

Compelling a Divorce?

Early Talmudic Roots of Coercion in a Case of *Moredet*

Avishalom Westreich

1. Introduction

The purpose of this paper is to expose the deep roots of coercion of a *get* in the case of the *moredet* (the rebellious wife) in tannaitic and amoraic sources. The relevant Talmudic sources will be discussed and interpreted. It is in the very nature of this kind of source that alternative interpretations are possible, which in our case differ *inter alia* as regards coercion. However, the interpretation here suggested has important advantages compared to the others, as will be shown at length below.¹

This study argues that the roots of the well known gaonic tradition regarding coercion are to be found already in the tannaitic and amoraic sources. Several parts of this study are based on Rashi's interpretation of the Babylonian *sugya*, which is compatible with the gaonic tradition, but more far reaching in the way it legitimates coercion on the basis of Talmudic interpretation.

These interpretative conclusions are supported by the variant of MS Leningrad-Firkovitch of Amemar's opinion in the Babylonian *sugya*, which mentions coercion explicitly. This variant was described in past researches as supporting the gaonic tradition. However, according to the present paper, the basis for coercion is not only MS LF's variant of Amemar's opinion, but also earlier sources.

The argument that follows has both historical and dogmatic importance: historical insofar as it supports the claims (i) that coercion was implied, even where it was not explicit, already in tannaitic and amoraic sources, and (ii) that the gaonic measures were based on Talmudic interpretation; dogmatic insofar as it points to a body of opinion (here exemplified in the interpretation of Rashi,² his predecessors³ and successors⁴) amongst the Rishonim which

¹ The paper focuses on the hermeneutic considerations which are the basis of the dispute regarding coercion in a case of *moredet*. Nevertheless, this dispute reflects also different conceptual models of marriage and divorce in Jewish Law; see Michael J. Broyde, **Marriage, Divorce and the Abandoned Wife in Jewish Law**, Hoboken, NJ: Ktav, 2001, pp. 15-28.

² Ascribing this view to Rashi is accepted by many commentators, both Rishonim (Sma"g, Lavin 81; Ritva, 63b, s.v. **היכי דמיא מורדת**; Hagahot Maymoniot, Ishut, 14: 6), and Acharonim (Pne Yehoshua, 63b, end of s.v. **בחוטפות אבל**), as well as by academic researchers (E. Westreich and A. Grossman, see note 3 below).

³ Recent researches show that early Ashkenazic Rishonim, mainly Rabbenu Gershom Me'or Ha'gola and probably a few of his students, accepted the gaonic tradition of *moredet*: see Elimelech Westreich, "The Rise and Decline of the Law of the Rebellious Wife in Medieval Jewish Law", **Jewish Law Association Studies**, 12 (2002), p. 211 (hereinafter: E. Westreich, Rise and Decline); Avraham Grossman, **Pious and Rebellious – Jewish Women in Medieval Europe**, Waltham: Brandeis University Press, 2004, p.242. Rashi, who followed these scholars (see E.

supports the view (despite that attributed to Rabbenu Tam, which was accepted by main halakhic authorities⁵ and largely followed since) that coercion was authorized by the Talmud in the case of the *moredet*.

2. Background of the Dispute Regarding *Moredet*

Rabbenu Tam's main argument is that coercion could not be found in the Babylonian Talmud, and the Geonim had no authority to introduce it as a *takkanah*.⁶ Indeed, many Rishonim agree that coercion is a *takkanat ha-Geonim*, while they debate whether the Geonim had the authority for it.⁷ However, Friedman and Brody maintain that the Geonim themselves regarded it as a Talmudic law, based on the conclusion of the *sugya*: "ומשהינן לה תריסר ירחי" שחא אגיטא.⁸ This view was adopted by some Rishonim, who treat coercion as a Talmud-based law rather than *takkanat ha-Geonim*. Amongst them are Rambam⁹ and Rashi.¹⁰

In many cases new manuscript discoveries shed light on the text of the Talmudic *sugya*. In this context, MS Leningrad-Firkovitch explicitly supports the gaonic tradition in that Amemar's opinion in a case of *moredet* who claims "מאיס עלי" (he is repulsive to me) is stated as "כייפינן ליה", i.e. "we forced him", which could hardly be understood other than coercion of a *get*.¹¹

However, this surprising support for the gaonic tradition is not without problems. A preliminary reading of the talmudic *sugya* reveals an intensive discussion on the financial

Westreich, *ibid*; A. Grossman, **Hassidot U-mordot**, Jerusalem: Merkaz Zalman Shazar², 2003, p. 443 n. 137 [this note does not appear in the English edition]; hereinafter: Grossman, *Hassidot*), tried to base their tradition on the Talmudic *sugya*. Indeed, in many aspects Rashi continues *Perushey Magenza*, which largely continues the tradition of R. Gershom and his students, see Israel M. Ta-Shma, **Ha-sifrut Ha-parshanut La-Talmud**, vol. 1, Jerusalem: Magnes², 2000, pp. 35-56. However, Ta-Shma (*ibid*, p. 43) claims that Rashi normally focuses on hermeneutic rather than *halakhic* considerations in his commentary (this claim is disputed by halakhic writers; see **Talmudic Encyclopedia**, vol. 9, ed. R. S.Y. Zevin, Jerusalem: the Talmudic Encyclopedia Press and Mossad Harav Kook, 1959, p.337, entry "halakhah").

⁴ For example: Rashbam, see E. Westreich, *Rise and Decline*, pp. 212. ; Grossman, *Hassidot*, pp. 435-436.

⁵ See E. Westreich, *Rise and Decline*, pp. 212-218.

⁶ See *Sefer Ha-yashar Le-Rabbenu Tam, Helek ha-Teshuvot*, 24.

⁷ There is a wide range of opinions at this point, from accepting the *takkanah*, through accepting it with limitations (Ba'al Hama'or's opinion of *hora'at sha'ah*) and totally rejecting it (R. Tam). See E. Westreich, *Rise and Decline*, p. 212 and further.

⁸ The effect of the gaonic *takkanah* was therefore to coerce the husband to give a *get* immediately and not only after 12 months. See Mordechai A. Friedman, **Jewish Marriage in Palestine – A Cairo Geniza Study**, Vol. 1, Tel Aviv and New York: Tel Aviv University and the Jewish Theological Seminary of America, 1980, pp. 324-325 (hereinafter: Friedman, *Jewish Marriage*); Y. Berody, "Kelum Hayu Ha-Geonim Mehokekim?", *Shenaton Hamishpat Ha-Ivri*, 11-12 (1984-1986), pp. 298-300 (hereinafter: Brody, *The Geonim*), pp. 298-300. See also Ramban, s.v. *ומצינו בירושלמי*, who ascribes the view that coercion is the Talmud's final conclusion to some responsa of Rav Sherira Gaon, but rejects it: "ובמקצת תשובות לרב שרירא ד"ל נמי ראיתי שפ"י דמדינא אין כופין, וכשאמרנו ודיבר ברור הוא משהינן לה תריסר ירחי אגיטא תקנתא אחריתי הות לומר דאח"כ כופין את הבעל בגט. ואין לדברים הללו עיקר כלום, ודבר ברור הוא שאין כאן תקנה חדשה לכופ' ומעולם לא עלתה על דעת חכמי התלמוד כפייהו זו לעולם".

⁹ See Rambam, *Ishut*, 14: 10-15.

¹⁰ See the discussion below.

¹¹ This is the common understanding of MS LF, see Bernard S. Jackson, "Preliminary Report of the Agunah Research Unit" (Working Papers of the Agunah Research Unit, December 2006), <http://www.mujs.org/PrelimRep.pdf>, p.16 (hereinafter: Jackson, *Preliminary Report*). It is possible to suggest another explanation, following Ritva, 63b, s.v. *ויש שגורסין*: when the husband wants to divorce his wife he cannot do it immediately without paying her *ketubbah*. He is therefore coerced ("כייפינן ליה") to divorce her only after the mishnaic process of decreasing the *ketubbah*. However, our interpretation of "כייפינן ליה" is more reasonable. It is also supported by Rashba, 64a, s.v. *ומיהו*: Rashba deals with the traditional text of Amemar, and argues that its meaning cannot be coercion, since the Talmud doesn't mention the words "כייפינן ליה" ("שלא אמרו כאן אלא אבל") (אמרה מאיס עלי לא כייפינן לה' אבל כייפינן ליה' לא אמרו"). Accordingly, MS LF's, which did mention "כייפינן ליה", must be interpreted as coercion of a *get* (but see Meiri, 63b, s.v. *וגדולי המחברים*, who rejects the possibility of a variant like MS LF).

aspects of *moredet* with no explicit mention of a *get*. Thus, if we accept MS LF, we must ask why was it only in the era of Amemar that the *get* became an issue for the *amoraim*?¹²

Interestingly, Rashi, although having the traditional text of Amemar, integrates into his interpretation of the *sugya* the rule that the husband must give a *get*, and probably understands this as authorizing coercion (where necessary). In fact, although the *sugya* deals with financial aspects, Rashi mentions the existence of a *get* four (!) times, sometimes requiring that it be given immediately, elsewhere later.¹³ Accordingly, MS LF's variant of Amemar appears not to be the only talmudic source for coercion. There appear to have been broader interpretative advantages supporting this view, beyond the specific dispute in the *memra* of Amemar. These will be described in the sections that follow.

3. Tannaitic and Amoraic Sources Regarding *Moredet*

3.1. Tannaitic Sources

המורדת על בעלה פוחתין לה מכתובתה שבעה דינרין בשבת, רבי יהודה אומר: שבעה טרפעיין. עד מתי הוא פוחת? עד כנגד כתובתה. רבי יוסי אומר: לעולם הוא פוחת והולך שמא תיפול לה ירושה ממקום אחר, ויחזור ויגבה ממנה.

If a wife rebels against her husband, her *ketubbah* may be reduced by seven *denarii* a week. R. Judah said: Seven *tropaics*. For how long does he reduce it? Until the *ketubbah* is exhausted. Rabbi Yose says: he may reduce it for ever in case she inherits property, from which he may claim it. (M. Ketubbot 5:7)

According to the Mishnah, in a case of *moredet* we act against her by decreasing the value of her *ketubbah* in a gradual process (conversely, the Mishnah adds, in a case of *mored*, we increase the value of the *ketubbah*). The Tannaim in the Mishnah argued about the exact weekly sum and the limits of this process. According to both opinions in the Mishnah it is a long process. Take for example a basic *ketubbah* with a value of 200 *zuz* (or: 200 *dinarin*): according to Tanna Kamma, decreasing the *ketubbah* can take more than half a year (200 / 7 *dinarin* in a week = 28.57); according to Rabbi Yehuda more than a year;¹⁴ and according to R. Yose it can take forever.¹⁵ In fact, it is a much longer process even according to Tanna Kamma and Rabbi Yehuda, if we take into consideration other property which according to the Mishnah's commentators was also subject to the mishnaic decrease process.¹⁶

¹² Rabbi Shlomo Riskin regards the stage of Amemar as a turning point, claiming that in earlier generations the *moredet* was not interested in divorce: see Shlomo Riskin, **Woman and Jewish Divorce**, Hoboken, NJ: Ktav, 1989, pp. 40-42 (hereinafter: Riskin, Divorce). Nevertheless, divorce was a consequence of the tannaitic laws of *moredet* (Riskin, *ibid.*, pp. 17-18). Below I suggest a different view of coercion in the earlier sources.

¹³ Rashi's commentators usually point to s.v. לא כייפינן לה as a source for coercion in his commentary (see for example Resp. Maharam, Prague Print, 946, 135a), but in fact Rashi repeats it several times: (1) 63a s.v. עד כדי כתובתה (Mishnah): "ואחר כך נותן לה גט"; (2) 63b s.v. נמלכין: "משהין את גיטה"; (3) s.v. היכי: "דמשהין גיטא"; (4) s.v. לא לה: "להשהותה, אלא נותן לה גט ויוצאה בלא כתובה". Accordingly, he views coercion as an integral part of every section of the *sugya*, and not only of one single part of it. See also below, text to notes 38-39, further discussion of Rashi's mentioning of a *get*.

¹⁴ A trape'ik ("טרפעיין") is half a dinar and the amount of decrease per week is thus 3.5 dinars, half that of the Tanna Kamma.

¹⁵ "לעולם", i.e. we continue decreasing from her property as an "overdraft", in case she might get an inheritance and her husband would be able to collect from it.

¹⁶ The additions to the *ketubbah*, husband's gifts, dowry (נכסי ברזל and נכסי מלוג) etc. might also be reduced according to the mishnaic rule of "עד כדי כתובתה". The exact belongings that are subject to this process are disputed by the Geonim and Rishonim. See for example Ramban, 63b, s.v. וכתב רבינו הגדול; Rashba, 63a, s.v. ועד מתי ("עד") ועד מתי: פירושו: עיקר כתובה ותוספת ונדוניא, חוץ מנכסי מלוג שלה שאינן בכלל כתובה... ויש מי שפירש [...] דאפילו לרבנן כנגד כתובתה: פירושו: עיקר כתובה ותוספת ונדוניא, חוץ מנכסי מלוג שלה שאינן בכלל כתובה... ויש מי שפירש [...] דאפילו לרבנן

Dr. Avshalom Westreich

The tannaitic attitude of reducing the *ketubah* in a gradual process, which is unanimously agreed in the Mishnah (but disputed in its specific details), was changed in a later tannaitic generation. The later opinion is found in the Tosefta (Ketubbot 5:7), which comments on the Mishnah:

המורדת על בעלה וכו' זו משנה ראשונה. רבותינו התקינו שיהו בית דין¹⁷ מתריץ בה ארבע וחמש¹⁸ שבתות זו אחר זו פעמים¹⁹ בשבת. יתר על כן אפי' כתובתה מאה מנה אבדה את הכל.

“If a wife rebels against her husband...” This is the first Mishnah. But our Rabbis enacted that (a court) should warn her four or five consecutive weeks, twice a week.²⁰ [If she persists], even if her *ketubbah* is a hundred maneh, she has lost it all.

According to the Tosefta, there is no gradual process, but rather only a few weeks of warning,²¹ and after that the *moredet* loses her entire *ketubbah*.²² This enactment introduces the prospect of a defined and rapid end to this process.

The difference between these two tannaitic approaches is that between an almost endless story (Mishnah Rishonah) on the one hand, a story with a clear and sharp end (Rabbotenu) on the other. The goal of the first opinion is to lead the wife to end her "rebellion", and the process is designed to influence her finally (and voluntarily) to change her mind. But this was probably not enough for Rabbotenu,²³ who apparently adopted a more coercive approach,

“פוחת מנכסי מלוג שהיו לה בשעה שמרדה). For the gaonic view regarding the monetary aspects of the original law of *moredet*, comparing their own *takkanah*, see Brody, *The Geonim*, pp. 300-303.

¹⁷ The words “בית דין” do not appear in Erfurt MS and in the print edition. In Vine MS they were marked for deletion, see Saul Lieberman, *Tosefta Kifshuta*, vol. 6, *Nashim*, New York: Bet Ha-midrash Le-rabanim Be-America, 1967, pp. 266-267 (hereinafter: Lieberman, *Tosefta Kifshuta*). These words might be an addition influenced by the Bavli (see below, section 3.2) or by misinterpretation of “בית דין” in the Yerushalmi (see below, n. 30), which was corrected later. In many cases MS Vine is closer to the tradition of the Yerushalmi, while MS Erfurt is closer to the Bavli: see Shama Y. Friedman, *Tosefta Atikta*, Ramat Gan: Bar Ilan University, 2003, pp. 79-86; Avshalom Westreich, *Hermeneutics and Developments in the Talmudic Theory of Torts as Reflected in Exceptional Cases of Exemption*, PhD, Ramat Gan: Bar Ilan University, 2007, p. 107 n. 23 (hereinafter: Westreich, *Dissertation*). Here “בית דין” appears in MS Vine and this fact supports the option of Yerushalmi's influence. On the other hand, the word “פעמים” in MS Vine is similar to the Bavli's tradition (see below, note 19 and note 53), so the issue cannot be conclusively determined.

¹⁸ Some variants and Rishonim do not include the word “וחמש”. See Lieberman, *Tosefta Kifshuta*, p. 267.

¹⁹ “פעמים” is according to MS Vine, the print edition and Talmidey Rabbenu Yonah. According to MS Erfurt and some Rishonim (Tosafot, Sma"g and more), the text here is: “פעם אחת”. See Lieberman, *Tosefta Kifshuta*, pp. 266-268, who concludes without any decision. See also the discussion regarding Rami bar Hamma in the Bavli and its relation to the text of the Tosefta (below, text to notes 50-54).

²⁰ The words “a court”, “or five” and “twice a week” are not accepted by all variants of the Tosefta, see *supra*, notes 17-19.

²¹ “מתריץ בה” in the Tosefta is lack of any public humiliating announcement, significantly different from “מכריזין עליה” which is found in the parallel Babylonian *baraita* (see Lieberman, *Tosefta Kifshuta*, p. 267; below, note 24). Warning in the Tosefta may thus reflect a private warning, by a messenger for instance.

²² This is the most widespread explanation of the Tosefta. For an exceptional approach which integrates a gradual process into Rabbotenu's rule (as in the Mishnah) see Meiri, 63a, end of s.v. אמר המאירי, in the name of “גדולי הדורות” “לפי מה שהעידו תלמידיהם בשמם” “והיא שוברת כתובתה ויוצאה”, see below.

²³ The cause for this move is not explicit in the Tosefta. I assume that the character of the *moredet* has changed between the Mishnah and Rabbotenu. Maybe it was a move from a domestic *moredet* (“ממלאכה”) to a *moredet* from sexual relationships (“מתשמיש המטה”), which forced Rabbotenu to enact a process which would be effective almost immediately. Those two kinds of *moredet* are mentioned in a later generation in an amoraic dispute (see Bavli, Ketubbot 63a, and implicitly in Yerushalmi, Ketubbot, 30b, 5:8, see *Shitah Mekubetset*, 63a, s.v. וזה לשון). However reasonable this explanation, we cannot prove it from the texts of the Mishnah and of the Tosefta, nor from their context: while the previous Mishnah and previous Halakhah of the Tosefta deal with sexual relations, what follows deals with financial aspects. See also Riskin, *Divorce*, pp. 4-9 (discussing the definition of *moredet*) and pp. 12-14 (explaining the cause for Rabbotenu's rule as “the increasing number of rebellious wives”).

Talmudic Roots of Compulsion in Cases of *Moredet*

with the prospect of a more immediate loss of the *ketubbah*,²⁴ and is thus thought to operate more efficiently than the Mishnaic process.²⁵

However, explaining the very goal of Rabbotenu as inducing the wife to end her "rebellion" by providing a more drastic sanction is problematic. The *takkanah* of Rabbotenu is indeed more radical than the Mishnaic rule. But assuming its goal is to induce the wife to finish her *meridah*, is it really more efficient than the rule of the Mishnah? According to Rabbotenu, loss of the *ketubbah*²⁶ occurs in a single action against the wife, and then, after only four weeks, there are no further possible sanctions, whereas the mishnaic process envisages a long period of time in which the required impact can be created. Thus, if our goal is to influence the wife to finish her *meridah*, it would be more practical to use a lesser sanction over a longer period of time, rather than using the maximal sanction almost immediately, where the *moredet* has been "in rebellion" for only four weeks.²⁷

On this analysis, the rationale of Rabbotenu may not have been deterrence but rather something different, namely to put an end to the conflict as quickly as possible,²⁸ whether by bringing the couple back together or by leading to a complete separation between them. The choice here is in the wife's hand: preferably she may decide to withdraw her rebellion; however, if she insists, she is entitled to a divorce,²⁹ but must forfeit her *ketubbah*.

This explanation is supported by the Yerushalmi. Another version of the *baraita* appears in the Yerushalmi and introduces Rabbotenu as follow (Ketubbot, 5:7, 30b):

בית דין שאחריהן: מתירין בה ארבע שבתות והיא שוברת כתובתה ויוצאה.

The later court [enacted that we]³⁰ warn her four weeks (after which) she cancel her *ketubbah* debt³¹ and leave.

Comparing the Yerushalmi and the Tosefta, there is a significant addition in the Yerushalmi: "and leave" ("ויוצאה"), which means that after losing the *ketubbah* she receives a *get*.³²

²⁴ In the parallel Babylonian *baraita* there is an additional element, a process of public announcement, which is actually a process of humiliation designed to end the rebellion. However, the public humiliation does not exist in the Tosefta (compare Tosafot, 63b, s.v. דיקא) nor in the *Yerushalmi* (see below, section 3.3.), and therefore I refer here only to the financial aspects of Rabbotenu's ruling.

²⁵ Riskin, *supra*, note 23.

²⁶ The humiliation does not exist in the Tosefta, see *supra*, n. 24.

²⁷ The term "marginal deterrence" is used by modern researchers to describe a legal system which imposes different measures of sanctions for different kind of offences, in order to create an efficient deterrence for each offence. Accordingly, the sanction would be enhanced as a function of the severity of the offence, the number and extent of offences etc. (see George J. Stigler, "The Optimum Enforcement of Laws", **The Journal of Political Economy**, 78 (1970), pp. 527-528: "If the offender will be executed for a minor assault and for a murder, there is no marginal deterrence to murder"; see also Steven Shavell, "A Note on Marginal Deterrence", **International Review of Law and Economics**, 12 (1992), pp. 345; 351-352). On this view, it is more efficient to use a low sanction for a rebellion which is at its beginning and to enhance the sanction when the rebellion becomes more severe, rather than using the high level sanction each time.

²⁸ This might be a response to a social change, see n. 23 *supra*.

²⁹ In this case the husband is compelled to give a *get*, by a physical coercion if required, see Rambam, *Ishut*, 14: 8: "כופין אותו להוציא לשעתו", regarding *moredet ma'es alay* (nevertheless, the *halakhic* implications of the different kinds of *moredet* are in regard to financial aspects and questions of timing, as discussed at length below, and not regarding the character of coercion, see for example below, end of section 3.2, text to note 82-86. The same applies to the *moredet*, coercion of whom is compared to coercion in a case of *moredet*, see below, notes 56-57).

³⁰ "בית דין שאחריהן" does not refer to the warning (i.e. warning is done by the later *bet din*) since the word "שאחריהן" has no meaning according to this interpretation. It refers to the whole enactment, as translated above, while the predicate of this sentence ("enacted") is missing. Its meaning is the same as in the other two parallels of this *baraita*: "רבותינו חזרו ונמנו" (Tosefta) or "רבותינו חזרו ונמנו" (Bavli).

³¹ "Shoveret" means "writes a receipt" (*shovar*) for her *ketubbah* (see Bavli, Sotah, 7a; Ya'akov N. Epstein, **Mavo Le-nusah Ha-Mishnah**, Jerusalem: Magnes², 2001, p. 616. A parallel term in Tosefta, Ketubbot, 9:1, is clearer: "שוברת לו על כתובתה"), acknowledging that she received her *ketubbah* payments, or more accurate: canceled her husband's debt.

According to the explanation of Rabbotenu, which focuses on deterrence, this addition is not explained. But according to the second suggested interpretation it is meaningful. "ויוצאה" is the completion of the whole process and also represents its goal, i.e. to lead to a separation between the couple. *Get*, according to this explanation, is a necessary condition for ending the story and thus an integral part of Rabbotenu's teaching.³³ The version of Rabbotenu in the Yerushalmi can therefore shed light on their goal and rationale in the Tosefta.³⁴

The view of Rabbotenu here suggested accords with Rashi's interpretation of the Babylonian *sugya*,³⁵ and in the next section I will point out at its advantages as against other possible interpretations. Supporting this view by Rashi's interpretation is not only a historical argument, which seeks to find the most reasonable understanding of tannaitic sources. As indicated earlier,³⁶ it also has a dogmatic importance, by pointing to later opinion which supports the view that coercion was authorized by the Talmud in the case of the *moredet*.

Yet, Rashi takes a further step. According to the Mishnah, what shall we do after the *moredet* has lost her *ketubbah*? At this moment there are no more sanctions against the wife and so she is not likely to agree to go back to her husband. Would she receive a *get*?

Rashi suggests that after losing the *ketubbah* the wife receives a *get* both in the mishnaic rule and in that of Rabbotenu.³⁷ As noted above,³⁸ Rashi repeats this point four times:

- (1) According to Tanna Kamma, the mishnaic gradual process of decreasing the *ketubbah* is "עד כדי כתובתה", (until the *ketubbah* is exhausted; 63a). Rashi adds here: "וואחר כך גט ויוצאה בלא כתובה" (=divorced) without receiving her *ketubbah*;
- (2) On 63b Rashi interprets "נמליכין בה" (she is to be consulted) as: "משהין את גיטה ומחזירין עליה שתחזור בה" (we hold back her *get* and try to make her change her mind).
- (3) A similar interpretation is given for "היכי דמיא מורדת" (what is to be understood by "a rebellious woman?"): "דכופין אותה, דמשהין גיטה ופוחתין כתובתה", i.e. we force her [by] holding back her *get* and reducing the *ketubbah*.

Quotations (2) and (3) will be discussed at length below. For the moment, we may already draw two important conclusions: (a) the mishnaic gradual process of reducing the *ketubbah* does not deny a *get* but only postpones it, and after this process is ended she will receive a *get*, as mentioned explicitly in quotation (1); (b) Without the mishnaic gradual process (for example: according to Rabbotenu of the Tosefta), her *get* is not delayed, but she receives it

³² See Friedman, Jewish Marriage, p. 322. There are also two other important differences between the Yerushalmi and the Tosefta: (i) Rabbotenu are replaced by "the later bet din" (see supra, n. 17 and n. 30); (ii) there is no mention of twice a week (see supra, note 19, and below, text to note 53).

³³ This view differs from Riskin's suggestion that divorce in the tannaitic stratum is a final penalty for the wife, who really does not want it, see Riskin, Divorce, pp. 17-18.

³⁴ A quite different reading is possible: Rabbotenu of the Tosefta still had the object of coercing the wife back into the marriage, as in the Mishnah, but by a sharper financial sanction. Only in the Yerushalmi has the goal changed and became the quest for ending the conflict, "one way or the other", and this is reflected by the addition: "ויוצאה". However, I prefer the explanation suggested above. A "revolution" in our case is mentioned explicitly in the move from the Mishnah to Rabbotenu, while the alternative reading finds a more radical distinction between the Tosefta and the Yerushalmi. In fact, the Tosefta, Yerushalmi and the Babylonian *baraita* are three parallel versions of one turning point, while these sources differ from one another in a few elements that are discussed in this paper. It is less likely that there was a significant but implicit change between the Yerushalmi and the Tosefta, while the sources explicitly point to Rabbotenu as the turning point of this *sugya*.

³⁵ As argued below, Rashi creates a parallelism between all sections of the Babylonian *sugya*. Therefore, Rabbotenu's enactment is described also as "לא כייפינן לה" (we don't force her). It is hard to understand it as a rule whose goal is to increase the deterrence on the *moredet*, since the words "לא כייפינן לה" are in her favor (the same argument is found in Ra'avad's interpretation of "נמליכין בה", see below, text to note 58). We can conclude therefore that the goal of Rabbotenu, in Rashi's view, is not deterring the *moredet* but rather bringing a quick end to the conflict – here by accepting the wife's demand for divorce (after trying to convince her, even by public humiliation, as in the Bavli) and "not forcing her to stay with her husband".

³⁶ See above, section 1.

³⁷ Yet, *get* is not an essential part of the mishnaic rule of *moredet*, contrary to Rabbotenu's rule.

³⁸ See supra, note 13.

Talmudic Roots of Compulsion in Cases of *Moredet*

immediately (or: after four weeks). This conclusion is explicit in the fourth appearance of *get* in Rashi's commentary:

- (4) According to Amemar, *moredet ma'es alay* (see at length below) is not regarded as a *moredet*, but "לא כייפינן לה", i.e. we do not force her, or: no pressure is to be brought to bear upon her. This is interpreted by Rashi as follow: "לא כייפינן לה להשהותה, אלא" "נותר לה גט ויוצאה בלא כתובה", i.e. we do not hold her back, but he gives her a *get* and she is to be divorced without receiving her *ketubbah*.

It is hard to understand these four repetitions as no more than a description of a contingent event, which occurs only when the husband is willing to grant the *get*.³⁹ It is much more plausible to understand it, following Rashi, as an integral part of the halakhic rules of *moredet*.

Rashi thus appears to endorse the view that the marital dispute must not remain static, without any movement towards a solution, and therefore that after loss of the entire *ketubbah* the husband is coerced to give a *get*.⁴⁰ Hence, receiving a *get* is a required stage both according to Rabbotenu and according to the Mishnah, after the end of the process of losing the *Ketubbah*. In addition, a broader consideration is involved here: a positive rule, ascribed in the Bavli to Rabbi Meir, requires a *Ketubbah* to be in existence.⁴¹ The result of accepting this rule is that a *get* must be given after total loss of the *ketubbah*.⁴²

Can coercion be considered as the *peshat* of these sources? Although it is not explicit, it is a reasonable explanation. Moreover, the interpretation here suggested has the following significant advantage. It provides us with a harmonious view, which ties together systematically the tannaitic and amoraic sources. I shall argue that the Talmudic *sugya* has a logical structure, in which two different options (already apparent in the tannaitic sources) are in tension in each of its sections, and that coercion is an integral issue throughout. Nevertheless, this systematic and logical structure, most clearly elaborated by Rashi, is opposed by competing interpretations of the *sugya* (notably that of Rabbenu Tam). We now turn to the Talmudic *sugya* and its interpretation by the Rishonim.

3.2. The Babylonian *Sugya* of *Moredet*

This section explores the Babylonian *sugya* of *moredet*, focusing on Rashi's interpretation compared to that of his opponents. The analysis exposes Rashi's advantages in every section of the *sugya*. However, its persuasiveness is attained by introducing a harmonious and systematic structure into the *sugya* as a whole. This fascinating structure, based on our previous conclusions (which found coercion already in the tannaitic sources), enables us to find coercion in attributed amoraic sources as well as in the anonymous late Talmudic stratum.⁴³ This examination has both historical and dogmatic importance, by arguing that

³⁹ Some Rishonim explained Rashi in this way. See Tosafot, 63b-64a, s.v. אבל; Rashba, 63b, s.v. היכי דמיא מורדת. (Rashba quoted Rashi that the husband gives a *get*, but with an addition: "if he wants to"). But other Rishonim and Acharonim explained Rashi as suggested in this paper, see supra, note 2.

⁴⁰ This is the explanation of Rashi and Rambam found in Pne Yehoshu: "נראה לי... דכל היכא דאי אפשר לכופה... דלעולם נוקקין לכופה היכא דאיכא חשש עיגון" (Pne Yehoshu'a, Ketubbot, 63b, s.v. בתוספות).

⁴¹ See Bavli, Bava Kamma, 89a, ascribed to R. Meir of Mishnah, Ketubbot 5:1: "אסור לו לאדם שישא את אשתו אפילו: שעה אחת בלא כתובה, וטעמא מאי? כדי שלא תהא קלה בעיניו להוציאה" (It is prohibited for any man to keep his wife without a *ketubbah* even for one hour. But what is the reason of this? So that it should not be an easy matter in his eyes to divorce her).

⁴² See Riskin, Divorce, p. 18.

⁴³ I define here "amoraic" as attributed rather than anonymous sources. This distinction is significant here since the final development of the Talmudic law of *moredet* is found in an anonymous stratum which belongs to the last generations of the Babylonian *Amoraim* or may even be a *savoraic* passage; see below, text to notes 67-70, and note 102. The distinction between attributed sources and anonymous sources has a general importance in Talmudic research, see Shama Y. Friedman, "Perek Ha-isha Rabbah Ba-Bavli Bezeruf Mavo Kelali Al Derech Heker Ha-sugia", *Mehkarim U-mekorot*, 1 (1978), pp. 275-441. Friedman's view is criticized by Brody: see Y. Brody,

coercion is an integral part of the Talmudic sources on the one hand, and by pointing to a group of opinions amongst the Rishonim who accepted this view on the other.

The first part of the *sugya* deals with the content of the *merida*, i.e. whether it is a rebellion regarding sexual relationships ("מתשמיש המטה") or regarding domestic duties ("ממלאכה").⁴⁴

The next part of the *sugya* is composed of a number of sections. At its beginning, the *sugya* cites a *baraita*, which parallels the Tosefta with a few changes.⁴⁵ The *baraita* leads to a discussion of aspects of *moredet*. The *sugya* continues as follows (bt Ketubbot, 63b):

(a) גופא: המורדת על בעלה פוחתין לה מכתובתה שבעה דינרים בשבת, רבי יהודה אומר: שבעה טרפעיין. רבותינו חזרו ונמנו, שיהו מכריזין עליה ארבע שבתות זו אחר זו, ושולחין לה ב"ד: הוי יודעת, שאפי' כתובתך מאה מנה הפסדת...

[To turn to] the main text. If a wife rebels against her husband, her *ketubbah* may be reduced by seven *denarii* a week. R. Judah said: Seven *tropaics*. Our Masters, however, revised [their views] [and ordained] that an announcement regarding her shall be made on four consecutive Sabbaths and that then the court shall send her [the following warning]: 'Be it known to you that even if your *ketubbah* is for a hundred *maneh* you have forfeited it'...⁴⁶

(b) אמר רמי בר חמא: אין מכריזין עליה אלא בבתי כנסיות ובבתי מדרשות. אמר רבא: דיקא נמי, דקתני: ארבע שבתות זו אחר זו, ש"מ. אמר רמי בר חמא: פעמים שולחין לה מבית דין, אחת קודם הכרזה ואחת לאחר הכרזה.

Rami b. Hamma stated: The announcement concerning her is made only in the Synagogues and the houses of study. Said Rava: This may be proved by a deduction, it having been taught, 'Four Sabbaths consecutively'. This is decisive.

Rami b. Hamma further stated: [The warning] is sent to her from the court twice, once before the announcement and once after the announcement.

(c) דרש רב נחמן בר רב חסדא: הלכה כרבותינו. אמר רבא: האי בורכא! אמר ליה רב נחמן בר יצחק: מאי בורכתיה? אנא אמריתה ניהליה, ומשמיה דגברא רבה אמריתה ניהליה, ומנו? רבי יוסי בר' חנינא.

R. Nahman b. R. Hisda stated in his discourse: The *halakhah* is in agreement with our Masters. Rava remarked: This is senseless. Said R. Nahman b. Isaac to him, 'Wherein lies its senselessness? I, in fact, told it to him, and it was in the name of a great man that I told it to him. And who is it? R. Jose the son of R. Hanina!'

(d) ואיהו כמאן סבר? כי הא דאתמר רבא אמר רב ששת, הלכה: נמלכין בה; רב הונא בר יהודה אמר רב ששת, הלכה: אין נמלכין בה.

Whose view then is he following? – [The first of the undermentioned:] For it was stated: Rava said in the name of R. Shesheth, 'The *halakhah* is that she is to be consulted', while R. Huna b. Judah stated in the name of R. Shesheth, 'The *halakhah* is that she is not to be consulted'.

"Stam Ha-Talmud Ve-divre Ha-Amoraim", **Proceedings of the Fourteenth World Congress of Jewish Studies** (forthcoming). However, Brody's main criticism is chronological rather than in regard to the basic distinction between attributed and anonymous sources, see Westreich, Dissertation, pp. 14-15.

⁴⁴ See supra, note 23.

⁴⁵ See Supra, note 24. Additional changes are discussed below.

⁴⁶ The *baraita* states here that the same law is applicable to a woman betrothed or married, even to a menstruant, sick, or a woman "waiting for levirate" ("אחת לי ארוסה ונשואה, אפילו נדה, אפילו חולה ואפילו שומרת יבם"). The case of menstruant is than discussed between R. Hiya bar Yosef and Shmuel. This discussion is a comment on the *baraita* and not part of the progression of the *sugya*. For that reason, I do not define it as a separate section.

Talmudic Roots of Compulsion in Cases of *Moredet*

(e) היכי דמיא מורדת? אמר אמיתר: דאמרה בעינא ליה ומצערנא ליה, אבל אמרה מאיס עלי לא כייפינן לה. מר זוטרא אמר: כייפינן לה. הוה עובדא ואכפה מר זוטרא, ונפק מיניה רבי חנינא מסורא. ולא היא, התם סייעתא דשמיא הוה.

What is to be understood by 'a rebellious woman'? —Amemar said: [One] who says, 'I like him; but wish to torment him'. If she said, however, 'He is repulsive to me', no pressure is to be brought to bear upon her. Mar Zutra ruled: Pressure is to be brought to bear upon her. Such a case once occurred, and Mar Zutra exercised pressure upon the woman and [as a result of the reconciliation that ensued] R. Hanina of Sura was born from the re-union. This, however, was not [the right thing to do]. [The successful result] was due to the help of providence.

(f) כלתיה דרב זביד אימרדא, הוה תפיסא חד שירא... (סד ע"א): השתא דלא אתמר לא הכי ולא הכי, תפסה לא מפקינן מינה, לא תפסה לא יהבינן לה. ומשהינן לה תריסר ירחי שתא אגיטא, ובהנך תריסר ירחי שתא לית לה מזוני מבעל.

R. Zevid's daughter-in-law rebelled [against her husband] and took possession of her silk [cloak]... Now that it has not been stated what the law is, [such clothing] is not to be taken away from her if she has already seized them, but if she has not yet seized them they are not to be given to her. We also make her wait twelve months for her divorce, and during these twelve months she receives no maintenance from her husband.

The *sugya* introduces at (a) the dispute between the Mishnah and Rabbotenu. At (b) there are some clarifications about the procedure of announcing (*hachraza*). Then (c) the *sugya* cites Rav Nahman bar Rav Hisda, who follows Rabbotenu in the *baraita*. The phrase "...הלכה כ..." which is used by R. Nahman bar Rav Hisda usually means that the law is determined according to somebody and not according to his opponent, and here the main controversy is between Rabbotenu and the Mishnah. Thus Rav Nahman bar Rav Hisda follows the rule of Rabbotenu, while Rava, who condemns this view as "בורכא", follows the Mishnah. Section (d) explains the authority for Rava's decision. Accordingly, the dispute between "נמלכין בה" and "אין נמלכין בה" is parallel to the earlier tannaitic dispute between the Mishnah and Rabbotenu.

The verb "נמלכין" means trying to convince the wife to change her mind. This is done by the mishnaic gradual process of reduction of the *ketubbah*. On the other hand, "אין נמלכין" means that we don't use this process of convincing her, but the wife loses her *ketubbah* at once, and, as Rashi adds in his commentary, receives a *get* (similar to our conclusion above in regard to the Tosefta).

The above explanation follows Rashi's interpretation.⁴⁷ Its simplicity and clarity are discernible, but it was not accepted by many Rishonim, including Rabbenu Tam. I assume that Rabbenu Tam's objection to Rashi's interpretation of these sections is not only as a result of local interpretative considerations. Rashi's interpretation takes a harmonious view of the complete *sugya*, whose conclusion is the need of coercion, as will be shown hereafter. It was therefore necessary for Rabbenu Tam to suggest different interpretations of almost every section of the *sugya*.⁴⁸

⁴⁷ See Rashi, 63b, s.v. נמלכין בה: "משהינן את גיטה ומחזירין עליה שתחזור בה, ובתוך כך פוחתין מכתובתה שבעה דינרין בשבת: נמלכין בה" (we hold back her *get* and try to make her change her mind, and in the mean time we reduce her *ketubbah* by seven *denarii* a week). "נמלכין" is thus exactly the mishnaic rule, and consequently this is Rava's opinion. The dispute between Rav Nahman bar Rav Hisda and Rava is therefore between determining the law in accordance with Rabbotenu and in accordance with the Mishnah (see Tosafot, 63b, s.v. ואינהו).

⁴⁸ Riskin, *Divorce*, pp. 38-40, accepts Rabbenu Tam and rejects Rashi's interpretation. Riskin's main argument is that according to Rashi, Rava on section (c) rejects Rabbotenu, but on section (b) supports R. b. Hamma's interpretation of Rabbotenu's teaching. This argument can easily be met by viewing Rava as interpreting Rabbotenu without following them *le-halakhah*.

Rabbenu Tam suggests a different interpretation of the *sugya*.⁴⁹ According to him, Rami bar Hamma in section (b) makes some additions to Rabbotenu. Rav Nahman bar Rav Hisda's determination of the law following Rabbotenu at section (c) does not refer to the tannaitic dispute. His statement opposes Rami bar Hamma by accepting the original law of Rabbotenu without any additions. This last view was condemned by Rava as בורכא.

This interpretation is problematic. Rami bar Hamma does not argue with Rabbotenu. I would even say that Rami bar Hamma does not even make additions to Rabbotenu, as it is described by Tosafot, but only interprets them: the *baraita* mentions two verbs ("מכריזין" and "שולחין"), and Rami bar Hamma's two statements refer respectively to these verbs, integrating them into one judicial process. The first statement describes how the public announcement is made, while the second exposes the timings of sending the messages for the wife, which are before and after the public announcement.

Viewing Rami bar Hamma's statements as an interpretation of Rabbotenu enables us to ascribe a more complicated object to him: to integrate the two traditions of Rabbotenu, the one of the Babylonian *baraita* and the one of the Tosefta.⁵⁰ Whereas his first *memra*, which mentions public announcement in synagogues and in *batey midrashot*, reflects merely the Babylonian *baraita*, his second *memra*, which deals with personal warning ("שולחין"), reflects the concept of the Tosefta ("מתרין בה"⁵¹) as well. Thus, presenting the public announcement and the personal warning as two parts of one process denies any possible disagreement between these two sources. The variant "פעמיים בשבת" of the Tosefta⁵² makes the link between Rami bar Hamma's second *memra* and the Tosefta more stable and explicit. Accepting this variant as the original text of the Tosefta⁵³ increases the meaning of the integration between the Babylonian *baraita* and the Tosefta and makes it reciprocal: the *baraita* contributes the aspect of public announcement, while the Tosefta contributes the number of personal warnings.⁵⁴

In brief, interpreting "הלכה כרבותינו" as rejecting Rami bar Hamma, who is understood as an opponent of the original meaning of Rabbotenu, while ignoring the Tosefta, as Tosafot suggest, is less likely. In fact, Rami bar Hamma does not oppose Rabbotenu; thus determining "הלכה כרבותינו" by Rav Nahman b.R. Hisda has no implication for Rami bar Hamma's own statements. Rav Nahman b.R. Hisda should have said for example: "אין הלכה כרמי בר חמא". Rashi's interpretation of "הלכה כ" as referring to the dispute between Rabbotenu and the Mishnah is much more probable.

There is another advantage to Rashi's interpretation. According to Tosafot, "נמלכין" at (d) supports Rami bar Hamma's teaching, and its meaning is that the *bet din* send messages to the wife both before their announcement and afterwards.⁵⁵ But this verb, "נמלכין", appears earlier,

⁴⁹ See Tosafot, s.v. ואינהו. A few more interpretations will be mentioned below.

⁵⁰ Compare Riskin, Divorce, pp. 15-16, who sees the *baraita* as a result of a later redactor's work, in order to make the Tosefta consonant with Rami bar Hamma's rule of announcement.

⁵¹ See supra, note 21.

⁵² This is the variant of Vine MS and others; see supra, n. 19.

⁵³ One could argue that this variant is a correction of the original text, influenced by the Bavli's tradition of Rami bar Hamma and is not the source for his teaching: see Lieberman, Tosefta Kifshuta, p. 268. Nevertheless, if this were the case, we would expect to find it as MS Erfurt's variant, which was more influenced by the Bavli than MS Vine (see supra, note 17). I prefer therefore to view this variant as the original basis for Rami bar Hamma and not as a consequence of his teaching (as to MS Erfurt, see Tosafot, 63b, s.v. דיקא).

⁵⁴ Accordingly, "פעמים שולחין לה" in Rami bar Hamma's second *memra* refers exclusively to the Tosefta. See Talmidey Rabbenu Yonah, in *shitah mekubetset*, 63b, s.v. שתי: "ורמי בר אבא בא לפרש התוספות ולומר שלא תחשוב: שאלו השתי פעמים שתיהן קודם הכרזה או שתיהן אחר הכרזה אלא אחת קודם הכרזה ואחת אחר הכרזה."

⁵⁵ Accordingly, "נמלכין" can also be accepted by Rabbotenu. Following this view, many Rishonim (Rif and others probably even earlier than Rif: see Halakhot Gedolot, 36, s.v. המורדת) determined the *halakhah* both according to Rabbotenu and "נמלכין", while according to Rashi these are conflicting approaches (see Tosafot, *ibid*; Rashba, s.v. וזאיהו כמאן סבר: "ואינהו כמאן סבר": "ואינהו" according to Rashi (also in most MSS), which refers to Rava at section (c), who follows the Mishnah, or "ואינהו"

Talmudic Roots of Compulsion in Cases of *Moredet*

in the first part of the *sugya* (on 63a) and its meaning there is totally different.⁵⁶ Here again, Rashi follows the *peshat*, and interprets the verb consistently in its two appearances.⁵⁷

It should be mentioned that Rashi's and Tosafot's interpretations are not the only ones. A third meaning of "נמלכין" is suggested by Ra'avad:⁵⁸ the *moredet* has the option to choose either the mishnaic rule of decreasing the *ketubbah* or the rule of Rabbotenu.⁵⁹ Following this understanding we can interpret "נמלכין" in 63a in a similar way, although it depends on questions of text.⁶⁰ However, Rashi's interpretation is more simple and reasonable.⁶¹

We now turn back to the progress of the *sugya* of *moredet*. Like earlier stages, the dispute in section (e) continues the basic tension of the *sugya*. Basically, both Amemar and Mar Zutra follow the Mishnah regarding *moredet*. As Rashi interprets: "היכי דמיא מורדת: דכופין אותה" "דמשהין גיטה ופוחתין כתובתה" i.e. the law of *moredet* involves forcing her by making her wait for her *get* (again, an interpretive addition of Rashi) and decreasing her *ketubbah*, exactly the mishnaic rule. Amemar and Mar Zutra agree to apply this law in a case of "בעינא ליה ומצערנא" "מאיס ליה" (I like my husband but wish to torment him) but disagree in applying it to a case of "עלי" (he is repulsive to me). According to Amemar, in this case we should not follow the mishnaic rule of *moredet*. Thus, the alternative option from earlier stages of the *sugya* arises: the rule of the Tosefta. Rashi therefore interprets Amemar's "לא כייפינן לה" as "לא כייפינן לה:"

"כמאן סברוה" (this variant appears in MS Munich 95) according to *Tosafot*, which refers to Rami bar Hamma and Rava, who according to Rabbenu Tam both follow Rabbotenu.

⁵⁶ At 63a the *sugya* deals with aspects of *mored* (a rebellious husband). One kind of *mored* is a financially rebellious husband, who refuses to support his wife and according to Rav is coerced to divorce her and pay the *ketubbah*: "כופין אותו להוציא" "האומר איני זן ואיני מפרנס יוציא ויתן כתובה" see Shmuel's response to Rav, *Ketubbot*, 77a: "עד שכופין אותו להוציא יכפוהו לזון", i.e. rather than coerce him to divorce her let him be coerced to maintain her; see also Mordechai A. Friedman, "Divorce upon the Wife's Demand as Reflected in Manuscripts from the Cairo Geniza", *JLA*, 4 (1981), pp. 103-104 [hereinafter: Friedman, Divorce]). According to the mishnaic rule of *mored* we increase the value of the *ketubbah*. The Talmud then confronts this gradual process with Rav's immediate rule of "יוציא" and answers: "ולאו לאמלוכי ביה בעי?!" (but see different variants of this sentence, below, at note 60), i.e. before the *mored* is coerced to give a *get* we try to convince him to reconsider his *merida* by increasing the *ketubbah*. "לאמלוכי" here is far from Tosafot's interpretation of "נמלכין".

⁵⁷ Rashi interprets "ולאו לאמלוכי ביה בעי?!" as follows: "ומחזירין עליו שיהזור בו" "ומשהין את גיטה ומחזירין עליה שתחזור בה ובתוך כך פוחתין מכתובתה שבעה דינרין בשבת" *moredet*: "מוסיפין על כתובתה". It is worth remarking here that perhaps the similarity between those two phrases led Rashi to interpret "נמלכין" of the *sugya* of *moredet* as including coercion, just as is in the *sugya* of *mored*. However, there are broader considerations for Rashi, as discussed in this paper.

⁵⁸ Ra'avad agrees with Rashi that Rav Nahman, who determines the *halakhah* in accordance with Rabbotenu, means not according to the Mishnah (see Ritva, 63b, s.v. אמר רבא). His argument is on the meaning of "נמלכין" (see below) and accordingly concerns the interpretation of Rava's exact opinion.

⁵⁹ See Ramban, 63b, s.v. הא. It is difficult to explain what would cause the *moredet* to choose the rule of Rabbotenu and lose immediately all her *ketubbah*, especially according to those opinions which deny coercion of a *get* in this case. See Ritva's explanation (63b, s.v. והראב"ד ז"ל).

⁶⁰ At 63a (the case of *mored*) the Rishonim (see for example Rashba, s.v. ופרקינן) introduce another variant "ולאו לאמלוכי ביה בעי" (compare the traditional text, supra note 57: "ולאו לאמלוכי ביה בעי") which means that the wife is given a choice between two *halakhic* options, similar to the interpretation of this phrase in 63b (but on 63a, since it is a case of *mored*, her choice is between immediate divorce while receiving her current *ketubbah* and delaying the divorce but increasing the *ketubbah*, whereas on 63b her choice is between divorce without *ketubbah* and decreasing the *ketubbah*, see notes 59 and 61). It should be remarked that most MSS take the traditional text, despite MS Vatican 130, whose original text was "בה" but was corrected above the line to the traditional text. Interestingly, according to *shitah mekubetset*, "בה" was Rashi's text in the first edition of his commentary (see 63a, s.v. ולאו), and it is also the text of "Rosh and all of Acharonim" (ibid, end of s.v. והאמר רב). I am therefore still doubtful whether Rashi in his last edition chose his text because of its advantages (see also next note), or maybe this text is a result of his correction of the Talmudic text, which was done in order to make his interpretation consistent with those two parts of the *sugya*.

⁶¹ The main argument against Ra'avad's interpretation is that it is not explained why the choice either in *mored* or in *moredet* is given to the wife. Rashi on the other hand is systematic also on this point: in a case of *mored* we are "נמלכין" with him, while in the case of *moredet* we are "נמלכין" with her. For more argument against Ra'avad's explanation see supra, n. 59. There is at least one more explanation of this passage: see Rashba's explanation of Rif (63b, s.v. ויש), which seems to integrate Rashi and Rabbenu Tam.

"להשהותה, אלא נותן לה גט ויוצאה בלא כתובה, i.e. we don't force her to remain under her husband, but he (must) give her a *get* while she loses her *ketubbah*.⁶²

Coercing a *get* is thus not unique to Amemar's teaching. It is part of an entire approach, whose roots are much earlier, in *Rabbotenu* of the Tosefta or even in the Mishnah. This approach is to be found, according to Rashi, at each section of the *sugya*, which consistently oppose the two approaches. However, at section (e), following Rashi's interpretation, we now have MS LF which raises explicitly the rule of coercion.⁶³

One comment should be made here. As we have seen, the dispute regarding *ma'es alay* at section (e) is equivalent to the dispute between the Mishnah and *Rabbotenu*, and to the dispute between "נמלכין בה" and "אין נמלכין בה" at section (d). However, the rhetoric is quite different. "נמלכין" at section (d) has a positive orientation, probably from the viewpoint of the husband or *bet din*. "כייפינן לה" at section (e) on the other hand, although having the same meaning, has a negative orientation, and probably reflects the viewpoint of the wife.⁶⁴ This fact may reflect diverse conceptions of different generations or of the sources of each part of the complete *sugya*. However, the redactor of the *sugya* integrated them into one complete *sugya*.⁶⁵ Following him, Rashi, as we have shown, interprets it in a clear and harmonious way.

The Rishonim who rejected coercion opposed Rashi also in their interpretation of (e), sometimes in a too complicated way. Thus, for *Rabbenu Tam*, it is not completely clear whether "כייפינן לה" of *moredet ba'ena leh* is according to the Mishnah or *Rabbotenu*. It probably can be according to both of them. However, it seems that *Rabbenu Tam* prefers to interpret it following *Rabbotenu*, according to whom the *halakhah* is fixed. On the other hand, "לא כייפינן לה" of *moredet ma'es alay* is neither according to the Mishnah nor according to *Rabbotenu*. Its meaning is an immediate loss of the *ketubbah* and immediate divorce, depending of course on the husband's will, without any four weeks of warnings, announcements or other waiting periods.⁶⁶

At section (f) the *sugya* continues discussing aspects of *moredet*, mainly financial ones.⁶⁷ Finally, it reaches the following conclusion (64a):

ומשהינן לה תריסר ירחי שתא אגטא, ובהנך תריסר ירחי שתא לית לה מזוני מבעל.

We also make her wait twelve months for her divorce, and during these twelve months she receives no maintenance from her husband.

This passage belongs to a late Talmudic stratum, *amoraic* or even *savoraic*.⁶⁸ It determines a waiting period of 12 months before receiving a *get*. The exact meaning of this passage is a matter of great dispute between Talmudic interpreters, following the basic attitude of each commentator to the interpretation of previous stages of the *sugya*. The Geonim, according to Brody's conclusions, referred to this passage as a late Talmudic *takkanah*, which determined coercion after 12 months of *merida*, whereas the Geonim themselves applied coercion immediately.⁶⁹ Rashi does not mention coercion explicitly. However, I assume that Rashi, as a continuation of his interpretation of the whole *sugya*, of which coercion is an integral part at every point, integrates coercion of a *get* at this stage as well. Rashi explicitly deals here with

⁶² Rashi does not refer explicitly to the question whether it is done after announcement, as it is in the *baraita*, or immediately. Since the other elements of this rule are similar to the *baraita*, it is a reasonable understanding to apply here the missing element (the announcement) too.

⁶³ MS LF follows Rashi also in section (d): "ואיהו כמאן סברה", see supra, note 55, although there it is not unique – at that point the majority of MSS follow Rashi.

⁶⁴ See Riskin, *Divorce*, p. 41.

⁶⁵ In this *sugya* the Rishonim show awareness of the redactor's work but in a different section. See Ritva, 63b, s.v. ולהני פירושי, regarding Rav Huna bar Yehuda's opinion in section (d).

⁶⁶ See Tosafot, 63b-64a, s.v. אבל.

⁶⁷ Whether she lost parts of her *nedunya* ("בלאותיה קיימין") or not, this being the significance of the silk cloak.

⁶⁸ See Friedman, *Jewish Marriage*, p. 323 n. 37.

⁶⁹ See supra, note 8.

according to Rashi, she has a chance to change her mind. Thus, if she does change her mind, she probably would not lose her *ketubbah*.⁸¹

To sum up Rashi's view, the final stage of the talmudic *sugya* imposes a waiting period of 12 months. The interpretation of this conclusion depends on the interpretative path of the *sugya*, especially as regards the legitimization of coercion. According to Rashi, here too coercion plays an important role: the final Talmudic conclusion delays coercion for 12 months in a case of *moredet ma'es alay*. Yet, whether in *ma'es alay* or in *ba'ena leh*, at the end of the halakhic process, the wife can demand a *get*, and her husband is coerced to divorce her.⁸²

The application of this late Talmudic conclusion to *moredet ma'es alay* is a matter of dispute between Rishonim. Opposing Rashi, some Rishonim apply this rule to both kinds of *moredet*, while others apply it only to *moredet ba'ena leh*.⁸³ Amongst the latter are Rambam, Rashbam and Rabenu Tam,⁸⁴ according to whom the law of *moredet ma'es alay* is as originally determined by Amemar. But at this point Rambam and Rashbam differ from Rabenu Tam. While the latter rejects coercion, the former accept it, and according to their view *moredet ma'es alay* loses her *ketubbah* and receives a *get* immediately.⁸⁵ In regard to coercion, therefore, there is an important group amongst the Rishonim which is in favor of it and puts it within the core of the Talmudic *sugya*.⁸⁶

3.3 Palestinian Talmud: Coercion in a case of *moredet* and Rabbi Yoseh's Condition

The Yerushalmi discusses different aspects of *moredet*. As elsewhere, there are variations between the two Talmudim, the Babylonian and the Palestinian, either in citing tannaitic or amoraic sources or in the literary and conceptual development of the *sugya*. In our case, the Yerushalmi cites Rabbotenu differently and thus can shed light on their goal and rationale, as already discussed. In short, the *baraita* in the Yerushalmi varies on two significant points: (a) by mentioning divorce according to Rabbotenu, which is explicit in the Yerushalmi but not in the Tosefta and the Bavli,⁸⁷ and (b) in the absence of public humiliation, similar to the Tosefta but contrary to the Bavli.⁸⁸ Accordingly, Rabbotenu's goal is to lead to a separation between the couple and (where appropriate, coerced) divorce is a necessary condition for it, and therefore an integral part of Rabbotenu's teaching.⁸⁹

Another part of the *sugya* is the question of the character of *moredet*, whether domestic or from sexual motives. These two options are raised implicitly in the Yerushalmi when

⁸¹ See Ritva, 64a, s.v. ומשהיין. There are Rishonim who argue that the wife loses her *ketubbah* even if she changes her mind during the 12 months waiting period, see Ritva, *ibid*. As to Rashi, since this *takkanah* sounds in favor of the wife, I prefer the first explanation.

⁸² The last *takkanah* of 12 months does not refer to *ba'ena leh*, as discussed above. Thus, the law here is the basic mishnaic law, agreed by both Amemar and Mar Zutra, and defined as: "כייפינן לה". According to Rashi, at the end of the mishnaic law, as mentioned a few times in this paper, she receives a *get*.

⁸³ Supra, note 73.

⁸⁴ See Rambam, *Ishut*, 14: 11-14; Shiltey Giborim, 27a, A; Tosafot, 63b, end of s.v. ואינהו

⁸⁵ See the famous *halakhah* of Rambam, *Ishut*, 14: 8: "ושואלין אותה מפני מה מרדה, אם אמרה מאסתיהו ואיני יכולה" ([*Bet din*] asks her why she rebelled. If she says: 'he is repulsive to me, and I cannot willingly have sexual relations with him', [*Bet din*] coerce him to divorce her immediately, since she is not like a captive woman, who must have sexual relations with someone she hates, and she goes out (=she is divorced) without *ketubbah* at all...". Divorce in this case is without any delays, whereas Rabbotenu's rule of four weeks of announcements and warnings (and than losing the *ketubbah*) are applied to *moredet ba'ena leh*, together with the 12 months of waiting for her *get*: see Rambam, *ibid*, 9-14.

⁸⁶ The different types of *moredet* and the dispute between the Mishnah and Rabbotenu concerning the proper *halakhic* process do not relate to the character of coercion, which is the basic physical one: see supra, note 29.

⁸⁷ See supra, text to notes 30-34.

⁸⁸ The Yerushalmi uses the term "מתרין בה" while the Bavli uses "מכריזין עליה", see supra, note 24. Two more differences between the Yerushalmi and the other sources are mentioned above, note 32.

⁸⁹ See supra, section 3.1.

Talmudic Roots of Compulsion in Cases of *Moredet*

explaining the differences between the *moredet* and the *mored*. In the Bavli on the other hand these options are the core of an explicit dispute between two *amoraim*, one of whom, Rabbi Yose bar Hanina, is mentioned also in the Yerushalmi.⁹⁰

The following passage is of the greatest importance:

אמר רבי יוסה אילין דכתבין אין שניא אין שנתא תניי ממון ותניין קיים.

R. Yoseh said: For those who write [a stipulation in the marriage contract]: 'if he grows to hate her or she grows to hate him', it is considered a condition of monetary payment, and their condition is valid.

R. Yoseh legitimates a condition in a case of hatred between the couple by referring to it as a monetary condition. But the exact content of the condition is not clear, and it is greatly disputed in both rabbinic and academic sources. Those sources usually deal with two main questions: First, what is the exact content of R. Yoseh's condition – is it only in regard to financial aspects, for example: rejecting the mishnaic process of decreasing the *ketubbah* in a case of *moredet*, or is it also in regard to the marriage itself, enabling a coerced divorce in such a case? Second, suppose the condition refers to the marriage, how is it used in practice – by coercing the husband to give a *get* or by a judicial act of the *bet din* itself? These questions are discussed at length as part of the Agunah Research Unit's papers.⁹¹ In this section, I would like to propose a view suggested by the previous analysis.

In a case described later in the Yerushalmi, a similar condition is mentioned.⁹² A man kissed a married woman ("אחד שראו אותו נותן את פיו על פיה"). The *amoraim* did not regard her as a *sotah* (adulteress), which would mean that her husband should divorce her and she loses her *ketubbah*, but treated the case as one of hatred. Accordingly, they applied here the condition which was found in her *ketubbah*:

אין הדא פלנית תסבי להדין פלוני בעלה ולא תיצבי בשור-פוחיה תהוי נסבה פלגות פרו.

If this So-and-so (fem.) hates⁹³ this So-and-so, her husband, and does not desire his partnership,⁹⁴ she will take half of *ketubbah*.

The *amoraim* in this case discuss mainly the financial aspects of the condition: whether she is entitled to receive at least part of her *ketubbah*. However, these aspects were probably accompanied by divorce, and this presumes that it includes unilateral divorce on the part of the wife. This argument is based on the clause: "ולא תיצבי בשותפותיה", i.e. she would reject

⁹⁰ See Riskin, Divorce, pp. 21-23, and *supra*, note 23. This phenomenon is well known, and reflects the high level of Babylonian conceptualization: see for example Leib Moscovitz, **Talmudic Reasoning – from Casuistics to Conceptualization**, Tübingen: Mohr Siebeck, 2002, pp. 306-309. Interestingly, the anonymous conclusion of the Bavli limits the amoraic dispute to a domestic *moredet*, while both *Amoraim* agree to define *moredet* from sexual relationships as a *moredet* ("אלא מתשמיש כולי עלמא לא פליגי דהויא מורדת"). Although this talmudic limitation can not be literally derived from the amoraic dispute in the Bavli, it does not necessarily reject their original teaching: according to the Yerushalmi these are alternative interpretations of the Mishnah, and not necessarily a conceptual dispute (see Riskin, *ibid.*, and note 3).

⁹¹ See Jackson, Preliminary Report, pp. 3-6; Bernard S. Jackson, "Agunah and the Problem of Authority: Directions for Future Research", *Melilah* 2004/1, pp.1 – 78, <http://www.mucjs.org/MELILAH/2004/1.pdf>, pp. 7-9 (hereinafter: Jackson, Directions).

⁹² Pt, Ketubbot, 7:6, 31c.

⁹³ The word: "תסבי" should be read as: "תשנא" or "תסני": see Saul Lieberman, **Hilkhot Ha-Yerushalmi Le-ha-Rambam**, New York, Bet Ha-midrash Le-rabanim Be-America, 1948, p. 61, based on Maimonides, Or Zaru'a and Meiri's version. This reading was adopted by Friedman, Jewish Marriage, p.317; Riskin, Divorce, p. 31 n. 16.

⁹⁴ The two words: "בשור פוחיה" should be read as: "בשותפותיה", see Lieberman, *ibid.* See Friedman, Jewish Marriage, p. 329: "*Shutafut* 'partnership' here clearly denotes 'marriage', as in Syriac. This felicitous term is particularly befitting in a stipulation which describes man and wife as equal partners in the business of marriage, each of whom can withdraw from the partnership at will".

being in a partnership with him, which means that the wife has the right to a coerced divorce.⁹⁵

One possible interpretation is that the wife's entitlement to a coerced divorce is achieved by the quoted condition. If that is correct, the term "תנאי ממון" (a monetary condition) in R. Yoseh's condition (which supplies its legitimization) includes stipulating the right to a unilateral divorce. "תנאי ממון" has therefore a wide meaning: "monetary stipulations' include agreements to forfeit a right or benefit assured one by law" (M.A. Friedman).⁹⁶

Yet, divorce is not the main legal consequence of the condition. Divorce is only part of the protasis (the "if" part of the condition) while the apodosis (the "then" part of the condition) is the financial aspect, which is also the core of the amoraic discussion that follows. So why does divorce seem to be less significant in the conditions of the Yerushalmi?⁹⁷

As we have argued, a *get* was an integral part of the law of *moredet* already in tannaitic sources, and in particular is part of Rabbotenu's rule in the Tosefta, as is explicit in the Yerushalmi's version of the *baraita*. Demanding a divorce therefore did not have to be based on any condition, but was based rather on the law of *moredet* itself. Accordingly, the reason why the amoraim do not discuss the right to demand divorce is that it was already known and accepted, rather than this being the "point of the innovation" of the condition. The same conclusion applies to the missing apodosis of Rabbi Yoseh's condition: it might have mentioned the coerced divorce, but its core is monetary, i.e. to regulate the financial terms of the tannaitic coerced divorce.⁹⁸

R. Yoseh merely adds a financial aspect, which overrides the tannaitic rule of *moredet*. Namely, although a *moredet* loses her *ketubbah*, if the couple has stipulated that she would not lose it, the condition is valid since it is a "תנאי שבממון". The right of the *moredet* to receive a *get* may appear in this sort of condition, but its basis is not the condition but a more stable one: the basic tannaitic law of *moredet*.⁹⁹

4. Conclusions

Coercion of a *get* in a case of *moredet* is a matter of great dispute between Talmudic commentators, whether Geonim, Rishonim or Acharonim. One most influential view was that of Rabbenu Tam, who strictly rejected coercion. Opposing the *gaonic* view, Rabbenu Tam argued that coercion has no basis in Talmudic sources. However, this paper has explored a wide basis for coercion in *tannaitic* and *amoraic* sources, as well as in later anonymous Talmudic discussions.

⁹⁵ Riskin, Divorce, pp. 31-32. The right for unilateral divorce appears more explicitly later in conditions in Palestinians *ketubbot* from the gaonic period found in the Cairo *Geniza* ("and if this Maliha hates this Sa'id, her husband, and desires to leave his home, she shall lose her *ketubbah* money... and she shall go out by the authorization of the court"), see Friedman, Jewish Marriage, pp. 327-346; Jackson, Directions, pp. 7-8.

⁹⁶ Friedman, Jewish Marriage, pp. 319-320. See also Jackson, Preliminary Report, pp. 4-5.

⁹⁷ Accepting the explanation above, that the entitlement to divorce is based on the condition, requires one to assume that "the text that is quoted omits... the wife's exit from the marriage, the divorce itself which resulted from her 'hating' her husband" (Friedman, Jewish Marriage, p. 318). Below I suggest a different view, based on the previous analysis of tannaitic and amoraic sources, which does not require such an assumed omission.

⁹⁸ This interpretation of R. Yoseh's condition is briefly suggested by Friedman, Jewish Marriage, p. 320, as a second interpretative option. The present research supports this option and puts it in a wider context.

⁹⁹ Meiri's teachers' teachers argue that R. Yoseh's condition is the basis for the gaonic *takkanah* of *moredet* (Meiri, 63b, end of s.v. ויגדולי המחברים). This claim is historically doubtful (see Friedman, Jewish Marriage, pp. 325-327; Friedman, Divorce, p.105; Riskin, Divorce, pp. 81-84; and compare Lieberman, *Hilkhot Ha-Yerushalmi*, p. 61 n. ק), but important from a dogmatic point of view (see Jackson, Preliminary Report, p.6). According to the analysis above, this connection is limited to financial aspects, i.e. the authority of the Geonim to override the tannaitic rule of losing the *ketubbah*. Interestingly, a close reading of the Meiri may suggest that this was his own objective when citing his teachers, i.e. finding in R. Yoseh's condition a support to the monetary aspects of the gaonic *takkanah* of not losing the *ketubbah*. But there is a significant difference: Meiri rejects coercion in both early and late sources while the analysis above accepts it but ascribes it to earlier generations.

Talmudic Roots of Compulsion in Cases of *Moredet*

Justifying coercion in a case of *moredet* is mainly a question of interpretation of Talmudic sources. The interpretative option suggested here is a legitimate – we would even say: preferable – way of interpretation, with the significant advantages of clarity, simplicity and consistency. Furthermore, it creates a logical structure which holds together the Mishnah, the Tosefta and every stage of the Talmudic discussion. Not surprisingly, it was chosen by Rashi and some other commentators when interpreting the *sugya*.

One methodological comment should be raised here. Rabbenu Tam's objection is based primarily on broader considerations, i.e. harmonizing all Talmudic sources, and not on the *peshat* of this specific *sugya*. His main argument is supported by some tannaitic sources, in which *moredet* is not mentioned amongst cases of coercion.¹⁰⁰ The Rishonim deal with those sources in accordance with Rashi's approach, for example: solving the difficulty above by making a distinction between a case of coercion when the wife receives the amount of her *ketubbah*, as in the cited *Mishnayot*, and coercion without receiving the *ketubbah*, as in *moredet*.¹⁰¹

Explaining Rashi's view in this way is based on a dogmatic approach. Nevertheless, we may suggest a historical view: contradictory sources may be explained synchronically, as sources in a dispute (סוגיות הלוקות), or, as may be more accurate in our case, diachronically, as a developing tradition. That is to say, at an early tannaitic stage *moredet* was indeed not amongst the cases of coercion, but this changed during the generations, and the sources discussed in this paper reflect this change in varying measures.¹⁰² This halakhic process is influenced by sociological changes, which characterise the case of *moredet*. As briefly described by Pne Yehusuah:¹⁰³

דבלא"ה (=דבלאו הכי) אשכחן כמה תקנות בענין מורדת, לפי השתנות הזמנים,
דינא דגמרא ודינא דרבנן סבוראי שהביאו התוספות ודינא דמתיבתא שהביאו הר"ף והרא"ש
ז"ל...

Even without that, we find a number of enactments regarding *moredet*, corresponding to changing circumstances: talmudic law, saboraic law, which was cited by Tosafot, and the law of *metivta* (=the gaonic law), which was cited by Rif and Rosh z"l...

¹⁰⁰ For example: Mishnah Ketubbot, 7:7. See Tosafot, 63b, s.v. אבל; Ramban, 63b, s.v. וכולה הלכתא.

¹⁰¹ See Ritva, 63b, s.v. היכי דמיא מורדת. Actually, Ritva rejects this distinction, see *ibid*.

¹⁰² For example, comparing *moredet* in the Tosefta and in the Mishnah, coercion in the Tosefta is an essential part of the *halakhah* and not only a possible outcome of losing the *ketubbah* as it is in the Mishnah (see *supra*, section 3.1), which may be the reason for not mentioning it amongst the mishnaic cases of coercion. Yet, both sources focus on the *ketubbah* while divorce is still not explicit. It becomes explicit only in late amoraic generations, Amemar according to MS Leningrad-Firkovitch or the final determination of late Talmudic stratum: "וימשינן לה תריסר ירחי שתא אגיטא".

¹⁰³ See Pne Yehoshuah, 63b, s.v. בגמרא ואיהו (emphasis added). The context of Pne Yehoshuah's statement is his question: "היאך פליג רבא אהאי ברייתא וקאמר הא בורכא?!" (How could Rava be in a dispute with the *baraita* and describe their view so negatively?). His possible answer is that after *Rabbotenu* the Sages changed their mind again and moved back from *Rabbotenu* to the Mishnah as a result of changing circumstances (literally: "changing times").

5. Bibliography

Talmudic and Rabbinic literature:

I used standard editions, either from the Responsa Project of Bar Ilan University or from regular print editions. Whenever required I also used critical editions and manuscripts.

Academic Literature:

אנציקלופדיה תלמודית, עורך: הרב שלמה יוסף זיין, כרך תשיעי, ירושלים: הוצאת אנציקלופדיה תלמודית בסיוע מוסד הרב קוק, תשי"ט.

אפשטיין, יעקב נ', **מבוא לנוסח המשנה**, ירושלים: מאגנס², תשס"א.

ברודי, ירחמיאל, "כלום היו הגאונים מחוקקים", **שנתון המשפט העברי**, יא-יב (תשמ"ד-תשמ"ו), עמ' 279 – 315.

ברודי, ירחמיאל, "סתם התלמוד ודברי האמוראים", **דברי הקונגרס העולמי הארבעה עשר למדעי היהדות** (בדפוס).

גרוסמן, אברהם, **חסידות ומורדות – נשים יהודיות באירופה בימי הביניים**², ירושלים: מרכז זלמן שזר לתולדות ישראל, תשס"ג.

ליברמן, שאול (מהדיר), **הלכות הירושלמי לרבינו משה בן מיימון ז"ל מעצם כ"ק ז"ל**, נויארק: בית המדרש לרבנים באמריקה, תש"ח.

ליברמן, שאול, **תוספתא כפשוטה – ביאור ארוך לתוספתא**, חלק שישי, סדר נשים, נויארק: בית המדרש לרבנים באמריקה, תשכ"ז.

פרידמן, שמא י', "פרק האשה רבה בבבלי, בצירוף מבוא כללי על דרך חקר הסוגיא", **מחקרים ומקורות**, א (תשל"ח), עמ' 275 – 441.

פרידמן, שמא י', **תוספתא עתיקתא**, רמת גן: אוניברסיטת בר אילן, תשס"ג.

תא שמע, ישראל מ', **הספרות הפרשנית לתלמוד באירופה ובצפון אפריקה**, חלק ראשון, ירושלים: מאגנס², תש"ס.

Broyde, Michael J., **Marriage, Divorce and the Abandoned Wife in Jewish Law**, Hoboken, NJ: Ktav, 2001.

Friedman, Mordechai A., "Divorce upon the Wife's Demand as Reflected in Manuscripts from the Cairo Geniza", **JLA**, 4 (1981), pp. 103-126.

Friedman, Mordechai A., **Jewish Marriage in Palestine – A Cairo Geniza Study**, Vol. 1, Tel Aviv and New York: Tel Aviv University and the Jewish Theological Seminary of America, 1980.

Grossman, Avraham, **Pious and Rebellious – Jewish Women in Medieval Europe**, Waltham: Brandeis University Press, 2004.

Jackson, Bernard S., "Agunah and the Problem of Authority: Directions for Future Research", *Melilah* 2004/1, pp.1 – 78, <http://www.mucjs.org/MELILAH/2004/1.pdf>.

Jackson, Bernard S., "Preliminary Report of the Agunah Research Unit" (Working Papers of the Agunah Research Unit, December 2006), <http://www.mucjs.org/PrelimRep.pdf>.

Moscovitz, Leib, **Talmudic Reasoning – from Casuistics to Conceptualization**, *Tübingen: Mohr Siebeck*, 2002

Riskin, Shlomo, **Woman and Jewish Divorce**, Hoboken, NJ: Ktav, 1989.

Shavell, Steven, "A Note on Marginal Deterrence", **International Review of Law and Economics**, 12 (1992), pp. 345-355.

Talmudic Roots of Compulsion in Cases of *Moredet*

Stigler, George J., "The Optimum Enforcement of Laws", **The Journal of Political Economy**, 78 (1970), pp. 526-536.

Westreich, Avishalom, **Hermeneutics and Developments in the Talmudic Theory of Torts as Reflected in Exceptional Cases of Exemption**, PhD, Ramat Gan: Bar Ilan University, 2007.

Westreich, Elimelech, "The Rise and Decline of the Law of the Rebellious Wife in Medieval Jewish Law", **Jewish Law Association Studies**, 12 (2002), pp. 207 – 218.