Introduction

One of the most fascinating issues in every legal system is the nexus of contract law and family law and their potential mutual influence. On the one hand, one can contemplate using contractual devices and doctrines to achieve a more flexible and nuanced regulation of the various issues arising in family law instead of the rigid and determined regulation by public policy-inspired statute. On the other hand, it is possible to explore whether and the extent to which family law assists in the validation of different (family) agreements and contracts. In scholarly literature, one can find in the last decades writing regarding the expanding influence of civil contract law on modern family law.[1] This book focuses mainly on regulating some aspects of marital status. By way of example, it uses various spousal agreements, such as prenuptial and postnuptial agreements, divorce agreements, cohabitation agreements, and even agreements between same-sex partners.

Similarly, in the field of parent–child relationships, this book includes discussions of various co-parenting agreements.[2] In the modern era, "nontraditional" families, in both the spousal and the parental contexts, urgently require the provision of such agreements since their relationships are not recognized by their jurisdictions as a married couple. The unique interplay between greater social openness and rapid biomedical developments in the field of reproduction enables reproduction in almost every family structure, with large numbers of

[1] *See, e.g.*, Shahar Lifshitz, Contractual Regulation of Spousal Relationship in Civil Law 263 n.2 (PhD thesis, Bar-Ilan University, 2002) (Heb.); ibid, *The Regulation of the Spousal Contract in the Israeli Law – First Outline*, 4 Kiryat Hamishpat 271 (2004–05) (Heb.).

[2] *See* Charles P. Kindregan, *Collaborative Reproduction and Rethinking Parentage*, 21 J. Am. Acad. Matrimonial L. 43 (2008); Bix Brian, *Domestic Agreements*, 35 Hofstra L. Rev. 1753 (2007); Katherine M. Swift, *Parenting Agreements, The Potential Power of Contract, and the Limits of Family Law*, 34 Fla. St. U. L. Rev. 913 (2007).

children being born using nontraditional means.[3] Consequently, the need to contractually regulate the relationship between all the parties to those enterprises has been accelerated.

There is much less academic discussion concerning the potential influence of various family law doctrines and principles on the regulation of modern contractual devices and doctrines.[4] Modern contract theory has been regarded as much more sensitive and potentially even more humane than classical contract theory is.[5] There is a stark contrast between contracts regulating family settlements and contracts governed by classical contract theory, which holds that any given contracting parties are rational and reasonable enough for signing the best contract for them[6] – and therefore "Qui dit contractual, dit juste"[7] – and they must fulfill their contractual obligations. This is true even though there might be various problems concerning the formation and operation of a contract, such as unequal bargaining power of the contracting parties, a change of heart, changed circumstances, and other cognitive obstacles for properly foreseeing the future at the moment of signing the contract.

Likewise, both the rabbinic and the scholarly literature[8] have not dealt extensively enough with the possible influence of contractual devices and doctrines on the

[3] *See* recently Yehezkel Margalit, *Dying to Be a Father – About the Appropriate Normative Limits on the Use of the Will of the Deceased to Reproduce after His Death* ch. 1 (on file with author) (Heb.).

[4] For seminal academic writings regarding the modern/neoclassical contract doctrine, see Ian Ayres, *Valuing Modern Contract Scholarship*, 112 Yale L.J. 881 (2003); Morton J. Horwitz, The Transformation of American Law, 1780–1860 (1997); Good Faith and Fault in Contract Law 7–12 (Jack Beatson & Daniel Friedmann eds., 1995); Jay M. Feinman, *The Significance of Contract Theory*, 58 U. Cin. L. Rev. 1283 (1990); Ian R. Macneil, The New Social Contract: An Inquiry into Modern Contractual Relations (1980).

[5] *See, e.g.*, Elizabeth S. Scott & Robert E. Scott, *From Contract to Status: Collaboration and the Evolution of Novel Family Relationships*, 115 Colum. L. Rev. 293 (2015) passim; Yehezkel Margalit, *In Defense of Surrogacy Agreements: A Modern Contract Law Perspective*, 20 Wm. & Mary J. Women & L. 423 (2014) passim; Allen M. Parkman, *The Contractual Alternative to Marriage*, 32 N. Ky. L. Rev. 125 (2005); Robert Leckey, *Relational Contract and Other Models of Marriage*, 40 Osgoode Hall L.J. 1 (2002); John Wightman, *Intimate Relationships, Relational Contract Theory, and the Reach of Contract*, 8 Feminist Legal Stud. 93 (2000); Elizabeth S. Scott & Robert E. Scott, *Marriage as Relational Contract*, 84 Va. L. Rev. 1225 (1998).

[6] *See* Ian R. Macneil, *Contracts: Adjustment of Long-Term Economic Relations under Classical, Neoclassical and Relational Contract Law*, 72 Nw. U. L. Rev. 854 (1978); Michel Rosenfeld, *Contract and Justice: The Relation between Classical Contract Law and Social Contract Theory*, 70 Iowa L. Rev. 769 (1985); Kevin M. Teeven, *A History of Legislative Reform of the Common Law of Contract*, 26 U. Tol. L. Rev. 35 (1994); Patrick S. Atiyah, An Introduction to the Law of Contract 7 (1995); Melvin A. Eisenberg, *Why There Is No Law of Relational Contracts*, 94 Nw. U. L. Rev. 805 (2000).

[7] For this legal doctrine, see Louise Rolland, *Qui dit contractual, dit juste (Fouillee) . . . en trois petits bonds, a reculons*, 51 McGill L.J. 765 (2005–06).

[8] For a general discussion of the Jewish contract law, see Menachem Elon, *Contract* in The Principles of Jewish Law 246–56 (Menachem Elon ed., 1975); Levine Aaron, Free Enterprise and Jewish Law: Aspects of Jewish Business Ethics 33–57 (1980). For a discussion of the general difficulty to formulate contemporary contract that can be reconciled

regulation of Jewish family law, mainly in finding a viable solution to the problem of the *agunah* (Jewish chained woman), as is discussed extensively in the outset of the third chapter of this book. These discussions revolve around contractual devices and doctrines that are based on contractual agreements per se and are included in prenuptial agreements and a commitment to grant a *get* (religious divorce) and in different contractual doctrines such as conditional marriage, mistaken marriage, and so on. If those contractual solutions are accepted as a viable alternative for the acute need of receiving the *get*, one may properly cope with the heart-wrenching case of the *agunah*.

Besides the complexities arising because of the status of marriage, discussed above, there is an urgent need for further discussion regarding the regulation of different financial aspects arising from the spouses' use of an explicit or implicit contract.[9] These discussions should be much easier from halakhic perspective since they deal only with the monetary angles of spousal life, such as mutually agreeing upon egalitarian or contractual ownership and distribution of the family assets. In addition, these private agreements may enable the spouses to mutually agree upon increasing, decreasing, or even absolutely abolishing gender halakhic obligations, such as contractual agreements to exempt or obligate the husband to pay the wife's maintenance and/or the child support or to waive the husband's right to inherit his wife. It is my opinion that these important and substantial contractual devices have not received the attention they deserve in either the halakhic or the scholarly literature. This lacuna will be filled with the theoretical and practical conclusions of this book.

THE STRUCTURE OF THIS WORK

The main theme of this book is exploring the potential influence of halakhic contract law on halakhic family law in both spousal and parent–child relationships. In Chapter 1, I initiate the discussion of the use of contractual devices to privately regulate the various halakhic spousal obligations that derive from the status of being married according to "the law of Moses and Israel" (*kedat Mosheh veYisrael*).

with the rigid halakhic restrictions, see the following Hebrew references: David Bass, *Contracts According to Dine Torah*, 1 Keter 17 (1996); Benjamin Porat, *The Law of Fraudulent Prices – Fundamentals, Principles and Values*, 4 Keter 292 (2004); Defective Contracts (Nahum Rakover ed., 2011); Remedies for Breach of Contract (Nahum Rakover ed., to be published); and the various articles in the periodical 4 Mishpetei Eretz (2016).

9 For example, Ariel Rosen-Zvi, The Law of Matrimonial Property (1982) (Heb.) has dealt extensively with regulating the monetary spousal relationship via contractual devices in both *halakhah* and civil law. *See*, respectively, ibid, at 124–27, 132, 222, 339, and 349–50, and in the index, s.v. "contract law" (*hozim*). For a discussion of the various spousal monetary agreements and waving away the various *ketubah* stipulations, see, respectively, Benzion Schereschewsky, Family Law in Israel 98, 157, 164, and 101–02 (4th ed., 1993) (Heb.) and more recently Benzion Schereschewsky & Michael Corinaldi, Family Law in Israel vol. 1, 225–78 (2015) (Heb.).

Recently there has been an increase in academic and rabbinical literature dealing with various aspects of the approach of Jewish law to marital relations between spouses, discussions that until not long ago took place only in private. Jewish law regulates this relationship in a most comprehensive manner, in accordance with the concept of *halakhah*. This is different to civil law, which in liberal modern systems avoids legal involvement in this intimate relationship. The halakhic term used for regulating this relationship is the commandment/duty of *onah*.

In this chapter, I seek to discuss anew the traditional determination that sees the element of *onah* in Jewish marriages as mandatory, a rigid halakhic and basic obligation owed by a husband to his wife, from which a man cannot be exempted either by mutual agreement between the parties or by a unilateral stipulation on his part. This traditional approach is expressed in the determination of the Babylonian Talmud, which chose the element of *onah* as the prototype for any attempt to stipulate with regard to an obligation that originates from the Torah. Any such stipulation will be void since it comes within the category of "one who stipulates about what is written in the Torah"; thus *rishonim* (early rabbis) insisted that *onah* is the "essence of matrimony" and "the essence of Torah marriage" and that "marital relations are the essence of marriage from the Torah." This chapter reexamines this traditional approach, seeking to illuminate the dispositive foundations of the elements of *onah* – whether by imposing a condition in the *kiddushin* (Jewish betrothal) and thus negating the obligation of *onah* or by permitting the wife to renounce her *onah* rights or giving her permission to violate her *onah* right.

The discussion in Chapter 2 is a direct continuation of the conclusions of Chapter 1, focusing only on the possible private regulation of the marital relations between spouses by consent. The discussion in Chapter 1 highlights the essential differences between the Babylonian Talmud, which rejects from the outset almost any private agreement regarding this intimate relationship, and the Palestinian Talmud, which is much more flexible and enables this type of spousal agreement. In this chapter I examine whether there exists only one essential difference in the Talmudic points of view regarding conjugal relations or whether there is a much more comprehensive and meaningful gap in the Talmud's outlook. Recently there has been considerable interest also in the contractual aspects of the relationship between spouses in both *halakhah* and civil law. In *halakhah* the discussion is primarily concerned with the limits of freedom of contract. In other words, the question is to what extent a couple married under Jewish law can use a contract to regulate their financial relations at the commencement of their married life. These halakhic contracts are generally called prenuptial agreements.

In this chapter I am interested in reconsidering the extent of "freedom of contract" in Talmudic family law in light of the special approach found in the Palestinian Talmud and contrast it with that of the Babylonian Talmud. I devote most of the discussion to those components dealing with matters of ritual (*issura*), issues that are not specifically financial from a pure halakhic point of view but that

are connected to Jewish marriage. Among the subjects discussed besides the husband's duties regarding *onah* are the possibility of limiting through contracts obligations and privileges resulting from marital status, such as the husband's obligation to pay the basic *ketubah* sum and his right to inherit his deceased wife's estate. The special approach found in the Palestinian Talmud permits a much wider and more flexible approach to the freedom of contract than that of the Babylonian Talmud. In the light of this approach, Chapter 2 is primarily concerned with the dogmatic basis for the woman's right to initiate a divorce because she hates her husband based on prior agreement at the time of the marriage, a condition that was common in Palestine during the period of the Palestinian Talmud.

After concluding in the first two chapters that indeed we have an explicit contradiction between the two Talmuds and there is an essential gap in their perspectives regarding the limits of freedom of contract for couples who wish to marry according to the law of Moses and Israel, I seek in Chapter 3 to take the issue one step further and explore whether it is possible to practically use one of the available contractual devices as a possible solution for the heart-wrenching case of the *agunah*. In the modern era, there have been a number of suggestions for halakhic solutions for the problem of the *agunah*. Those solutions are based on contractual agreements per se and are included in prenuptial agreements and a commitment to grant a *get* and in different contractual doctrines such as conditional marriage, mistaken marriage, and so on. The use of doctrinal contracts that lead to conditional marriage is rejected first because of the Amoraic rejection of conditional marriage and second because they are not in accordance with Torah law.

My intention in this chapter is to negate these two claims. I cite both early and recent halakhic authorities, which put forward the opinion that since we have unified the two stages *kiddushin* and *nissuin* (Jewish marriage), any condition laid down with regard to *kiddushin* is also applicable to *nissuin*. Furthermore, it is my intention to demonstrate a principle, which was accepted by early authorities, that all halakhic marriages are basically conditional. I also attempt to extract samples from Tannaitic and Amoraic levels of the Mishnah and Talmud that include different preconditions in marriage and to show that they could even be considered conditional marriages. There are thus early halakhic precedents for the use of conditions in Jewish marriage, as has been suggested as a contemporary solution for the problems of the *agunah*. At the Tannaitic level, I examine the following conditions: the wife having no outstanding vows or blemishes prior to the marriage, the marriage being subject to the consent of a third party, and the postponement of the *kiddushin* until entry under the marriage canopy. At the Amoraic level, I consider the following conditions: the wife having no outstanding vows or blemishes prior to the marriage and the Palestinian *simphon*.

In Chapter 4, which is consequent upon the discussion in Chapter 3, I present a little-known potential halakhic solution to the problem of the *agunah* – that of temporary marriage. I consider its roots and the different applications of this solution

in Talmudic sources, in both the Palestinian Talmud and the Babylonian Talmud, where there is a more detailed discussion. An example of the Babylonian application of this solution is the cry by important Babylonian *amoraim* – "Who will be mine for a day?" In this case, some of the halakhic authorities rule that there is no necessity for a *get* in order to terminate the marriage. I consider the early halakhic rulings in this case and the modern version of this suggestion, which was also rejected by modern halakhic authorities. I also undertake a comparative study of a possible parallel to this unique marriage – the Shi'ite temporary marriage, which is intentionally restricted to an agreed period of time and does not require divorce to annul it. I conclude the discussion by revealing the possible common roots of the Talmudic temporary marriage and Shi'ite temporary marriage in ancient Persian law.

Recent decades have borne witness to dramatic changes in the institutions of family and parenthood. Various sociological changes, however, have brought about rapid and major changes to the definitions of family, partnership, parenthood, and parent–child relations. As if this were not enough, advances in modern medicine have intensified the ability to separate sexuality, fertility, and parenthood. There is a dramatic increase today in the number of couples and parents who seek to acquire parental status, along with all the rights and responsibilities inherent therein, by means of a varying set of contracts and agreements. It is imperative, therefore, to bridge the gap created between the current family structure and existing normative law. The problem is that legislators and judges consistently choose to confer traditional public-regulatory arrangements on these kinds of relationships and usually do not permit private arrangements, nor do they recognize the validity of these agreements and contracts.

In the concluding chapter, Chapter 5, I examine the regulation of these matters from the point of view of civil family law in comparison with *halakhah*. My intention is to compare the legal and bioethical frameworks in both systems in some detail, focusing on the question of the appropriate place and extent of the freedom of contract with respect to bringing children into the world in a nontraditional manner, and to deal with the possibility of establishing parenthood by agreement. I examine this question in the following test cases: sperm and ova donations, surrogate agreements, and disposition agreements pertaining to the use of frozen embryos. After exploring the main themes of *halakhah* and the civil law, I try to find a compromise between those two contradictory approaches and open the question of whether we are on the way to establishing halakhic parenthood by agreement.

METHODOLOGY

I chose to write this book almost entirely from the standpoint of the dogmatic method of halakhic research. This method, in contrast to the historical method,[10]

[10] For a seminal writing in the historic method of halakhic research, see Shalom Albeck, *Law and History in Halakhic Research*, in Modern Research in Jewish Law 1 (Bernard S. Jackson ed.,

focuses the discussion only on exploring the legal/halakhic aspects of the relevant sources without any connection to the broad historical background, which would look at where and when they were written.[11] It should be emphasized that numerous prominent halakhic scholars have chosen the dogmatic method of halakhic research as the preferred one.[12] Moreover, many students of Professor Menahem Elon have criticized his two-headed method, the historical-dogmatic standpoint, and have argued that the dogmatic method is a much superior one.[13] I use this method in writing the vast majority of the research in front of us.

In addition, the research was based, *inter alia*, on Talmudic research[14] by using the accepted philological devices in the realm of the Talmudic law's research.[15] In this context, it is noteworthy that in translating the Babylonian Talmud texts, I constantly used the Online Soncino Babylonian Talmud Translation, http://ancientworldonline.blogspot.co.il/2012/01/online-soncino-babylonian-talmud.html. That is the best and most accepted English translation, as far as I know. Therefore, I have quoted it verbatim without making any corrections, omissions, or additions. The Palestinian Talmud translation is well known for its lack of

1980) and the various researches of Chaim Soloveitchik. For supporting Albeck's method, see Baruch Shiber, *The Albeck System in Talmudic Research*, in Modern Research in Jewish Law 112 (Bernard S. Jackson ed., 1980). *See also* Peretz Segal, *Jewish Law during the Tannaitic Period*, in An Introduction to the History and Sources of Jewish Law 101, 137 (Neil S. Hecht et al. eds., 1996).

[11] *See* Menahem Elon, Jewish Law: History, Sources, Principles (Bernard Auerbach & Melvin J. Sykes trans., 1994); ibid, Jewish Law Cases and Materials (1999), and more specifically ibid, *More about Research into Jewish Law*, in Modern Research in Jewish Law 66 (Bernard S. Jackson ed., 1980). For the historical-dogmatic standpoint of his research books, see Ze'ev W. Folk, *What Is "Jewish Law"? A Review of Jewish Law: History, Sources, Principles-Ha-Mishpat Ha-Ivri by Elon Menachem. Jewish Publication Society, 1994*, 11(2) J.L. & Religion 835 (1994). For other possible methods of halakhic research, see Izhak Englard, *Research in Jewish Law – Its Nature and Function*, in Modern Research in Jewish Law 21 (Bernard S. Jackson ed., 1980); Haim H. Cohn, *The Methodology of Jewish Law – A Secularist View*, in Modern Research in Jewish Law 123 (Bernard S. Jackson ed., 1980); Boaz Cohen, Jewish and Roman Law: A Comparative Study vol. 1, vii–xxvii (1966).

[12] Such as Eliav Shochetman, Illegal Act in Jewish Law 17–21 (1981) (Heb.), who states in the preface to his book that he uses the dogmatic method.

[13] *See, e.g.*, the prefaces of the following dissertations: Berachyahu Lifshitz, One Does Not Receive Both the Death Penalty and Payment 1–11 (PhD thesis, Hebrew University, 1979) (Heb.); Shalom Lerner, Elements of the Law of Pledges in Jewish Law 13–17 (PhD thesis, Hebrew University, 1980) (Heb.).

[14] *See* a similar statement in the outset of Shmuel shilo, Dina de-Malkhuta Dina – The Law of the State Is Law 1 (1974) (Heb.). For the historical-dogmatic standpoint of this book, see Peter Elman, *Dina de-Malkhuta Dina (The Law of the State Is Law). By Shilo S. [Academic Press, Jerusalem, 1974, 511]*, 11 Israel L. Rev. 133 (1976).

[15] It should be noted that Berachyahu Lifshitz, who supports the usage of the Talmudic research's method in researching the Jewish law, has made a similar statement in the outset of his dissertation; *see* Lifshitz, *supra* note 13. Similarly, the periodical Dine Israel has dedicated an entire gate for the various angles of this method; *see* 20–21 Dine Israel 437–589 (2000–01) (Heb.) ("Talmudic Law").

reliable comprehensive scientific translation. I preferred to use Heinrich W. Guggenheimer's translation[16] in the hope that it is much better than Jacob Neusner's translation.[17]

Although the vast majority of this book is based on the dogmatic method, from time to time I also use the historical method. I enumerate some sociological-historical reasons for explaining the gap between the two different Talmuds' perspectives regarding the available freedom of contract in privately regulating the spousal relationship as a deviation from the rigid public regulation of familial relations. For example, using the historical method may greatly assist us in explaining the pattern of freedom of contract in the Palestinian Talmud, which allows us to introduce conditions with regard to different aspects of a couple's intimate relations – the conditions of the *ketubah*, the husband's inheriting his wife's property, and the possibility of the wife initiating divorce proceedings are extensively explored in Chapter 2. The historical method proposes that this Palestinian wide freedom of contract was aimed primarily at alleviating the heavy halakhic spousal economic burden.

Thus, on the one hand, the groom may decrease the expenses he is required to pay to his bride when marrying her, such as imposing in the marriage contract the condition that he will be exempt from paying for her clothing and food or by reducing his payment of her basic *ketubah* sum (*ikkar ketubah*). On the other hand, the bride also may impose a stipulation that waives her groom's right to inherit her property. This double and urgent necessity was crucial especially in Palestine due to the tough economic situation in the era of the Mishnah and the Talmud.[18] We have several testimonies, the earliest of which date back to the Tannaitic period, that teach us how much the severe economic situation influenced ancient Palestinian family law. One prominent example is found in the deed of R. Tarfon, a late first-century CE sage and priest[19] who betrothed 300 women in order to feed them

[16] *See* Talmud Yerushalmi: Edition, Translation, and Commentary (Heinrich W. Guggenheimer ed., 1999–2012).

[17] *See* The Talmud of the Land of Israel: A Preliminary Translation and Explanation (Jacob Neusner trans., 1982). For an evaluation of Neusner's work, see Tirzah Meacham, *Review: Neusner's "Talmud of the Land of Israel,"* 77(1) Jewish Q. Rev. 74 (1986).

[18] For the possible effect of the severe economic situation in ancient Palestine on the prevailing usage of imposing a condition in the marriage contract, see Yitzhak D. Gilat, Studies in the Development of the Halakha 240–43 (1992) (Heb.) and the references he enumerated. For a general historical overview of this miserable situation, see Gedaliah Alon, The Jews in Their Land in the Talmudic Age, 70–640 CE, vol. 2, 66–69, 182–93 (1961) (Heb.); Avraham Buchler, Studies in the Period of the Mishnah and Talmud 113–37 (Ben-Zion Segal trans., 1968) (Heb.). For describing the severe economic situation already in the third century, see, e.g., Saul Liberman, *Palestine in the Third and Fourth Centuries*, 36 Jewish Q. Rev. 329 (1945–46); Dov Herman, *The Historical Background of Halakhot Praising the Nocturnal Study of Torah*, 6 Sidra: A Journal for the Study of Rabbinic Literature 31, 37 n.28 (1990) (Heb.).

[19] For discussing this vague action, see Ben Zion Rosenfeld & Haim Perlmutter, *"Who Is Rich"? The Rich in Roman Palestine 70–250 C.E.*, 6(2) J. Ancient Judaism 275, 284 (2015). For possible testimonies that R. Tarfon was indeed a priest, see, e.g., Rashi, in his commentary to BT *Kiddushin* 71a, s.v. "*ahar ahi*"; PT *Yoma* 1:1 (38:4).

priestly tithes during a drought year.[20] He had explicitly stipulated that all of them would be permitted to eat the priestly food from the very moment of their betrothal;[21] nonetheless, it was obvious that it was only a fictional act and he never seriously intended to marry them.[22]

Similarly, the historical method may claim that the Palestinian Talmud enables the woman to unilaterally initiate divorce proceedings against her husband, as is extensively explored in Chapter 2, following the massive Hellenistic influence on this Talmud. This foreign conceptualization of the marriage is much more egalitarian while treating the spousal relationship as a full partnership in all aspects of the family; their aim was that it should lead to egalitarian and harmonic relations. It is reasonable to assume that the Hellenistic approach is the source of or at least the inspiration for the Talmud's unique approach that enables a woman to unilaterally initiate divorce in accordance with an explicit stipulation that was agreed upon to this effect in the marriage contract, even if her husband strongly opposes the divorce.[23]

[20] *See* Tosefta *Ketobut* (Liberman ed.) 5:1. For the parallels, see PT *Yevamot* 4:11 (6:2). *Midrash Shir Ha-Shirim* 6:2 (Greenhot ed.).

[21] For additional Palestinian evidence that documents the ability of a man to betroth a wife and impose a condition with her that she will be permitted to eat priestly tithes from the very first moment of their betrothal, see PT *Nedarim* 10:4 (42:1); PT *Ketobut* 11:1 (34:2).

[22] *See* Enoch Albeck, *Betrothal and Betrothal Writs*, in Studies in Memory of Moses Schorr, 1874–1941, 12 (Louis Ginzberg et al. eds., 1944) (Heb.).

[23] For the Hellenistic conceptualization of the marriage, see the references enumerated by Adiel Schremer, Male and Female He Created Them: Jewish Marriage in the Late Second Temple, Mishnah and Talmud Periods 302–04 (2003) (Heb.). Similarly, I want to shed a light upon the wide freedom that had been given in Roman law to both the bride and the groom in enabling them to unilaterally initiate divorce proceedings against their spouse (at least until the Constantinus Christian legislation at the year 331; *see* Codex Theodosianus 3.16.1). This important ancient jurisdiction may have massively influenced the Palestinian Talmud's unique approach that enables a woman to unilaterally initiate divorce in accordance with an explicit stipulation that was agreed upon to this effect in the marriage contract, even if her husband strongly opposes the divorce. It is noteworthy that the prevailing opinion in the Talmudic research dated this Talmud at the latest to the year 360–70, *see* Yaakov Sussmann, *And Again to Yerushalmi Neziqin*, in Talmudic Studies vol. 1, 55, 103 (David Rosenthal & Yaakov Sussmann eds., 1990) (Heb.). Moreover, even Christian legislation did not absolutely abolish the ability of the woman to initiate her divorce but only imposed legal sanctions on such a woman. It is safe to assume that the Palestinian Jews, who were living in Palestine under the Roman Empire, were enormously influenced by the perception that even a wife is eligible to unilaterally initiate a divorce.