

## **EARLY MODERN WORKSHOP: Jewish History Resources**

**Volume 3: Gender, Family, and Social Structures, 2006, Wesleyan University, Middletown, CT**

### **The Woodstruck Deed**

#### **The Documentation of Accidental Defloration among the Jews of Early Modern Italy**

David Malkiel, Bar-Ilan University, Israel

**ABSTRACT:** The “woodstruck” (mukat ets) deed, a Hebrew document that officially records the accidental defloration of a young girl, appears in sixteenth-century Italy, in a block of deeds recorded by Jewish notaries in Rome, in a rabbinic responsum and in the record book of the Padua community. Prior to that, there is no record of such an instrument anywhere in Jewish history and literature, despite the fact that the frequency of accidental defloration must have been a constant. Moreover, the registers of the Jewish notaries of sixteenth-century Rome contain over a hundred such deeds for the sixteenth century alone. The appearance of the woodstruck deed seems to reflect the formalization and bureaucratization of Jewish life in the early modern era. An early sign of this development is the creation, in the fourteenth century, of a formal process of ordaining rabbis and granting them communal appointments. The early modern era also witnessed the emergence of new public institutions and the records of their regulations and activities. Henceforth public institutions, principally the Jewish community, intruded into the life of the individual, as details of his personal life and activities came into the public purview, and, theoretically at least, became subject to supervision and intervention. The woodstruck deed thus presents another example of the exposure of certain areas of daily life. This trend has been noted with regard to marriage and death. The woodstruck deed differs in that it represents the seizing of the initiative by the family, as it attempts to exploit the new public involvement in personal life to its advantage. Apart from the institutional context, the woodstruck deed offered parents a guarantee that their daughter’s honor would not be impugned if on her wedding night her husband discovered that she was not a virgin. There was nothing to compel the family to publicize the incident or the document, unless on the morning after the wedding the groom complained that he had not found his wife to be a virgin. The woodstruck deed may imply, therefore, that parents had reason to suspect that their daughter might engage in premarital sex, which could lead to an unwelcome scandal.

**This presentation is for the following text(s):**

- Isaac's Fear
- Minutes Book of the Council of the Jewish Community of Padua 1577-1603
- Responsa of Rabbi Azriel Diena
- Woodstruck Deed



**David Malkiel**

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Duration: 49:57

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## **EARLY MODERN WORKSHOP: Jewish History Resources**

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### **Introduction to Isaac's Fear**

David Malkiel, Bar-Ilan University, Israel

**Notes:** Pahad Yitzhak, Livorno 1840, vol. 6, fol. 40r, col. 1-2, s.v. mukat 'ets.

Isaac Lampronti, a rabbi and physician of 18<sup>th</sup>-century Ferrara, authored a monumental encyclopedia of Jewish law and lore entitled Pahad Yitzhak, which also contains dozens of contemporary responsa, including some of his own. In this source Lampronti discusses the case of a woman who had suffered accidental defloration as a child, and subsequently does not bleed during or immediately after her first sexual experience. The halakhic issue is whether she must then refrain from further sexual activity for seven days, as other women would, even though she did not bleed, and Lampronti rules stringently, i.e. that she should.

Of particular interest is Lampronti's statement that it often happens that a girl falls and injures herself, bleeding from the genitals, and the parents promptly arrange to obtain an official document, signed by rabbis, declaring her woodstruck, although in fact her hymen may still be intact. Mordecai Zahalon, a rabbinic contemporary, confirms this observation. These statements reveal that parents continued to obtain affidavits of accidental defloration well into the eighteenth century. Furthermore, the skepticism evinced by these rabbis about the girls' defloration suggests that parents cared more about the document than about the accident; indeed, they they exploited even a trivial incident in order to obtain the affidavit.

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### Isaac's Fear

Pahad Yitzhak

Isaac Lampronti, early eighteenth century

Translated by David Malkiel, Bar-Ilan University, Israel

**Notes:** Pahad Yitzhak, Livorno 1840, vol. 6, fol. 40r, col. 1-2, s.v. mukat 'ets.

Isaac Lampronti, Pahad Yitzhak

Who does not know [that] in all these [cases] and in every law the gates of *pilpul*, the disagreements and the aspects have not been locked, even when it comes to purifying the things that swarm, with all sorts of proofs? And yet, as I made my way honestly in search of truth I chose the aspects that prohibit, because I have seen many cases involving virgins who fall and their 'nether face' forcefully strikes the ground or the wood of the chair on which they sit; and when drops of blood come out of the genitals everyone calls them 'woodstruck' (muket 'ets); and elderly rabbinical authorities undersign an affidavit which they [the girls' parents] then hold, stating that they are woodstruck, even if it seems that the wood never went deep inside; and most of her virginity certainly remains, and possibly all of it, for the wood only entered the outer womb, called vagina, and not the inner womb; and who can say that every woodstruck girl that comes before us is in the same category as the one mentioned in the Mishnah [Ketubot 1:3], who is completely pierced, and is not, rather, one of those we have seen with our own eyes? Regarding your question, although she did not see visible blood, who would presume to say that she did not see a drop of blood covered by semen? Which is why I analyzed the ways of your question and my line of reasoning fell in step with its ruling, to rule stringently in real cases even though theoretically there are all sorts of aspects that might incline one to rule liberally.

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פחד יצחק

Pahad Yitzhak

Isaac Lampronti, early eighteenth century

Prepared by David Malkiel, Bar-Ilan University, Israel

**Notes:** Pahad Yitzhak, Livorno 1840, vol. 6, fol. 40r, col. 1-2, s.v. mukat 'ets.

4. ר' יצחק למפרונטי, פחד יצחק, ד"ה מוכת עץ, מ ע"א:

מי לא ידע בכל אלה ובכל דינא ודינא לא ננעלו שערי הפלפול והמחלוקות והצדדין אפילו לטהר את השרץ בכל מיני ראיות מראיות שונות, אבל מדי לכתו ביושר לבב לבקש האמת צדדתי צדדי האסור כיון דפעמים רבות באו מעשים לידי ועיני ראו ולא זר בתולות נופלות ופניהן של מטה טוחות בקרקע ובעץ הכסא אשר היו יושבות עליו ובצאת ממקום התורף טיפות דם כ"ע קורין אותן מוכות עץ ורבני' זקני ההוראה מעידים תחת השטר ראה אשר בידיהן היותן מוכות עץ אע"ג דלא נראה דלא נמצא העץ נכנס לפני לפנים ובודאי נשאר רוב בתולים ואולי כולן כי לא נכנס העץ כי אם ברחם החיצון הנקרא וואגיני"א ולא ברחם הפנימי ומאן לימא לן דכל מוכת עץ הבאה לפנינו תהיה המוכת עץ השנויה במשניות שנפרצה במילואה ולא תהיה אה[!] מאחת מאלה אשר בעינינו ראינו. ובנדון שאלתך, הגם שלא ראתה דם הנראה לעינים, מי הוא זה ואיזה הוא אשר יערב לבו לומר שלא ראתה טפת דם וחפהו שכבת זרע, כי על כן חשבתי דרכי שאלתך ואשיבה רגלי סברתי לעמוד בשמועתו, להחמיר למעשה, הגם דלהלכא איכא צדדין וצדי צדדין להקל.

נאם הצעיר הדורש שלומך וטובתך יצחק בכמה"ר שמואל לאמפרונטי זלה"ה פה פירארא

**Publisher:** Livorno, Italy, 1840, p. 40r-v

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## **EARLY MODERN WORKSHOP: Jewish History Resources**

**Volume 3: Gender, Family, and Social Structures, 2006, Wesleyan University, Middletown, CT**

### **Introduction to Minutes Book of the Council of the Jewish Community of Padua 1577-1603**

David Malkiel, Bar-Ilan University, Israel

**Notes:** Minutes Book of the Council of the Jewish Community of Padua 1577-1603 [Hebrew], ed. Daniel Carpi, Jerusalem 1973, vol. 1, p. 457. Italy

A communal record book, or pinkas, typically contains communal ordinances, but this document is a court decision, a *ma'aseh bet din*. The three judges, headed by Samuel Archivolti, Padua's leading rabbinical authority, affirm the testimony they have heard, by two female witnesses, that a certain girl lost her virginity in an accident. Thus, this document supports the conclusion that accidental defloration was only beginning to be recorded in official instruments, by the public institutions of the Jewish community. We also see that the phenomenon was not limited to Rome, or to central Italy, but appears also in the Veneto, several decades later in the sixteenth century.

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## **EARLY MODERN WORKSHOP: Jewish History Resources**

**Volume 3: Gender, Family, and Social Structures, 2006, Wesleyan University, Middletown, CT**

### **Minutes Book of the Council of the Jewish Community of Padua 1577-1603**

**Pinkas Va'ad K.K. Padova 338-363, no. 830  
Jewish Community of Padua, Italy, 1582**

Translated by David Malkiel, Bar-Ilan University, Israel

**Notes:** Minutes Book of the Council of the Jewish Community of Padua 1577-1603 [Hebrew], ed. Daniel Carpi, Jerusalem 1973, vol. 1, p. 457. Italy

no. 830 (1582)

It occurred thus before us, the court of those undersigned, that the honorable Mr. Solomon Pelestrina came, frightened, frantic and complaining bitterly about what happened to his daughter Bella, born on 13 Adar 338 (as is stated at the beginning of a Mahzor belonging to him). And the event was that she climbed on a chest to play, as girls will do, and when she descended her legs slipped and her steps widened and she fell, and the sharp edge of the chest's cover struck her between her thighs at that place [her genitals], and immediately her virginity fell out onto her robe. All this was told us by two elderly and important women, namely the honorable Mrs. Rosa de la Comara and the honorable Mrs. Sorelina, widow of Mr. Aaron Rava, both of whom were on the scene when the girl was lying in bed with blood flowing onto her robe, in plain sight of them. Thus, we, the undersigned members of the court, have written and signed this instrument for a remembrance for generations to come, and so that the truth find its way. All the above took place here, Padua, today, Tuesday, 27 Tammuz 342.

Samuel Archivolti, Judge

Israel b. Yehiel Luria, Judge

Abraham b. Elhanan Heilperon, Judge

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## EARLY MODERN WORKSHOP: Jewish History Resources

Volume 3: Gender, Family, and Social Structures, 2006, Wesleyan University, Middletown, CT

**פנקס וועד ק"ק פדואה**  
**Pinkas Va'ad K.K. Padova 338-363, no. 830**  
**Jewish Community of Padua, Italy, 1582**

Prepared by David Malkiel, Bar-Ilan University, Israel

**Notes:** Minutes Book of the Council of the Jewish Community of Padua 1577-1603 [Hebrew], ed. Daniel Carpi, Jerusalem 1973, vol. 1, p. 457. Italy

2. פנקס ק"ק פאדוואה, של"ח-שס"ג, מהד' דניאל קארפי, ירושלים תשל"ג, סי' תתל, עמ' 457:

מעשה היה בפנינו בית דינא דחתימי לתתא שבא הנכבד ר' שלמה פיליסטרינה יצ"ו נבהל ונחפז וצועק מרה על מאורע אירע אל הילדה בתו בילה, אשר נולדה לו ביום י"ג אייר של"ח, כפי מה שנזכר בראש מחזור אחד שלו; והמאורע היה, שעלתה על גבי תיבה אחת לצחוק כמשפט הילדות, וברדתה הוחלקו רגליה והרחיבה צעדיה ותפול ויך חודו של מכסה התיבה ההיא בין ירכותיה באותו מקום, ותכף נשרו בתוליה על חלוקה; וכל זה הגידו לנו שתי זקנות חשובות, היינו הכבודה מר' רוסה די לה קומארה והכבודה מ' סורלינה אלמנת ר' אהרן רבא ז"ל, שנמצאו שתייהן במעמד ההוא, כשהיתה הילדה הנ"ל מוטלת על מטתה והיה הדם שותת על החלוק לעיניהן; ובכן אנחנו בית דינא דחתימי לתתא כתבנו וחתמנו האי עובדא למזכרת לדורות הבאים, ולמען האמת יעשה דרכו; וכל הנ"ל היה פה פאדובה היום יום ג' כ"ז תמוז שמ"ב לפ"ק לי"א.

שמואל ארקולטי דיין

ישראל בכמהר"ר יחיאל לוריא ז"ל דיין

אברהם ב"ר אלהנן היילפרון ז"ל דיין

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### **Introduction to Responsa**

David Malkiel, Bar-Ilan University, Israel

**Notes:** Responsa of Rabbi Azriel Diena, ed. Yacov Boksenboim, Tel Aviv 1977, vol. 1, pp. 541-544 Italy

Ozriel Diena issues a legal opinion on whether and when female testimony is admissible in Jewish legal proceedings. He concedes that it is only admissible in cases involving laws legislated by the Sages, not biblical laws, but argues that disputes surrounding a woman's marriage contract fall under that rubric. Accordingly, he upholds the judicial value of the testimony given by women regarding the accidental defloration of a particular girl, and buttresses the women's testimony by adding his own signature.

Among the document's striking features are: (1) the fact that discussion of an issue so basic as the admissibility of female testimony should arise as late as the sixteenth century; (2) the use of the responsa genre for the publication of an affidavit concerning accidental defloration. These two features are indications that accidental defloration was only now entering the bureaucratic and judicial purview for consideration and documentation.

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### Responsa of Rabbi Azriel Diena She'elot u-Teshuvot Azriel Diena, 1528

Translated by David Malkiel, Bar-Ilan University, Israel

**Notes:** Responsa of Rabbi Azriel Diena, ed. Yacov Boksenboim, Tel Aviv 1977, vol. 1, pp. 541-544 Italy

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In the second [of the two] chapter[s] entitled One Who Steals, the Mishnah states:<sup>[1]</sup> *R. Johanan b. Baroka said: A woman or a child may be believed if they say, "The swarm of bees went away from here." A man may go into his fellow's field to save his swarm...* And the *gemara* says about this: *A woman and a child may testify. R. Judah said in the name of Samuel: This is so, for example, when the owners are chasing them and the women and child say casually: "The swarm emerged from here." R. Ashi said: Casual talk is only accepted as testimony when the issue is a woman's right to remarry.<sup>[2]</sup>* *Ravina responded: Is not the case of the swarm of bees one of casual testimony [and yet the Mishnah rules that this is acceptable as testimony]? The [case of the] swarm of bees is an exception, because [their] acquisition is rabbinical [rather than biblical]<sup>[3]</sup>...* Rashi commented: *There is no theft here, but rather [ownership of bees is recognized] to avoid disputes, for they are not private property. And [the gemara] asks further: A case came before Rabbi [Judah the Patriarch] of a child who spoke casually and said: "My mother and I were taken captive by gentiles. When I went out to draw water, I thought about my mother,<sup>[4]</sup> to collect wood – about my mother;" and on that basis they allowed her to marry a Kohen. [Clearly casual talk is admissible in cases other than that of an 'agunah?'] They ruled leniently in the case of a woman taken captive, [and therefore the rule of the inadmissibility of casual talk stands].*

Similarly, the Mishnah states in the chapter entitled How Do We Extend?:<sup>[5]</sup> *Even a bondman and even a bondwoman may be believed when they say: "Thus far is the Sabbath limit"...* And in this context the *gemara* states that matters concerning the

Sabbath limit are rabbinical [not biblical],[<sup>6</sup>] implying that if they were considered biblical, they would not be believed.<sup>[7]</sup> And the tosafists wrote there: *Even though we routinely believe women on [matters pertaining to] the slaughter and porging of animals and the donation of hallah, this is only because it is within her power<sup>[8]</sup> to slaughter before the act of slaughter [takes place], but with regard to matters concerning the Sabbath limit, these are not in her power ... This may seem to be contradicted by the statement, regarding the search for leavened bread on the eve of Passover, that the search must be conducted with great care and effort, and therefore one must be more concerned about their laziness [of women] than in other situations. And thus it is stated in the Jerusalem Talmud that there is a view according to which women are not to be believed with regard to the search for leavened bread because they are lazy and their search is perfunctory.*<sup>[9]</sup> The tosaphists wrote the same thing in the first chapter of *Pesahim*, s.v. The Rabbis Believed Them in Rabbinical Matters.<sup>[10]</sup>

Mordechai [b. Hillel] wrote, regarding the first chapter of *Hullin*, that *one witness is believed and [deemed] legitimate [and] we rely on him, and even a woman, as it is stated in the chapter [entitled] If the Lower Mark Comes:<sup>[11]</sup> “R. Ishmael entrusts his mother”<sup>[12]</sup>... And regarding the immersion of a menstruating woman, when (she) [the rabbis] only (knows) [know] what other people [testify], in all these cases we rely on one witness. In sum, a minor is not believed whenever the case at hand involves a biblical prohibition, and neither is a woman or an adult male who is not deemed [as] reliable [as two witnesses]. However, [they are believed] with regard to a rabbinical prohibition, such as [the prohibition of] salted meat, for [the prohibition of] salted blood is only rabbinical ... All this follows the view of R. E.M.,<sup>[13]</sup> who explained, regarding the chapter [entitled] Damages:<sup>[14]</sup> “Everything that is in his power:<sup>[15]</sup> Whatever is within his power to fix now.” However, R. Tam, who interpreted [the Mishnah] to mean “whatever was once within his power,” has no need of this interpretation.<sup>[16]</sup>*

What emerges from all this, therefore, is that the testimony of women is only accepted in rabbinical laws, for the rabbis believed them in rabbinical matters, or in cases of biblical laws when it is within one’s power to repair [the damage], such as slaughtering and porging, for it was in their power to slaughter properly and purge properly, or in the case of a female captive even when it is not within her power to repair [the damage], for they [the rabbis] ruled leniently in the case of a female captive. However, regarding testimony concerning a biblical matter which it is not within their power to repair, they are not believed, as is found in the chapter [entitled] The Oath of Testimony,<sup>[17]</sup> that the testimony of women is null, for it is stated [in the Torah]: “Then shall both the men...” [Dt. 19:17].<sup>[18]</sup>

Therefore, when an impure incident<sup>[19]</sup> occurred to a young girl, the daughter of Mr. [name omitted], who was ascending a ladder on 2 Nissan [5]288 of last year to search

for leavened bread in an attic and clean it up, as women do; and she fell from the ladder onto a piece of wood which penetrated her in that place<sup>[20]</sup> and her blood spilled onto the ground, her mother cried out for some time, and called two or three modest women, who came and saw the blood spill onto the ground, and the location of the wood onto which she fell, and her bruised and torn genitals; and they saw that she was telling the truth, not lying, and that the event took place just so. These women came and testified before me about the entire episode and about what they saw, so that their testimony would serve as a sign and remembrance for the day of her wedding, that she is struck by wood rather than stomped by man.<sup>[21]</sup>

According to R. Gamliel and R. Eliezer, in the first chapter of *Ketubot*, [where it is stated], *She says "I am struck by wood,"* she is believed<sup>[22]</sup> and may marry a *Kohen*, and we are not concerned lest she had relations with a man who would render her ineligible [for such a match]. Therefore, according to their view, in the case at hand this girl need not present proof of her words at the time of her marriage, for she is believed when she says: "I am struck by wood." Moreover, even according to R. J [Joshua], who says "We do not depend on her own testimony,"<sup>[23]</sup> and we consider her to have been stomped by man until she brings proof to the contrary... this girl needs to bring proof in support of her words, and the testimony of these two women, who testify about her, about this incident, will not avail her, to enable her to marry a *Kohen*, for this is prohibited biblically, for she is in the category of one who has had relations with a man who renders her ineligible, and this is not testimony which it is within these women's power to repair, and therefore they would not be believed for the purpose of enabling her to marry a *Kohen*, as I have proved above. Indeed, the *gemara* says about this: *R. Judah said in the name of Samuel: The law follows [the view of] R. Gamliel.* And thus did Maimonides explain in his Mishnah commentary, and thus also R. Asher [b. Yehiel] concerning this *mishnah* of one struck by wood, in the first chapter of *Ketubot*.

Should this girl claim, at the time of her nuptials, that she is struck by wood and [therefore] that her marriage contract [should be] two hundred [zuz], and her husband says that she is stomped by man, and *when one marries her under the assumption that she is a virgin and she is discovered to have been deflowered, her marriage contract is worth only one maneh,*<sup>[24]</sup> therefore their entire claim, regarding this girl and her husband, is merely a rabbinical matter, for the marriage contract, even one for two hundred zuz, is merely from their words.<sup>[25]</sup> R. N[issim of Gerona] wrote thus in [his commentary to] *Ketubot*, ch. 2, regarding the phrase "they taught here a lenient regulation concerning the marriage contract."<sup>[26]</sup> *As far as the halakhic ruling is concerned, we accept the view of the Rabbis, for the marriage contract is a rabbinical matter. Admittedly, R. Simon b. Gamliel derives from the phrase "in accordance with the bride-price for virgins" [Ex. 22:16] that the woman's bride-price is of biblical origin, and that by biblical law she has a lien on whatever bride-price is agreed upon, and therefore the lien is in effect at the place<sup>[27]</sup> of the wedding. Nevertheless, the*

*amount of the bride-price should not be the money of a rapist and seducer, but rather a sum to which they agree, and the Sages fixed it at two hundred [zuz]. And thus is it stated in the Tosefta: “R. Simon b. Gamliel say: A woman’s marriage contract and a debt [are fixed] at the place of the wedding.” Apparently it did not state “two hundred pieces of Tyre [currency],” since it says, generally, “at the place of the wedding?”... Those who write [in the marriage contract] “the two hundred zuz allocated to you by biblical law” err, for biblical law allocates her nothing, [only] rabbinic law does. Therefore she collects nothing on the strength of her marriage contract, but rather on the strength of rabbinic decree... This was also the ruling of Alfasi at the end of Ketubot:<sup>[28]</sup> This excludes the view of Simon b. Gamliel, who said that the basis of the marriage contract is biblical, for it is merely rabbinical... Even though R. Johanan said: “Wherever R. Simon b. Gamliel taught [a law] in our Mishnah the law is as he ruled,”<sup>[29]</sup> Nissim of Gerona wrote that *we do not adhere to this principle, for these are amoraic scholars who identify with R. Johanan, as is found in many places [in the Talmud]. And thus also did Alfasi write, in the chapter [entitled] An Unfolded Document, that this rule is not necessarily [binding], for we do not say that the law follows [the view of] R. Simon b. Gamliel except when there is a reason...<sup>[30]</sup>**

Hence, if the claim is made under the canopy, regarding her marriage contract, whether it should be for two hundred [zuz] or a *maneh*, according to the views of both R. Gamliel and R. Johanan the testimony of these women should be believed, for it concerns a rabbinical matter, and the Rabbis believed her [any woman] in rabbinical matters.

Therefore, so that the testimony of these women be as a lesson to rebels<sup>[31]</sup> and a memory for the last day,<sup>[32]</sup> I have signed my name to testify to all that has occurred. And women that spin their yarn by moonlight<sup>[33]</sup> shall not gossip about this girl and look down their noses at her,<sup>[34]</sup> for God addressed her<sup>[35]</sup> and did not close the doors of her abdomen,<sup>[36]</sup> and her virginity may have fallen, for her blood flowed at the top of her orifice.<sup>[37]</sup> May God be with her to bring her to the home of her husband and act as her advocate. Alternatively, let her return to her former state, as a virgin, concealed and shut,<sup>[38]</sup> and not be the subject of mockery by liars and schemers.<sup>[39]</sup> And her plight ascended and Aaron atoned.<sup>[40]</sup>

I am he who speaks of the rose of Sharon,<sup>[41]</sup> Ozriel Diena. Pure for light, may God bless him.<sup>[42]</sup>

## Endnotes

<sup>[1]</sup>Bava Qamma, ch. 10. The reference is to the second mishnah of chapter ten. In what follows quotations from earlier sources are italicized.

<sup>[2]</sup>To prevent her from being ‘agunah or trapped for lack of evidence of her husband’s death.

[3] The legal acquisition of bees is not recognized under biblical law, because they fly away at will.

[4] The implication is that the child kept watch over his mother at all times, implying that she could not have been violated by her captors. See Lev. 21:7.

[5] 'Eruvin, ch. 5.

[6] 'Eruvin 58b-59a.

[7] This last phrase, from "implying," is the beginning of the tosafist gloss cited immediately thereafter.

[8] Lit. her hand.

[9] JT Pesahim, ch. 1, 27b.

[10] 4b.

[11] Niddah ch. 6.

[12] i.e. with the physical examination of girls: see Niddah 48b.

[13] Eliezer of Metz.

[14] Gittin, ch. 5.

[15] Gittin 54b.

[16] Mordechai on Hullin, #579. See Shulhan Arukh, Yoreh De'ah 127:3

[17] Shevu'ot, ch. 4.

[18] Shevu'ot 30a.

[19] Based on I Sam. 20:26, which refers however to nocturnal emission.

[20] Her vagina.

[21] i.e. deflowered accidentally, rather than through intercourse.

[22] Ketubot 1:7.

[23] Ibid.

[24] i.e. 100 zuz – Ketubot 11b.

[25] The words of the rabbis, i.e. a rabbinical matter.

[26] Ketubot 110b, in chapter 13, not chapter 2. Nissim of Gerona's text, as it appears in standard editions, is ordered somewhat differently.

[27] i.e. in accordance with the value of the local currency.

[28] i.e. at the site of Nissim of Gerona's comments.

[29] Ketubot 77a.

[30] Alfasi on Bava Batra, 81a.

[31] Num. 17:25.

[32] i.e. for all time. The expression is an inversion of the phrase from the Rosh Hashanah liturgy: a memory of the first day.

[33] i.e. gossips, based on Sotah 6:1.

[34] Lit. incline their throats, based on Isa. 3:16.

[35] Ruth 1:21. The traditional interpretation of this phrase is: God testified to her situation or condition, but here the point is that she was deflowered accidentally. Dena may be referring obliquely to Ex. 21:13, which has inah rather than 'anah, but which employs this same notion to explain the concept of cities of refuge for cases of accidental

homicide.

[36] Job 3:10.

[37] A play on the expression “the steps of Bet Horon” – see San. 32b.

[38] See Sanhedrin 44b.

[39] Ps. 31:21.

[40] The reference to Aaron may be purely rhetorical, since the author refers here to atonement, but, as the Hebrew editor notes, it may indicate the author’s first name.

[41] Perhaps an indication that the name of the girl in question was Rosa.

[42] The last two phrases are used numerically, to indicate the date: 27 Iyyar 5288, or May 16, 1528.

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## EARLY MODERN WORKSHOP: Jewish History Resources

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### שאלות ותשובות She'elot u-Teshuvot Azriel Diena, 1528

Prepared by David Malkiel, Bar-Ilan University, Israel

**Notes:** Responsa of Rabbi Azriel Diena, ed. Yacov Boksenboim, Tel Aviv 1977, vol. 1, pp. 541-544 Italy

.. שו"ת ר' עזריאל דאינה, מהד' יעקב בוקסנבוים, תל אביב תשל"ז, סי' קלז, כרך א, עמ' 541-

בפ' הגוזל בתרא תנן, א"ר יוחנן בן ברוקא נאמנת אשה או קטן לומר מכאן יצא נחיל זה, ומהלך בתוך שדה חבירו להציל את נחילו וכו', ואומר עלה בגמ', אשה וקטן בני עדות נינהו, אמר רב יהודה אמר שמואל הכא במאי עסקינן כגון שהיו הבעלים מרדפין אחריהם ואשה וקטן מסיחים לפי תומם ואומר מכאן יצא נחיל זה, אמר רב אשי מל"ת אינו כשר אלא לעדות אשה בלבד, א"ל רבינא והרי נחיל של דבורים מל"ת הוא, שאני נחיל של דבורים דקניין דרבנן הוא וכו'; פי' רש"י, [542] דאין כאן גזל אלא מפני דרכי שלום, דהא הפקר נינהו וכו'. ומקשה עוד, והא מעשה בא לפני ר' בתינוק אחד שהיה מל"ת ואמר, אני ואימי נשבינו לבין הגוים, יצאתי לשאוב מים דעתי על אמי, ללקוט עצים דעתי על אמי, והשיאה על פיו לכהונה, בשבויה הקלו וכו'. וכן פ' כיצד מעברין תנן, אפי' עבד אפילו שפחה נאמנין לומר עד כאן תחום שבת וכו', ואומר עלה בגמ' דתחומין דרבנן. משמע, דאם היו מדאוריתא לא מהמני. וכתבו שם התוס', ואע"ג דמעשה בכל יום שמאמינים לנשים בשחיטה וניקור ולתרום חלה, היינו משום דהוי בידה קודם שנעשית השחיטה לשחוט, אבל תחומין לא היו כלל בידו; והא דקאמר גבי בדיקת חמץ בנשים ועבדים דהמנוה רבנן דרבנן, משמע דאם היו דאוריתא לא מהימנו אע"ג דבידו, היינו משום דבדיקת חמץ צריך דקדוק וטורח גדול, לפיכך יש לחוש לעצלותו <טפי> ממקום אחר, וכן איתא בירושלמי, דאיכא מאן דאמר דנשים אינם נאמנות בבדיקת חמץ מפני שהן עצלות ובודקות כל שהוא, עכ"ל. וכ"כ התוס' בפ"ק דפסחים, בדבור המנוהו רבנן דרבנן וכו'. וכתב המרדכי בפ"ק דחולין, דעד אחד מהימן וכשר סמכינן עלויה, ואפי' אשה, כדאיתא בפ' בא סימן, ר' ישמעאל מוסר לאמו וכו' עד ובטבילת גדה שאינה יודעת אלא מפי אחרים שכולהו סמכינן אעד אחד; כללו של דבר, כל שהוא בחזקת איסור מן התורה אין קטן נאמן ולא אשה ולא גדול דלא מהימן, אבל דרבנן, כגון בשר אחר שנמלח, דדם מלוח אינו אלא מדרבנן וכו' עד וכל זה לפי' רא"ם דפי' פ' הנזיקין, כל שבידו, דבר שבידו עתה לתקן, אבל לפי' ר"ת שפי' מה שהיה כבר בידו, לא צריכינן לכולי האי, עכ"ל. א"כ יראה מכל זה, דאין עדות נשים מועיל רק בדבר מדרבנן, דהימנום רבנן דרבנן, או מדאוריתא בדבר שהוא בידו לתקן, כגון השחיטה והניקור שהיה בידן לשחוט כהוגן ולנקר כהוגן, או בשבויה אפי' שאינו בידן לתקנה, דבשבויה הקלו. אבל בעדות דבר שהוא מן התורה שאינו בידם לתקן אינם נאמנות, כדאיתא בפ' שבועת העדות, דעדות נשים פסול, שנא' ועמדו שני האנשים ולא נשים וכו'.



אם כן איפא, כי אירע מקרה בלתי טהור בילדה אחת, ה"ה בת כמ', שהיתה עולה בסולם בב' ניסן רפ"ח שעבר, לבדוק ולנקר החמץ באיזה עליית הבית, כדרך הנשים, ונפלה מהסולם על עץ אחד ונתחב לה באותו מקום, והיה דמה [543] שותת לארץ. ותלך אמה הלך וזעקה וקראה ב' או ג' נשים צנועות, ובאו וראו את דמה שותת לארץ ומקום העץ אשר נפלה עליה ואת מקורה נחבל ונמרט, ועיניהן ראו כי האמת אתה ואין אתה רמיה, רק המעשה שהיה כך היה, ותבאנה הנשים האלה ותעידנה אלי את כל המאורע ואשר ראו בעיניהן, למען תעמוד עדותן לאות ולזכרון ליום תכנס לחופה, כי מוכת עץ היא ולא דרוסת איש.

ולדברי ר"ג ור"א בפ"ק דכתובות, היא אומרת מוכת עץ אני נאמנת ויכולה לינשא לכהונה ולא חיישינן שמא נבעלה לפסול לה, א"כ, לדבריהם בנ"ד אינה צריכה זאת הילדה להביא בשעת חופתה ראייה לדבריה, כי היא נאמנת לומר מוכת עץ הייתי. אלא (אפי') לר"י שאומר, לא מפיה אנו חיים והרי היא בחזקת דרוסת איש עד שתביא ראייה לדבריה וכו', צריכה זאת הילדה להביא עדות לדבריה, ועדות אלה הנשים המעידות עליה על זה המעשה לא יועיל לה להשיאה לכהונה, כי זה איסור מן התורה, כי היא בחזקת שנבעלה לפסול לה, וזה אינו כדות שביד אלה הנשים לתקן, וא"כ לא יהיו! נאמנות להשיאה לכהונה, כמו שהבאתי ראייה לעיל. האמנם אומר עליה בגמ', אמר רב יהודה אמ' שמואל הלכה כר"ג. וכ"פ הרמב"ם בפ"ה המשנה, וכן הרא"ש ז"ל בזאת המשנה ממוכת עץ בפ"ק דכתובות.

ואם תבא זאת הילדה לטעון בשעת חופתה עם בעלה כי מוכת עץ היא וכתובתה מאתים, ובעלה אומר כי דרוסת איש, וכנה בחזקת בתולה ונמצאת בעולה אין לה אלא מנה, א"כ, כל טענתם מהילדה הזאת ומבעלה אינה אלא בדבר שהוא מדרבנן, שהרי הכתובה אף מהמאתים היא מדבריהם, כמ"ש הר"ן בפ"ב דכתובות, גבי מקולי כתובה שנו כאן ז"ל ולענין הלכה ק"ל כרבנן דכתובת אשה דרבנן; והאי דרשב"ג יליף מכמהר הבתולות, היינו לומר שיש מוהר לאשה מן התורה ואיזה מהר שיסכימו ביניהם משתעבד לה מן התורה, ולפיכך חל שעבודו במקום הנישואין, אבל לא שיהיה סך המוהר כסף של אונס ומפתה, אלא כסף שיסכימו בו, וחכמי' השוו מדותיהם למאתים, והכי איתא בתוספתא, רשב"ג אומר כתובת אשה ובעל חוב במקום הנישואין, אלמא דלא מאתים צורי קאמר, מדקנתי סתמא במקום הנישואין וכו' עד הני דכתיבי כסף זווי מאתן דחזו ליכי מדאוריתא, טעותא היא דמדאוריתא לא חזו לה מידי, אלא [544] מדרבנן, הלכך אינה גובה כלום מכח הכתובה,, אלא מתקנת חכמי' וכו' מדבריו. וכ"פ הרי"ף בסוף כתובות ז"ל, ולאפוקי מדרשב"ג דאמר כתובה מדאוריתא, שאינה אלא מדרבנן וכו'. ואע"ג דאמר ר' יוחנן, בכל מקום ששנה רשב"ג במשנתנו הלכה כמותו, כתב הר"ן, דלא סמכינן אההוא כללא, דאמוראי נינהו אליבא דר' יוחנן, כדאיתא בדוכתא טובא. וכ"כ הרי"ף ז"ל בפ"ג פ', דהדין כללא לאו דוקא הוא, דלא אמרינן הלכה כרשב"ג אלא עד דאיכא טעמא וכו' מדבריו. וא"כ אם תבא הטענה בשעת חופתה מעסק כתובתה אם הוא מאתים או מנה, בין לר"ג בין לר"י תהיין הנשים האלה נאמנות בעדותן, שהוא על דבר דרבנן, והימנוה רבנן בדרבנן.

לכן, למען יהיה העדות מהנשים האלה לאות לבני מרי ולזכרון ליום אחרון, באתי על החותמת להעיד על כל אשר נעשה ולא תהיין המוזרות בלבנה מליזות על זאת הילדה ונטויות עליה גרון, כי ה' ענה בה ולא סגר דלתי בטנה ובאולי כי נשרו בתוליה כי זה זוב דמיה במעלת בית חורו"ן. יהי ה' אלקים עמה להביאה בית אישה ילמד עליה סניגרון, או כי תשוב לקדמותה כאשר בבתוליה פסקון אטמון וסגרון, ולא תהיה למשל ביד דוברי שקר ורוכסי איש ותעל אזכרתה וכפר אהרן.

אני הוא המדבר על חבצלת השרון, עוזריאל דאינה יזיי"א ז"ך למאור יברכנ"ו אלקים.

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### Introduction to Woodstruck Deed

David Malkiel, Bar-Ilan University, Israel

**Notes:** Abraham Berliner, “Sarid me-‘ir,” *Kovets ‘al Yad* 5 (1893), p. 6, republished by Asher Gulack, *Otsar ha-Shetarot*, Jerusalem 1926, p. 361, deed #400 Italy

Berliner published this document from the archive of the Jewish notaries of sixteenth-century Rome, principally Judah Piatelli and his son Isaac. These files are currently stored in Rome’s *Archivio Storico Capitolino* and Kenneth Stow, who recently summarized their contents, notes that there are over a hundred documents like it for the sixteenth century alone<sup>1</sup>. Yet this kind of document is unprecedented in Jewish history: it is unknown in the Bible, the Talmud, medieval rabbinic literature or the Cairo genizah. Moreover, the Jews of earlier times evince no need for documents of this sort, even though the accident exposed the wounded girl’s family to financial damage and damage its reputation, if eventually her husband should claim that she was not a virgin on her wedding night.

**Notes:**

<sup>1</sup> See Kenneth Stow, *The Jews in Rome*, vol. 1: 1536-1551 (Leiden 1995), vol. 2: 1551-1557 (Leiden 1997). See, especially, vol. 1, #261, pp. 93-94. On this body of notarial records see also Shoshana Shenhav-Gollan, “La vie des Juifs de Rome de la moitié du XVIe siècle à la deuxième moitié du XVIIe siècle,” *REJ* 144 (1985), pp. 169-179.

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## **EARLY MODERN WORKSHOP: Jewish History Resources**

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### **Woodstruck Deed Shtar mukat 'etz Judah b. Shabbatai, 1544**

Translated by David Malkiel, Bar-Ilan University, Israel

**Notes:** Abraham Berliner, "Sarid me-'ir," Kovets 'al Yad 5 (1893), p. 6, republished by Asher Gulack, Otsar ha-Shetarot, Jerusalem 1926, p. 361, deed #400 Italy

We the undersigned testify that today, Sunday, 10 Shevat 304, these witnesses came before us: Mr. Isaac Zamat and Mrs. Lina Zamat, his wife, and Mrs. Stella, the wife of Mr. Samuel, and testified before us under oath that last Saturday it happened that the young girl [named] Dolce, daughter of Mr. Judah Pugliese, fell from a box on that Saturday, such that her virginity fell out. And in order that the truth not be lost, and to prevent her from being defamed, and so that the girl possess testimony and proof, I Judah b. Shabbatai, the community scribe, received and wrote this testimony from these witnesses. <sup>[1]</sup>

#### **Endnotes**

<sup>[1]</sup> Abraham Berliner, "Sarid me-'ir," Kovets 'al Yad 5 (1893), p. 6, republished by Asher Gulack, Otsar ha-Shetarot, Jerusalem 1926, p. 361, deed #400.

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**שטר מוכת עץ**  
**Shtar mukat 'etz**  
**Judah b. Shabbatai, 1544**

Prepared by David Malkiel, Bar-Ilan University, Israel

**Notes:** Abraham Berliner, "Sarid me-'ir," Kovets 'al Yad 5 (1893), p. 6, republished by Asher Gulack, Otsar ha-Shetarot, Jerusalem 1926, p. 361, deed #400 Italy

3. אברהם ברלינר, "שריד מעיר", קבץ על יד 5 (1893), עמ' 6; אשר גולאק, אוצר השטרות, ירושלים תרפ"ו, שטר ת, עמ' 361:

מעידים אנחנו ה"מ, איך היום יום ראשון שהם עשרה ימים לחדש שבט שנת ש"ד באו לפנינו אלו העדים, שהם כמר יצחק זמ"ט ומרת לינה אשת כמר יצחק זמ"ט ומרת סטילה אשת ר' שמואל והעידו על פי שבועה, איך ביום שבת שעבר קרה מקרה לנערה דולצי בת ר' יהודה פולייסי שנפלה מארגז אחת ביום שבת הנ"ל באופן שנשרו בתוליה וכדי שלא תהיה האמת נעדרת ולהוציאה מכל שום ביש וכדי שתהיה ליד הנערה הנ"ל לעדות ולראיה, אני יהודה בכמהר"ר שבתני ז"ל סופר מתא קבלתי וכתבתי העדות הלז מפי העדים הנ"ל.

**Publisher:** Abraham Berliner, Berlin, Germany, 1893, p. 6

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