

Nidd.6:13: related to women.

Nidd.6:14: related to women.

Nidd.7:1: related to women.

Nidd.7:2: unrelated.

Nidd.7:3: unrelated.

Nidd.7:4: unrelated.

Nidd.7:5: unrelated.

Nidd.8:1: related to women.

Nidd.8:2: related to women.

Nidd.8:3: related to women.

Nidd.8:4: related to women.

Nidd.9:1: related to women.  
 Nidd.9:2: related to women.  
 Nidd.9:3: related to women.  
 Nidd.9:4: related to women.  
 Nidd.9:5: related to women.  
 Nidd.9:6: unrelated (?)  
 Nidd.9:7: unrelated.  
 Nidd.9:8: related to women.  
 Nidd.9:9: related to women.  
 Nidd.9:10: related to women.  
 Nidd.9:11: related to women.

Nidd.10:1: related to women and marriage.  
 Nidd.10:2: related to women.  
 Nidd.10:3: related to women.  
 Nidd.10:4: related to women.  
 Nidd.10:5: related to women.  
 Nidd.10:6: related to women.  
 Nidd.10:7: related to women.  
 Nidd.10:8: related to women.

Out of 79 paragraphs in tractate *Nidah* 62 are related to 'women', whereas 6 are related to 'women and marriage', 1 is related to 'women, marriage and betrothal' and 1 is related to 'women, marriage and divorce'.

Eight tractate: *Makshirin* ('Predisposers'), 54 paragraphs.

Maksh.5:1: related to women.  
 Maksh.6:8: related to women.

Ninth tractate: *Zabim* ('They that suffer a flux'), 33 paragraphs.

Zab.2:3: related to women.  
 Zab.4:1: related to women.

Tenth tractate: *Tebul Yom* ('He that immersed himself that day'), 26 paragraphs.

Teb.Y.4:2: related to women.

Eleventh tractate: *Yadain* ('Hands'), 22 paragraphs.

No pertinent paragraph.

Twelveth tractate: *Uktzin* ('stalks'), 27 paragraphs.

No pertinent paragraph.

Out of 1001 paragraphs in Division *Toharoth* 86 are related to 'women' whereas 7 are related to 'women and marriage', 1 is related to 'women, marriage and betrothal' and 1 is related to 'women, marriage and divorce'.

After a perusal of the above data concerning the laws of marriage in the Mishnah, we realize that out of six divisions, only *Nashim* deals directly with laws related to marriage. The five other divisions, only occasionally mention laws about women and even more occasionally do they speak about laws on marriage and/or betrothal. Some tractates are even absolutely silent about it. In *Nashim*, the last tractate *Kiddushin* is mostly concerned with the acquisition of the woman and with the rules pertaining to her betrothal. There are only three other paragraphs in *Nashim* where mention is made of the acquisition of the woman. It is in tractate *Yebamoth* (Yeb.6:1) and in tractate *Nidah* (Nidd.5:4 and 5:5).

The rules concerning betrothal are mainly rounded up in *Kiddushin* which is itself part of the *Nashim* division, a division generally dedicated to the subject of women.

We also want to emphasize the gathering together of much different elements which we find in the first five paragraphs of the first unit of *Kiddushin*. The Mishnah, after stating the different modes by which a woman can regain her freedom (Kidd.1:1), stipulates how slaves are acquired and how they themselves acquire their freedom (Kidd.1:2,3), how large and small cattle are acquired (Kidd.1:4). The acquisition of land (immoveable and moveable) is discussed (Kidd.1:5) and the Temple's right to property is made by the payment of money alone, while a common person can only acquire the

same through possession (Kidd.1:6). This reunion of diverse elements will find its counterpart in the Institutes of Gaius.

### THE INSTITUTES:

The four Commentaries of the Institutes of Gaius are an uninterrupted legal discourse. All along, there are no titles or head chapters which could lead us to the laws related to women and/or marriage. To find those laws we have to read thoroughly the four Commentaries. Not only are the laws related to women scattered throughout the whole document, but the laws related to marriage are generally not found for themselves. They are not gathered for the benefit of the law students (assuming that the Institutes might have been a textbook), but they are most generally attached, when it is appropriate for the sake of the legal argumentation, to other legal topics.

For the presentation of our material in the Institutes, we will proceed in the same manner as we did for the Mishnah. Laws concerned only with 'women' will be identified accordingly. However, because of the nature itself of the laws which include marriage as a component we will quote *in extenso* all pertinent paragraphs. We will bring the attention of the reader on the significant features in each one by using a darker print.

The four Commentaries are numerated One to Four and they successively deal with the three main divisions of Roman law as explained by Gaius,

All the law which we make use of has reference either to persons, to things, or to actions. (I:8)

The First Commentary deals with 'persons', the Second and the Third with 'things' and the Fourth with 'actions'.

*Commentarius Primus* : 200 paragraphs.

The First Commentary starts by explaining that the Roman society is divided between freemen and slaves; the freemen are born free or are freed persons: freed persons are Roman citizens, Latins or *Dediticii* (I:9-12). Depending on the procedure by which a slave is freed, he is a Roman citizen or a Latin Junius (I:17). Concerning this matter, we read the following paragraphs:

I:19: related to women and marriage.

A good reason for manumission exists where, for instance, anyone offers for manumission before the Council a natural son or a daughter, or brother or sister, or foster-child or teacher, or a slave with the intention of appointing him a steward, or a female slave on account of prospective marriage.

I:29: related to women and marriage.

For, by the *Lex Aelia Sentia*, where slaves under the age of thirty years are manumitted and become Latins, if they marry either women who are Roman citizens or Latin colonists, or those who belong to the same condition as themselves, and prove this by the testimony of not less than seven Roman citizens who have arrived at the age of puberty; and they have sons, and the latter are a year old, authority is granted them by this law to appear before the praetor - or, in the provinces before the governor - and prove that they have married wives in accordance with the terms of the *Lex Aelia Sentia*, and have sons by them who are a year old; and if the magistrate before whom this proof is adduced should declare it to be true, then the Latin and his wife, provided she is of the same condition, are ordered to become Roman citizens.

I:30: related to women.

I:32: related to women.

The second encounter with marriage in this First Commentary has to do with the *Pater Potestas*, or the 'power of the father'. The *Pater Potestas* is part of a larger section of the Institutes which deals with the legal capacity of persons. This latter section is itself divided between the persons who are

'their own master' and those who are 'under the authority of another' (I:48). Those under the *Pater Potestas* fall in the category of those 'under the authority of another' together with those *in manu* and those 'mancipated' (I:49). Concerning this matter we read the following paragraphs,

I:55: related to marriage.

In like manner, our children whom we have begotten in lawful marriage are under our control. This right is peculiar to Roman citizens, for there are hardly any other men who have such authority over their children as we have, and this the Divine Hadrian stated in the Edict which he published with reference to persons who petitioned for Roman citizenship for themselves and for their children, for he said: "It does not escape my knowledge that the Galatians hold that children are in the power of their parents."

I:56: related to marriage.

... if they marry Roman citizens, or even Latins or foreigners whom they have the right to marry; for the result of legal marriage is that the children follow the condition of the father and not only are Roman citizens by birth, but also become subject of paternal authority.

I:57: related to women and marriage.

Therefore, certain veterans are usually granted permission by the Imperial Constitutions to contract civil marriage with those Latin or foreign women whom they first marry after their discharge, and the children born of such unions become Roman citizens by birth, and are subject to the authority of their fathers.

I:58: related to women and marriage.

Nor are we permitted to marry any free woman, as we should refrain from contracting matrimony with certain ones.

I:59: related to women and marriage.

For marriage cannot be contracted between persons who sustain to one another the relation of ascendants and descendants, nor can legal matrimony exist between them; for instance, between father and daughter, mother and son, or grandfather and granddaughter; and if such persons form unions they are said to have contracted nefarious and incestuous marriage.

I:60: related to marriage.

I:61: related to women and marriage.

Marriage is indeed prohibited between brother and sister, whether they are born of the same father or mother or merely of one of these parents in common; but although legal marriage cannot take place between me and my sister by adoption as long as the adoption continues to exist, still if the adoption is dissolved by emancipation I can marry her, and if I should be emancipated, no impediment to the marriage will exist.

I:62: related to women and marriage.

It is lawful for a man to marry the daughter of his brother, and this first became customary when the Divine Claudius married Agrippina, his brother's daughter, but it is not lawful for anyone to marry his sister's daughter, and this rule is stated in the Imperial Constitution. It is likewise illegal for a man to take as his wife his paternal or maternal aunt.

I:63: related to women and marriage.

Moreover, I cannot marry my former mother-in-law or daughter-in-law, or my step-daughter or step-mother. We make use of the word 'former', because if the marriage by which affinity of this kind was established is still in existence, there is another reason why I cannot marry her, for a woman cannot marry two men, nor can a man have two wives.

I:64: related to women and marriage.

Therefore, if anyone should contract a nefarious and incestuous marriage he is considered to have neither a wife nor children, hence the issue of such a union are considered to have a mother but no father, and for this reason are not subject to paternal authority, but resemble children whom the mother has conceived through promiscuous intercourse; and they, in like

manner, are understood to have no father, as he also is uncertain; therefore they are ordinarily called illegitimate children, either from the Greek word meaning conceived indiscriminately, or because they are children without any father.

I:66: related to women and marriage.

For instance, under the *Lex Aelia Sentia*, if a Latin, after having married, should have a son who is a Latin by a Latin mother, or who is a Roman citizen by a Roman mother, he will not have him under his control; but if he should afterwards obtain the right of Roman citizenship by the evidence required by law, his son will, at the same time, be brought under his power.

I:67: related to women and marriage.

Likewise, if a Roman citizen should marry a Latin or a foreign woman through ignorance, believing that she was a Roman citizen, and should have a son, the latter will not be under his control because he will not be a Roman citizen, but either a Latin or a foreigner; that is to say, he will belong to the same condition as his mother, as no child follows the condition of its father unless the right to legal marriage existed between its parents; but by a Decree of the Senate it is permitted to prove the cause of error, and in this way the wife and the son will both obtain Roman citizenship, and the son will, from that time, begin to be under the control of his father. The same rule applies where a Roman citizen marries a woman belonging to the class of the *dediticii*, except that the wife does not become a Roman citizen.

I:68: related to women and marriage.

Moreover, if a female Roman citizen should, through mistake, marry a foreigner under the impression that he was a Roman citizen, she will be permitted to prove the cause of error, and in this way both her son and her husband will obtain Roman citizenship, and, at the same time, the son will begin to be subject to the authority of the father. . .

I:69: related to women and marriage.

Likewise, if a Latin woman should marry a foreigner believing him to be a Latin in accordance with the *Lex Aelia*

*Sentia*, on the birth of a son she can, under the Decree of the Senate, prove the cause of her error, and then all the parties will become Roman citizens, and the son will pass under the control of his father.

I:70: related to women and marriage

The same rule has been established where a Latin man marries a woman who is a foreigner under the impression that she is either a Latin or a Roman citizen, with a view to taking advantage of the *Lex Aelia Sentia*.

I:71: related to women and marriage.

Moreover, a Roman citizen who thinks that he is a Latin, and for this reason marries a Latin woman, will be permitted to prove the cause of his error in case of the birth of a son, just as if he had married his wife under the provisions of the *Lex Aelia Sentia*. Likewise, those who being Roman citizens think that they are foreigners and marry foreign women, are permitted by the Decree of the Senate, on the birth of a son, to prove the cause of their error; and this having been done, the wife becomes a Roman citizen and the son not only obtains the Roman citizenship but also is brought under the authority of his father.

I:74: related to women and marriage.

If a foreigner believing himself to be a Roman citizen, marries a woman who is a Roman citizen, the question arises whether he could prove the cause of error under the Decree of the Senate. He could not do so, however, as this privilege is not granted by the Decree of the Senate to a foreigner, even though he, being mistaken, should have married a Roman citizen, unless this right was especially conferred upon him. But, when a foreigner married a woman who is a Roman citizen, and after a son was born, he obtained Roman citizenship in some other way, then when the question arose whether he could prove the cause of error, the Emperor Antoninus stated in a rescript that he could do so, just as if he had remained a foreigner; from which we gather that even a foreigner can prove the cause of error.

I:75: related to women and marriage.

From what we have said, it is apparent that where either a Roman citizen marries a foreign woman or a foreigner marries a woman who is a Roman citizen, the child born of the union is a foreigner. If, however, a marriage of this kind should have been contracted through mistake, the defect can be remedied in the manner which we explained above. But if no error took place, and the parties aware of their condition, contracted marriage, the defect of an union of this kind, can under no circumstances, be remedied.

I:76: related to women and marriage.

We, however, are speaking of persons who have not the right to contract legal marriage; for, otherwise, if a Roman citizen should marry a foreign woman with whom civil marriage can be contracted as is stated above, a legal marriage takes place, and a son born to the parties is a Roman citizen, and will become subject to the authority of his father.

I:77: related to women and marriage.

Likewise, if a female Roman citizen should marry a foreigner who is entitled to contract a legal marriage, and a son is born, he will be an alien, and the lawful son of his father, just as if he had begotten him with a foreign woman. At the present time, however, by a Decree of the Senate enacted at the instance of the Divine Hadrian, even if the right of civil marriage did not exist between a woman who is a Roman citizen and a foreigner, the child born of the union is the lawful son of his father.

I:104: related to women.

The third encounter with laws related to marriage happens in this part of the First Commentary where Gaius examines another category of persons who are 'under the authority of another', i.e. the persons who are held *in manu* ('in the hand') (I:48 to I:108 ff). Whereas, both male and female can be under the *Pater Potestas*, only women can be held *in manu*:

I:109: related to women.

Both males and females are under the authority of another, but females alone are placed in the hands.

I:110: related to marriage.

Formerly this ceremony was performed in three different ways, namely, by use, by confarraetion, and by coemption.

I:111: related to women and marriage (analogy with the Mishnaic law)

A woman came 'into the hand' of her husband by use when she had lived with him continuously for a year after marriage; for the reason that she was obtained by usucaption, as it were, through the possession for the term of a year, and passed into the family of her husband where she occupied the position of a daughter. Hence it is provided by the Law of the Twelve Tables that if a woman was unwilling to be placed 'in the hand' of her husband in this way, she should every year absent herself for three nights, and in this manner interrupt the use during the said year; but all of this law has been partly repealed by legal enactments, and partly abolished by disuse.

This first manner of becoming 'in the hand' bears resemblance with the mishnaic way of acquiring a woman by 'intercourse' (Kidd.1:1). The word 'usucaption' is also use in Kidd.1:3 in relation with the acquisition of the Canaanitish bondman.

I:112: related to women and marriage.

Women are placed 'in the hand' of their husbands by confarraetion, through a kind of sacrifice made to Jupiter Farreus, in which a cake is employed, from whence the ceremony obtains its name; and in addition to this, for the purpose of performing the ceremony, many other things are done and take place, accompanied with certain solemn words, in the presence of ten witnesses. This law is still in force in our time, for the principal flâmens, that is to say, those of Jupiter, Mars, and Quirinius, as well as the chief of the sacred rites are exclusively selected from persons born of marriages celebrated by confarraetion. Nor can these persons themselves serve as priests without marriage by confarraetion.

I:113: related to women and marriage.

In marriage by **coemption**, women become 'in manu' of their husband by **mancipation**, that is to say by a kind of **fictitious sale**; for the man purchases the woman who comes into his hand in the presence of not less than five witnesses, who must be Roman citizens over the age of puberty, and also a balance-holder.

I:114: related to women and marriage.

By this act of sale a woman can not only make a coemption to her husband but also to a stranger, that is to say, the sale takes place either on account of marriage or by way of trust; for a woman who disposes of herself in this way to her husband for the purpose of occupying the place of his daughter is said to have done so on account of matrimony; but where she does this for some other purpose, either to a husband or to a stranger, as for instance in order to avoid a guardianship, she is said to have made a coemption by way of trust.

I:115: related to women.

I:115a: related to women.

I:115b: related to women and marriage.

Even if the woman makes a fiduciary sale of herself to her husband, she nevertheless occupies the place of his daughter; for if a wife comes 'into the hand' of her husband for any reason whatsoever, it has been decided that she enjoys the rights of a daughter.

I:117: related to women.

All children of either the male or female sex who are under the control of their father can be mancipated by him in the same way as that in which slaves can be mancipated.

I:118: related to women and marriage.

The same rule of law applies to those persons who are in the hand of others, and they can be mancipated in the same way by those to whom they have been sold, just as children may be mancipated by their father; and while she who is married to the purchaser may only occupy the place of his daughter; still, though she may not be

married to him, nor occupy the place of his daughter, she can still be mancipated by him.

I:119: related to marriage (through coemption).

**Mancipation**, as we have mentioned above is a kind of fictitious sale, and the law governing it is peculiar to Roman citizens. The ceremony is as follows: After not less than five witnesses (who must be Roman citizens above the age of puberty) have been called together, as well as another person of the same condition who holds a brazen balance in his hand and is styled the 'balance holder,' the so-called purchaser, holding a piece of bronze in his hands, says: "I declare that this man belongs to me by my right as a Roman citizen, and let him be purchased by me with this piece of bronze, and gives it to the so-called vendor as purchase money.

I:120: unrelated (but analogy with the Mishnaic law).

In this manner both slaves and free persons are mancipated, as well as such animals as are subject to sale, among which are included oxen, horses, mules, and asses, as well as urban and rustic estates; for instance, Italian lands are usually disposed of in the same manner.

I:121: unrelated (but analogy with the the Mishnaic law).

The sale of land differs from the mancipation of other things, in that both slaves and free persons, as well as animals subject to mancipation cannot be disposed of in this way unless they are present; as it is necessary for him who acquires the object by mancipation to be able to grasp it with his hands, and the ceremony is designated mancipation because the property is seized with the hands. Lands however, are usually mancipated at a distance.

I:122: unrelated (but analogy with the Mishnaic law).

A piece of brass and a balance are employed for the reason that in former times only brazen money was in circulation, and this consisted of asses, doubles asses, half asses, and quarter asses; nor was any gold or silver coin in circulation, as we learn by the Law of the Twelve Tables. The value of the purchasing power of these coins was not estimated by their number, but by their

**weight**; hence an as consisted of a pound of bronze, a double as of two pounds (whence it derived its name, which is still retained), while the half-asses and quarter-asses were estimated by their respective parts of a pound. Therefore, in former times, those who paid out money to anyone did not count it but weighted it, and the slaves who were permitted to disburse money were called "weighters."

I:123: related to women and marriage.

If anyone should ask what is the difference between coemption and mancipation, the reply is that the first ceremony does not reduce the party to a servile condition; but persons of either sex mancipated by parents or others are reduced to the condition of slaves, to such an extent that they cannot take either an estate or a legacy under the will of the party by whom they have been mancipated, unless they have been ordered to be free by the terms of the same will; just as the law is with reference to the persons of slaves. The reason for this distinction is clear, as the words used by parents and so-called purchasers are the same as those employed in the mancipation of slaves, but in the coemption of women this is not the case.

Laws related to marriage are also to be found in the First Commentary among the laws related to the liberation of the persons 'under the authority of another' (I:124 ff). Those under the *Pater Potestas* acquire their freedom by manumission for the slaves (I:126), by death for the descendants (except for the grand-children who become, under the *Pater Potestas* of their living father I:127), or by three successive mancipations for the son and only one for the other descendants (I:132).

I:136: related to women and marriage.

..... Where, however, women are placed in the hand of their husbands by coemption, they are released from parental control; and it makes no difference whether they are placed 'in the hand' of their husbands, or in that of strangers; although those alone are considered to occupy the place

of daughters who are placed in the hand of their husbands.

I:137: related to women and marriage. (?)

... cease to be subject to this authority in the same way as daughters under the control of their father; that is to say, either by the death of him in whose power they are, or because he has been interdicted from water and fire.

I:137a: related to women, marriage and divorce.

... cannot compel him to do so, any more than a daughter can compel her father, even though she may be an adopted daughter. A woman, however, can by serving notice of repudiation, force her husband to release her, just as if she had never married.

In the part of the First Commentary which deals with guardianship (for persons who are not 'in the hand' or subject to *Pater Potestas*) we find a few paragraphs which concern women an/or marriage.

I:144: related to women and marriage.

Parents are permitted to appoint testamentary guardians for their children who are subject to their authority, who are under the age of puberty, and of the male sex; ... even if they are married; for the ancients required women even if they were of full age, to remain under guardianship on account of the levity of their disposition.

I:145: related to women.

I:148: related to women and marriage.

A testamentary guardian can be appointed for a wife who is 'in the hand' of the testator; just as if she were a daughter; and, likewise, one may be appointed for a daughter-in-law who is in the hand of a son, just as if she were a granddaughter.

I:160: related to women.

I:162: related to women and marriage.

The least loss of civil rights results when both citizenship and freedom are retained, but a man's domestic condition is altered; which happens to those who are adopted, as well as to women subject to coemption, and also in the case of those who are given in mancipation and are afterward manumitted; so that as often as anyone is mancipated, or remancipated, or manumitted, he suffers a loss of civil rights.

- I:167: related to women.
- I:168: related to women.
- I:171: related to women.
- I:172: related to women.
- I:173: related to women.
- I:174: related to women.
- I:178: related to women and marriage.

For the *Lex Julia*, enacted for the purpose of regulating marriages, a female who is under the legal guardianship of a ward is permitted to demand a guardian from the Praetor of the City for the purpose of constituting her dowry.

- I:190: related to women.
- I:193: related to women.
- I:194: related to women.

Out of 200 paragraphs in the First Commentary, 50 are related to 'women', whereas 30 are related to 'women and marriage', 5 are related to 'marriage' and 1 is related to 'women, marriage and divorce'.

We observe that the laws related to 'women' are scattered through this Commentary and that 'marriage' is only a component of laws concerning the legal concepts of status and of legal capacity (*Pater Potestas*). This *Pater Potestas* is the maximum capacity (with its rights) a member of the Roman society can possess on another person. It is exclusive to the Roman citizen father and is the ultimate prerogative of the latter's status.

We also notice in the Institutes and the Mishnah, a certain analogy in the laws dealing with the acquisition and liberation of women and slaves, the

acquisition of animals and land. In both systems, the value of the purchasing money is discussed.

*Commentarius Secundus*: 289 paragraphs.

The Second Commentary is concerned with "things" especially their acquisition and alienation (II:1 to II:79). As a subdivision of the subject we find the following topics: Whether or Not Wards Can alienate Property, (II:80 to II:108), Concerning Military Wills (II:109 to II:173), Concerning Substitutions (II:174 to II:191), Concerning Legacies (II:192 to II:223), On the Falcidian Law (II:224 to II:228) and Concerning Inoperative Legacies (II:229 to II:289).

II:50: related to women.

II:63: related to women and marriage.

For, by the *Lex Julia*, a husband was forbidden to alienate dotal land against the consent of his wife, although the land may have become his own either by sale to him as dowry, or by surrender in the court, or by usucaption. It is doubtful whether this rule is applicable only to lands in Italy, or also to those in the provinces.

II:80: related to women.

II:81: related to women.

II:85: related to women.

II:113: related to women.

II:118: related to women.

II:122: related to women.

II:124: related to women.

II:126: related to women.

II:128: related to women.

II:129: related to women.

II:132: related to women.

II:133: related to women.

II:134: related to women.

II:139: related to women and marriage.

The same rule applies where, after having made a will, a wife comes into the hand of the testator, or he marries a woman who is in his hand; for in this way she takes the place of a daughter, and becomes a proper heir.

II:142: related to women and marriage.

The same rule formerly applied to one for whose benefit proof of error is permitted by the Decree of the Senate, for the reason that he was born of an alien, or of a Latin woman who was married with the understanding that she was a Roman citizen; for, whether he was appointed heir, or disinherited by his father, or whether, during the lifetime of the latter, the error was proved, or this was done after his death; the will was absolutely broken, as by the birth of a posthumous child.

II:156: related to women.

II:159: related to women and marriage.

The same rule applies to the case of a wife who is in the hand of her husband, because she occupies the place of a daughter; as well as to a daughter-in-law who is in the hand of a son of the testator; for the reason that she occupies the place of a grandddaughter.

II:161: related to women.

II:241: related to women and marriage.

A legacy bequeathed to a posthumous stranger is void. A posthumous stranger is one, who, after his birth, will not be included among the proper heirs of the testator; and therefore a grandson born to an emancipated son is a posthumous stranger to his grandfather, and likewise the unborn child of a woman who is not considered a wife at Civil Law, is a posthumous stranger to his father.

II:274: related to women.

II:286: related to marriage.

Persons who are unmarried are, by the *Lex Julia* relating to wills, prohibited from receiving estates and legacies, and formerly were considered capable of being the beneficiaries of a trust.

Out of 289 paragraphs, 22 are related to 'women' whereas 5 are related to 'women and marriage' and 1 is related to 'marriage'.

We notice that in the majority of laws where marriage is mentioned, it is mainly in connection with the status of the Roman citizen who has full capacity over his wife because she holds the place of a daughter with regard to him.

*Commentarius Tertius*: 225 paragraphs.

The Third Commentary is also concerned with 'things'. It is the continuation of the end of the Second Commentary on 'Legacies' (III:1 to III:87). It follows with the Law of Obligations (III:88 to III:180) and the remaining part of it is covering Injuries, Damages and Actions (III:181 to III:225).

III:2: related to women.

III:3: related to women and marriage.

**A wife who is 'in the hand' of her husband is a proper heir because she occupies the position of his daughter; as well as a daughter-in-law who is in the hand of his son, for she occupies the place of a granddaughter; she will however, only be a proper heir if the son in whose hand she is was not under the control of the father at the time of his death. We also say that the same rule applies to her who is in the hand of a grandson on account of marriage, for the reason that she occupies the place of granddaughter.**

III:7: related to women.

III:14: related to women and marriage.

With reference to women, however, it has been decided that one rule applies to the taking of estates left by them. For the estates of women pass to us by the right of agnation, just as do those of males; but our estates do not belong to females who are beyond the degree of sisters by the same father. Therefore, the sister and

a brother's daughter cannot be the heir-at-law of one who occupies the place of a sister. A mother, or a stepmother, who passes 'into the hand' of a father by marriage is entitled to the same rights as a daughter.

III:23: related to women.

III:24: related to women and marriage.

In like manner, cognates who trace their relationship through persons of the female sex are not admitted; and, to such an extent does this rule apply, that even a mother and a son or daughter have no right reciprocally to an estate, unless by the mother having been placed 'in the hand' of the husband by marriage, the rights of consanguinity should thereby have been established between them.

III:30: related to women.

III:40: related to women and marriage.

Formerly, a freedman was permitted to pass over his patron in his will, with impunity, for the Law of the Twelve Tables only called a patron to the estate of his freedman, when the latter died intestate without leaving any heirs. Hence, if the freedman died intestate but left a proper heir, the patron was not entitled to any of his estate, but if he left a proper heir who was one of his natural children, no complaint could be made on this account. If, however, the proper heir was an adopted son or daughter, or a wife who was 'in his hand', it was evidently unjust that the patron should have no right to the estate.

III:42: related to women.

III:43: related to women.

III:44: related to women.

III:46: related to women.

III:47: related to women.

III:49: related to women and marriage.

Formerly, before the enactment of the *Lex Papia*, patronesses had only that right to the estates of their freedmen which was conferred upon patrons by the Law of the Twelve Tables; for they could not demand possession of half the estate of an ungrateful freedman contrary to the provisions of the will, or on the ground of intestacy, against an adopted son, a wife, or a daughter-in-law.

which right was granted by the Praetor in the case of a patron and his children.

- III:50: related to women.
- III:51: related to women.
- III:52: related to women.
- III:53: related to women.
- III:71: related to women.
- III:83: related to women.
- III:84: related to women.
- III:95a: related to women and marriage.

... a debtor, by the order of his wife, provided her guardian consents, may make a statement of the amount of dowry which he owes. Another, however, cannot be bound in this way, and therefore if any other person promises a dowry to the husband on behalf of his wife, he will be liable under the common law, provided the husband had previously stipulated.

- III:108: related to women.
- III:114: related to women and marriage.

To this rule there are certain exceptions, for the heir of a joint stipulator has no right of action. Likewise, the act of a slave as joint stipulator is void, although in all other cases he acquires property for his master by stipulation. The better opinion is, that, the same rule applies to a slave in domestic servitude, because he occupies the place of a slave. Moreover, a son who is under the control of his father can act as a joint stipulator, but he does not acquire anything for his father; although, under all other circumstances, by stipulating he makes acquisitions for his benefit. Nor will he be entitled to any right of action unless he has been released from paternal control without the forfeiture of civil rights; as, for, instance, by the death of his father, or because he himself has been installed a priest of Jupiter. We understand that the same rule applies to a daughter under the control of her father, and a woman 'in the hand' of her husband.

- III:119: related to women.
- III:171: related to women.
- III:176: related to women.
- III:199: related to women and marriage.

Sometimes, however, a theft of persons who are free is committed, for example where anyone of my children who is under my control, or a wife 'in my hand', or a judgment debtor, or a gladiator whom I have hired is secretly taken away.

Out of 225 paragraphs in *Commentarius Tertius* 28 are related to 'women', whereas 8 are related to 'women and marriage'.

The Third Commentary mentioned 'women' and 'marriage' as legal elements related to laws concerned with Legacies, Obligations, Injuries, Damages and Actions, but it is mainly done in connection with the status of the Roman citizen and with his authority over his wife who is like a daughter to him (*Pater Potestas*).

*Fourth Commentary:* 187 paragraphs.

The Fourth Commentary is concerned with the different actions which could be brought before the Courts (IV:1 to IV:187). In one paragraph only do we find women and marriage as components of the law. And again it is done in connection with the *in manu* situation of the wife with regard to the status and legal capacity over her of her Roman citizen husband,

IV:80: related to women and marriage.

So much with reference to those persons who are under the control of their fathers and masters whether the controversy relates to their contracts, or their crimes. But with reference to such persons as are 'in hand', or are liable to mancipation, the law is said to be that when an action founded on contract is brought against them, unless they are defended against the entire amount by the party to whose authority they are subject, any property which would be theirs, if they had not been under control, shall be sold. When, however, their forfeiture of civil rights having been rescinded, an action based on the judicial power of the magistrate is brought against them and is not defended, the women herself

can be sued, while she is 'in the hand' of her husband, because, in this instance the authority of the guardian is not necessary.....

In the Institutes, the laws which have 'women' and/or 'marriage' as components are founded mainly in the first three Commentaries. The First Commentary contains about half of the total data and the next two share the remaining half in almost equal parts.

Also in the Institutes, we find associated with women and marriage, the acquisition of slaves, animals and land (I:119, 121), and the discussion of the value of purchasing money (I:122).

## PART TWO: SOCIO-ANTHROPOLOGICAL ANALYSIS OF DATA

### I - LITERARY LAYOUTS

In order to decipher the literary layouts of the two documents from the data produced in the first part of this work, we will present tables which will show the apportionment of the data through the Mishnah and the Institutes. The first table gives the distribution of the four items 'women', 'marriage', 'betrothal' and 'divorce' within the six Divisions of the Mishnah. It presents the number of paragraphs for each item and its relative percentage to the total number of paragraphs for each Division. The second table will do the same for the *Nashim* Division and the third table will do it for the Institutes.

Table I  
M I S H N A H  
4164 par.

	<u>Zeraim</u> 655 p. par. %	<u>Moed</u> 656 p. par. %	<u>Nashim</u> 576 p. par. %	<u>Nezikim</u> 687 p. par. %	<u>Kodashim</u> 589 p. par. %	<u>Tohoroth</u> 1001 p. par. %
women	18 2.75	25 3.81	383 66.5	50 7.28	51 8.66	86 8.59
marriage	4 0.61	6 0.91	331 57.5	25 3.64	19 3.23	10 0.99
etrothal	- -	3 0.46	60 10.41	3 0.44	- -	1 0.99
divorce	- -	- -	104 18.05	7 1.02	- -	1 0.99

Table II  
N A S H I M  
576 par.

	<u>Yebamoth</u> 128 par. par. %	<u>Ketubboth</u> 111 par. par. %	<u>Nedarim</u> 90 par. Par. %	<u>Nazir</u> 59 par. par. %	<u>Sotah</u> 66 par. par. %	<u>Gittin</u> 76 par. par. %	<u>Kiddushin</u> 46 par. par. %
women	126-98.4	97-87.4	31-34.4	13-22	31-47	50-65.8	35-77.7
marriage	124-96.9	74-66.7	29-32.2	7-11.9	35-59.3	43-56.6	9-41.3
etrothal	11-8.6	12-10.8	6- 6.7	- -	5-7.6	3- 3.9	23-50
divorce	21-15.6	20-18.0	7-7.8	- -	3-4.5	49-64.5	4-8.7

Table III  
INSTITUTES  
901 par.

	<u>C. Primus</u> 200 par.		<u>C. Secundus</u> 289 par.		<u>C. Tertius</u> 225 par.		<u>C. Quartus</u> 187 par.	
	par.	%	par.	%	par.	%	par.	%
women	50	25	22	7.61	28	12.4	1	0.53
marriage	35	17.5	6	2.07	8	3.55	1	0.53
betrothal	-	-	-	-	-	-	-	-
divorce	1	0.5	-	-	-	-	-	-

#### THE MISHNAH:

From Table I we notice that outside of *Nashim* the laws related to 'women' in the Mishnah represent only an average of 6.22% of their total paragraphs. Those related to 'marriage' represent an average of 1.9%, those for 'betrothal' represent an average of 0.38% and those for 'divorce' represent an average of 0.4%.

Table II shows that laws related to 'women' are an important feature of most of the Tractates of *Nashim*, *Yebamoth* (98.4%) and *Ketubboth* (87.4%) have the largest concentrations while *Nedarim* (34.4%) and *Nazir* (22%) have the smallest ones. *Sotah* (47%) has almost half of its paragraphs about 'women' while *Gittin* and *Kiddushin* have respectively 65.8% and 77.8%.

The same Table also demonstrates that the laws concerned with 'marriage' are of major importance for each of the six Tractates of *Nashim*. 96.9% of *Yebamoth* paragraphs concerned with 'women' are related to 'marriage'. It is followed by *Ketubboth* with 66.7%, by *Sotah* with 59.3%, by

*Gittin* with 56.6%, by *Kiddushin* with 41.3%, by *Nedarim* with 32.2% and by *Nazir* with 11.8%.

50% of the paragraphs in *Kiddushin* are concerned with 'betrothal' laws while *Yebamoth* has 8.6% of them, *Ketubboth* has 10.8%, *Sotah* has 7.6%, *Nedarim* has 6.7% and *Gittin* has 3.9%. *Nazir* has none.

'Divorce' laws<sup>1</sup> are clustered in Tractate *Gittin* (64.5%). The other Tractates come after in the following order: *Yebamoth* (18%), *Ketubboth* (15.6%), *Kiddushin* (8.7%), *Nedarim* (7.8%) and *Sotah* (4.5%). *Nazir* has none.

When we consider globally Tables I and II we notice that the relevant paragraphs related to 'women', 'marriage', 'betrothal' and 'divorce' are generally gathered into the Division and Tractates which are officially named for the content of the majority of their laws. The fact that laws on 'women' and 'marriage' are found in all the Tractates of *Nashim* shows a will to gather and isolate them from other laws of the Mishnah. Even Tractates *Nedarim* and *Nazir* which contain such a large number of 'unrelated' paragraphs, still have enough laws on 'women' and 'marriage' to justify their inclusion in *Nashim*. In fact, their respective percentages for both 'women' and 'marriage' are more than the total percentages of the Mishnah on both subjects. Mishnah has 9.58% of its paragraphs concerned with 'marriage' while *Nazir*, the Tractate with the lower percentage, has 11.86%. Mishnah has 14.72% of its paragraphs concerned with 'women' while *Nazir* has 22%.

This pattern of literary organization shows a will to "put together" and "isolate". It gathers and isolates the laws of betrothal from the other laws related to marriage which are themselves rounded up separately in the other Tractates of *Nashim*. The *Nashim* Division itself, is, in its turn, isolated from

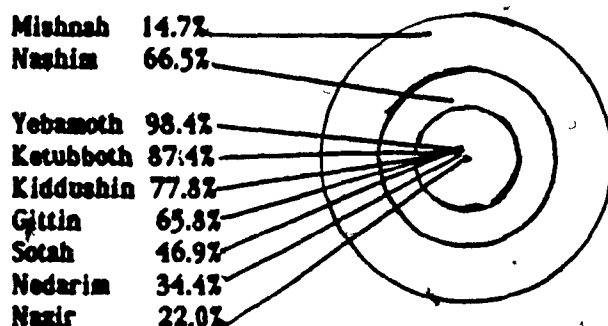
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<sup>1</sup> (as defined in the explanation of our methodology)

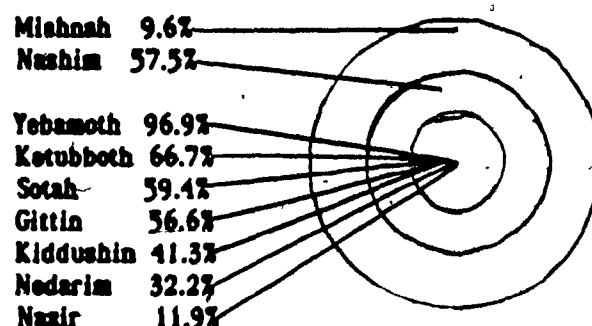
the other laws of the Mishnah which are organized according to their topics in the five other Divisions. Each Tractate, within *Nashim* looks as a WHOLE while *Nashim* itself within the Mishnah also looks as a WHOLE.

The literary layout of the Mishnah can be represented graphically by three concentric circles. For each item of the data we have the following graphics:

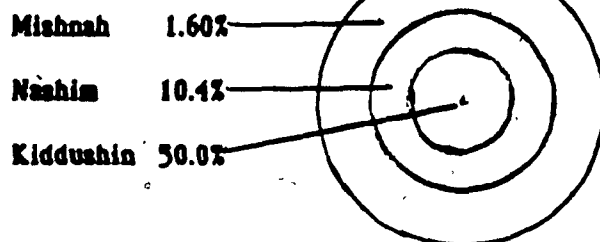
### WOMEN



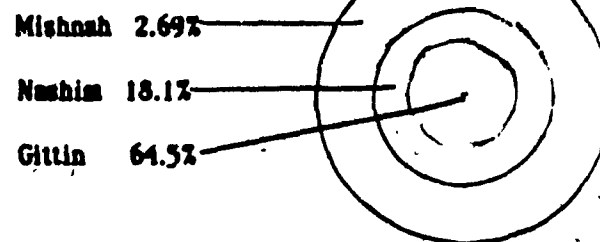
### MARRIAGE



### BETROTHAL



### DIVORCE



The Mishnah, as explained by Scott Green (1983, 200) exemplifies the 'list' genre. The characteristic of this genre is that the reading can take off anywhere. Each pericopa is a whole and can be understood without referring to any basic content of the Mishnah. What is required from a specialist of the Mishnah is a pre-knowledge which is acquired as part of his rabbinic training. Knowledge of the Torah is a prerequisite and it cannot be found in the Mishnah itself.

There exists in the Mishnah an interplay between the different pericopae, but this interplay is not dependent on the structure of the Mishnah, but on the knowledge of its content. The Mishnah is, then, not the basis of its whole structure. The structure of the Mishnah is organizational and is in no way dependent on the content. No division is supporting the others, and in each Division, no Tractate is supportive of the others.

We choose the concentric circles as representative of the Mishnah literary layout because they emphasize the role of its organization, which is to enclose, keep together and, at the same time, isolate. It is not representative of the content of the Mishnah but of the will and vision of its editor(s). This aspect of the literary layout will be developed later on.

### THE INSTITUTES:

Table III shows that in the Institutes we find laws related to 'women' and 'marriage' but none about 'betrothal' and only one which refers to 'divorce'. The First Commentary has 25% of its paragraphs concerned with 'women' and 17.5% concerned with 'marriage' and 0.5% concerned with 'divorce'. The Second Commentary has 7.6% of its paragraphs concerned with 'women' and 2.1% concerned with 'marriage'. The Third Commentary has 12.4% of its paragraphs concerned with 'women' and 3.5% concerned with 'marriage'. The Fourth Commentary has one paragraph concerned with 'women' and with 'marriage' i.e. 0.5%.

The acquaintance with the laws related to 'women' and 'marriage' has been made through a thorough reading of the Institutes. All along there has been no indication that the laws could be found in one Commentary more than in any other. This led us to realize that the cut between the Second and

the Third Commentaries is artificial. The Second Commentary finishes with 'Legacies' and the Third one starts with 'Legacies'. This latter is a continuation of the Second and both constitute a presentation of the Roman law which is concerned with 'things'. Things are the second division of the private Roman law system. The first division is concerned with 'persons' while the third one is concerned with 'actions' (legal actions before the Courts, I:8). The splitting of the laws of 'things' into two Commentaries could have been made for the sake of dividing the content of the Law whole *expose* into four almost equal parts.

If we put together the Second and Third Commentaries, we find that for the two, the laws related to 'women' represent 50 paragraphs out of a total of 514 i.e. 9.7% while the laws related to 'marriage' represent 14 paragraphs out of a total of 514 i.e. 2.7%. While the First Commentary on 'persons' has 50 paragraphs on 'women' or 25% of its content related to them, the Second and Third Commentaries together, although they also have a total of 50 paragraphs on 'women', only have 9.7% of their content related to them. For the laws related to 'marriage', the First Commentary has 17.5% related to them while the Second and the Third together only have 2.7%. The analysis of these figure shows that most of the laws related to 'women' and 'marriage' are concentrated in the First Commentary.

After we had completed our first reading of the entirety of the Institutes, we realized that, contrary to the Mishnah, an understanding of the Roman law system, as expounded by Gaius, cannot be acquired without a logical reading which has to start with the First Commentary and finished with the Fourth one. We find in the First Commmentary the basic structure for the elaboration of all the legal system presented by Gaius. We find in the First Commentary all the basic concepts, especially those of status and *Pater*

*Potestas* that are needed for an understanding of the whole Roman law system as presented in the Institutes. In the Third Commentary we find the following paragraph which deals with the rules of consanguinity in the matter of an estate,

"In like manner, cognates who trace their relationship through persons of the female sex are not admitted; and, to such an extent does this rule apply, that even a mother and a son or daughter have no right reciprocally to an estate, unless by the mother **having been place in the hand of the husband by marriage**, the rights of consanguinity should thereby have been established between them. (III:24)

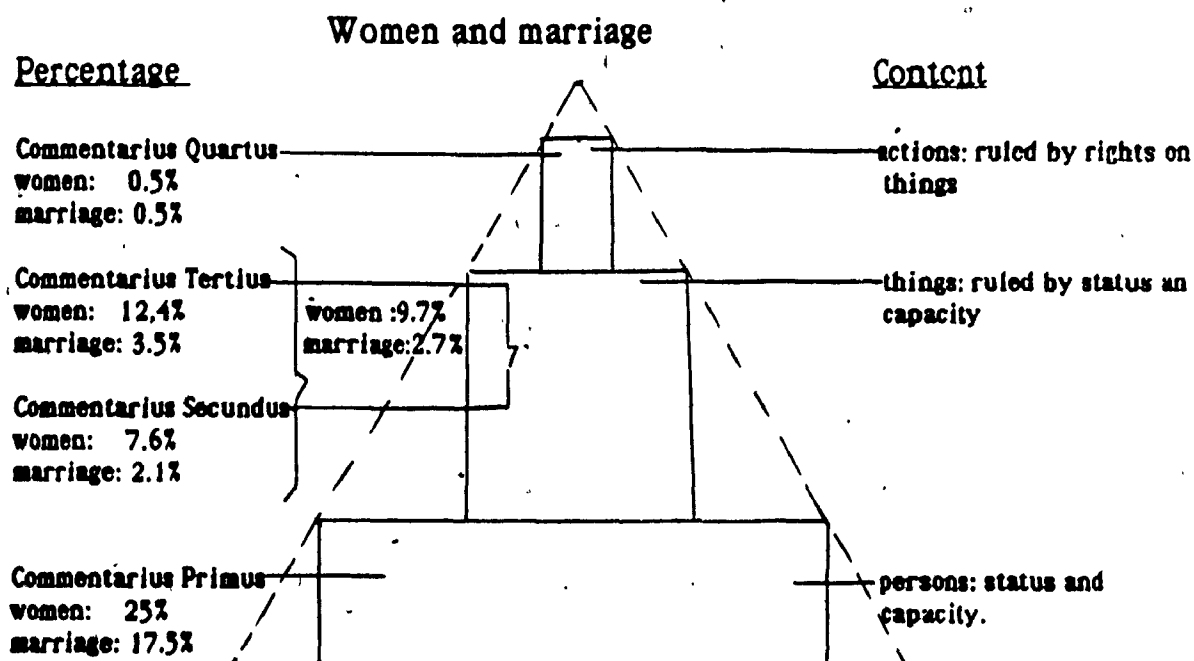
How can we understand this paragraph without knowing what "mother having been place 'in the hand' of the husband by marriage" means? What sense can we make of it if we do not know the basic concepts of status and capacity? These concepts are the major components of all the laws contained in the First Commentary and without a knowledge of them, no law of the Second, Third or Fourth Commentary is deemed to be understood. Without the First Commentary, no other Commentary can be understood.

On a knowledge of the laws of 'persons' depends an understanding of the laws of 'things' and on a knowledge of the laws of 'things' depends an understanding of the laws of 'actions'. All the four Commentaries of the Institutes are a logical construction where a total understanding of the legal system presented by Gaius depends on an understanding of each part of the latter, and this understanding is chronologically acquired.

To return to the statement of the "mother having been place 'in the hand' of the husband by marriage", the answer to its comprehension is found in the First Commentary which deals with the division of the law concerned with 'persons who are under the authority of another' (I:148 ff) and with its subdivision of 'those who are held in the hand' (I:109 ff).

This fact of the interdependency of the laws in the Institutes has forced us to envisage its literary layout as one which can only be represented by a pyramidal geometrical figure. The First Commentary, with its largest percentages of laws related to 'women' and 'marriage', has to be the basic block on which the three others are superimposed. This pyramidal structure which is here conceptualized after the percentages figures of Table III can also be conceptualized after the content of the Institutes. The First Commentary being the basis on which all the others are built.

This is graphically represented as follows:



## II - SOCIAL MAPS AND/OR WORLD-VIEWS

Our study, using a socio-anthropological approach (as explained in our Introduction) has examined the possibility of eliciting from the literary layouts of the Mishnah and the Institutes, some clues as to the respective social worlds as perceived through the eyes and minds of the author(s)/editor(s) of these two documents.

The hereabove performed analysis of the data gathered from the Mishnah and the Institutes has allowed us to become familiar, not only with their literary layouts, but also with their respective content. A search for clues as to the social worlds of the author(s)/editor(s) will have to take into account the interaction of these two facets of the documents.

### THE MISHNAH

Here, in a fragment - the laws about 'women, marriage, betrothal and divorce', taken from the 'civil' laws of the Mishnah, we find a literary layout which replicates the pattern discovered by Douglas. She writes in *Self-Evidence*,

In a paper which has to be treated as part of the evidence for the present argument, I have recently analyzed the Israelite rules for altar and table as a particular type of classification system (Douglas 1972). When its processes of inclusion and identification have been worked through, the result is a series of concentric circles, each larger boundary reinforcing the inner one, each inner one enclosing yet another. Everything that seems eligible to stand across any of the boundaries is picked out and put into the set of defilement. Our speculations about the kind of social intention which organises its universe in this way are straightforward. It is a people who prefer their boundaries to remain intact. They reckon any attempt to cross them a hostile intrusion. They expect no good to come of external exchange and have no rules for facilitating it. When they think of their social organisation in spatial terms they set the holiest place within several concentric boundaries. The tribes of Israel, when they camped, were to group on each side of the holy tent in which God revealed his presence. The closest area round the tent was occupied by the Levites (Numbers 2:17), Judah to the east, Ephraim to the west, on the north the camp of Dan, on the south the camp of Reuben (Ackroyd, 1970:103). The boundaries keep out the profane. The sons of Aaron were to avoid all strong drink, because they were 'to distinguish between the holy and the common, and between the unclean and clean' (Leviticus 10:10). Being holy means being set apart. The Israelites cherish their boundaries and want

nothing better than to keep them strong and high.  
(1975,304)

When we examine tables I and II of the data on 'women, marriage, betrothal and divorce' we notice that the Mishnah deals with the crossing of boundaries. Effectively, by its laws on betrothal (*Kiddushim*), it regulates with minutiae the passage by the woman from one domaine (that of her father) to another one (that of her husband). By its laws on 'divorce' (*Gittin*) it regulates the reverse crossing. These laws emphasize the importance of these liminary stages and of the danger inherent thereto.

This pattern of concentric circles that we find in the civil laws of the Mishnah through our analysis of the laws related to marriage, replicates that of the religious laws and social organization as revealed by Mary Douglas. As the religious laws of the Mishnah are based mainly on those contained in the Torah, we may assume that the pattern discovered by Douglas should also be valid for the religious laws of the Mishnah. The 'civil' and 'religious' patterns of the Mishnah would then be mutually reinforcing, and the conclusion of the analysis by Douglas of the Israelite society of Antiquity should also be valid for the Jewish society of Late Antiquity, but as perceived by the eyes and/or minds of the author(s)/editor(s) of the Mishnah.

### THE INSTITUTES

Contrary to the Mishnah, which gathers laws related to marriage and isolates them from other laws on women, and these from other laws in the Mishnah, laws on women and marriage in the Institutes are scattered, especially through the First Commentary, and are attached to other legal institutions needed by Gaius for the purpose of presenting his *exposé* on Roman law.

This *exposé* allows us to understand that women through marriage are **a means for modifying** status and, thereafter, the legal capacity which is attached to it. Women through marriage open doors to higher status (social climbing system) - from freedman to Roman citizen - and they add to the legal capacity of the Roman citizen whose *Pater Potestas* depends on a legitimate marriage and who through a legal fiction sees his power extended over his wife.

The Roman law system, through our analysis of the data on marriage, appears to us in the shape of a pyramidal construction made of stairs, which has at its summit, the top-status Roman citizen with his top-capacity of *Pater Potestas*. At the bottom of the pyramid come the Latins (colonists or Junii) and the foreigners with conubium. Below them, come the *Dediticii* and freed slaves having this status. Below the *Dediticii* come the Roman slaves and below them come the rest of the world as a pool for potential slaves and mercenaries.

This pyramidal configuration duplicates the pyramidal figure that we use to graphically represent the literary layout of the Institutes. In fact, one face of the pyramid could represent the literary layout, the second, the legal system as elucidated from the Institutes' content, and the third face could represent the social world of Gaius, as perceived through his eyes and/or mind and which has been discovered through our methodology and theoretical framework. The three-faced pyramidal graphic representation of the Institutes constitutes a mutually reinforcement of the representativity of each of its faces.

This three-faced pyramidal structure has been built by using data extracted from the Institutes only. The text of Gaius has been our only source of material. But, it happens that this configuration corroborates that

which has been elaborated by a plethora of Roman society' specialists, who for their research have used, besides the Institutes, all kinds of other data, data which we called 'corroborative' in our Introduction. The Roman world of 200 C.E. as explained by those specialists ( Fustel de Coulanges 1905, Dill 1905, Abbott 1909, 1912, Bailey 1923, Greene 1933, Carcopino 1941, McDaniel 1949, Grant 1960, Boren 1977) was the world of the Empire whose head or summit was the deified emperor and whose feet or base lied in the commoners who were the people of the Roman empire. Rome was at the top and all other cities, territories and colonies reported to her. The governments of the latter were under that of Rome.

All these levels of structures are those of a society whose legal and social organizations put the Roman citizen at the summit and the slaves and non-accredited foreigners at the bottom, but with a possibility for the latter to go from the bottom to the top. From the lowest status to the highest. For example, through legal 'manumission' a slave under the age of thirty years could become a Latin and through a lawful marriage and one child he could become a Roman citizen (I:29) The absolute legal capacity of Roman citizenship (*Pater Potestas*) was enough to lure people into the Roman society.

When we look at Table III, we do not find a significant number of paragraphs which deal with betrothal and divorce. In fact, there is no paragraph on betrothal and only one in the First Commentary which refers to the legal concept of divorce. The Institutes stand in complete opposition to the Mishnah whose laws on these two subjects are numerous and meticulously spelled out. Analyzing this phenomena within Douglas' framework of 'boundaries crossing', we realize that a society whose legal system does not deal specifically with the passage from one stage

(unmarried) to another (married) and vice-versa, is a society which, though perceiving such crossing as important, does not see it as dangerous. In fact, the laws related to marriage in the Institutes, show that the crossing of such boundaries is welcomed for it constitutes a means to attain the Roman citizenship. The latter being the basis of the social and legal Roman systems and in fact the only reason for such systems to exist.

Such systems can only be the results of a world-view which is that of a Roman citizen living in a society whose survival depends on the fulfilment of its needs in basic human supply and which, therefore, has to be open.

As much as the literary layout of the Institutes of Gaius is a witness to a society which is open, but strictly structured, the literary layout of the Mishnah gives evidence of a closed society, which presents its back to the outside world. All the gathering and isolation of the different components of the Mishnah reflect the basic structures of a small society - as could be seen through the eyes and/or mind of its author(s)/editor(s), which believes that survival is met only through isolation. As Douglas writes,

Inside the boundaries is a small political unit, a people surrounded by powerful, rapacious enemies. Defections and infiltrations are familiar in its history. Its boundaries are never strong enough.  
(1975,305)

### III: SIMILARITY AND ANALOGY OF LAWS RELATED TO MARRIAGE

The cases of similarity and analogy between Jewish law and Roman law have been and still are the object of many scholarly researches. As an example of such exploration, we have mentioned in our Introduction the work of Boaz Cohen Jewish and Roman Law: a Comparative Study and quoted him extensively on this subject.

While presenting our data taken from the Mishnah and the Institutes we came across laws related to marriage which present in the two documents stunning similarities. Both in the Mishnah (Kidd.1:1-5) and the Institutes (I:109-122) these laws which regard marriage are followed by stipulations concerning acquisition and liberation of slaves, acquisition of animals and acquisition of lands and the value of purchase money. Both mention 'usucaption' in relation with the acquisition of persons - the Canaanitish bondman at Kidd.1:3 and the woman at I:111).

The perusal of the above mentioned laws shows that in both documents, women, slaves, animals, money and land have been bundled up together. Furthermore, the rules which deal with each of these subjects present in their content striking similarities, as we have seen in the course of the presentation of the pertinent data.

As the purpose of this study is not to do comparative law, but to look for a means to discover the social reality behind a literary work - as seen or perceived through the eyes or mind of the author(s)/editor(s), we will not examine the specific content of these laws, but will look at them globally within the scope of the result of our socio-anthropological analysis of the collected data.

The similarity of content between laws about marriage, surely inclines the scholar to believe and, thereafter, to argue that there could have been a borrowing by one legal system from the other one. The consensus between scholars doing comparative law between the Jewish and Roman legal systems is that the Jews borrowed from the Romans. The Roman world became an everyday reality in Palestine from 67 B.C.E. to 700 C.E. and the Roman law system was imposed on the Jews in many areas. Boaz Cohen, (as quoted on pages 7 and 8 of the Introduction) speaks about "interchange of legal ideas"

and "subtle and indirect, but not the less, real influence". The plausibility of making such a statement derives from the confrontation of the language of the laws themselves.

To diagnose the nature of the similarity of the content of the two systems of law is a risky enterprise, because as required by Cohen (1966,13) it supposes a knowledge, not only of the legal concepts themselves, but of the 'social, religious, economic and political' reality behind the laws. Thus, it has been demonstrated in our Introduction that such a social reality is very difficult to evaluate in the case of the Mishnah because of the rarity and the questionable value of the social information the latter contains and because of the lack of extra-mishnaic sources.

Instead of comparing the language and *ipso facto* the content of these similar laws, let us compare with each other the results of our socio-anthropological analysis of the two documents. In fact, the two literary layouts of the documents stand in opposition to each other as well as the social maps and world-views which have been elucidated from them. The Mishnah stands for a closed society while the Institutes stand for an open society.

We wrote in our Introduction that "a borrowed legal concept like a borrowed object has to correspond to a need in the borrower for such concept or object" and that "a borrowed concept or principle has to be integrated in the whole legal system without disrupting both this system and the society which created it". A legal concept which has been developed and fashioned into a legal system which stands in absolute opposition to the one which is apparently borrowing it, has all the chances of not being integrated into the adopting one. But the fact that we notice and discuss today the similarities and analogies between the two systems supposes that the

mishnaic system borrowed something from the Roman system. What it borrowed does not need to be the legal concept or idea but, it could rather be a legal tool which was adopted by the mishnaic system to make its own concept on the same matter work effectively.

In *Kiddushin*, the laws on betrothal are concerned with the acquisition of the woman herself while in the Institutes, what is acquired through marriage is mainly status and legal capacity. These are really two different ideas!

We agree with Cohen's statement which says that "the influence was subtle and indirect but none the less real". The existence *per se* of the similarities and analogies in the two texts is, in itself, an evidence of such an influence. But we find it almost trivial to affirm that "there was an interchange of legal ideas between Romans and Jews". The lack of reliable sources on this matter and the result of our socio-anthropological analysis of the material from the Mishnah and the Institutes incline us to doubt such an affirmation.

This study has demonstrated that the literary layouts of the two documents are in opposition and that the two legal systems evinced through the analysis of these layouts and through the content of the texts (the laws related to marriage) have to emerge from two societies whose world-views stand in opposition to each other, one being "closed" and the other "open".

These two societies, as revealed through the present study can be represented on the "grid-group" diagram imagined and used by Mary Douglas (1978). The vertical axis of this diagram represents the various degrees of control exercised on the society by the rules and regulations which the latter has devised for itself. The horizontal axis is that of the 'group' and it represents the various degrees of cohesion of a group or

community. \*For the Mishnah we have a 'high grid- high group' society (upper right corner of the diagram), and for Gaius we have a 'high grid - low group' ( the upper left corner). From the results of our analysis we find the 'grid' in the content and the group in the literary layout and the world-view.

The minutiae regulations of the Mishnah and the strict laws of the Institutes constitute respectively the 'grid' for the Jews and for the Romans. These two legal systems are very exacting for the people which are submitted to them. The Mishnah with its rules about 'pots and pans' leaves no place for the imagination. The Institutes with its laws determining the status and capacity of a person and thereafter of all his/her legal rights is built to consecrate and protect the Roman citizen.

The closeknit society of the Mishnah which finds its survival in isolation from the rest of the world and the wide open society of the Institutes which needs new human supply for its survival constitutes the 'group' for the Jews and the Romans. One society does not allow its members to cross the protective boundaries, while the other regulates their crossing.

### CONCLUSION

With this last graphical representation of the Mishnah and the Institutes on Douglas 'grid'- 'group' axes, the present study is terminated. We believe that it has substantiated our hypothesis, that by applying to the Mishnah and the Institutes, a socio-anthropological approach, we can through the analysis of their literary layouts and contents find some clues to the kind of society which lies behind those legal documents. We admit that those clues are only clues to the society as the latter is perceived through the eyes or conceived

through the mind of each author(s)/editor(s) of the documents. Nevertheless, if these clues allow us only to draw a shadow of the society which gave birth to the author(s)/editor(s) and through them, to the documents themselves, our work would not have been in vain, for in the aridity of the historical information concerning the Mishnah, this shadow would already represent a gain.

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