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Abstract

This paper deals with the legal term “*medinat ha-yam*” (meaning “overseas”) in Jewish law, which, among other things, refers to a husband abandoning his wife, and to debtors who refuse to pay their debts, and commercial partners who took someone else’s property out of their homeland. That such disparate examples were considered conjointly is explained by the fact that the marital partnership was regarded in the Middle Ages as a commercial deal: the man ritually acquired the woman and provided her with food and clothes, in exchange for a number of services that she was obliged to give to her husband. The difficult consequences that abandoned women might face are listed and examined, as well as legal solutions provided by rabbinical authorities. The paper is intended to show, on the basis of rabbinical *Responsa* dealing with the Jewish communities of Provence and Languedoc, the controversial nature of the status of abandoned women. On the one hand, they were one of the most disadvantaged social groups within Jewish communities. On the other hand, they enjoyed liberties unavailable to other Jewish women. Some leniency was offered to them by the rabbis. They were more visible in public space than other women and more socially active.

Keywords:

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Among the Hebrew *Responsa* dealing with the Jewish communities of Provence and Languedoc, there are a number of texts examining legal issues that arose when a husband decided to leave his family. Various aspects of the history of Jewish women in the Euro-Mediterranean world during the Middle Ages¹ have been studied in the relevant bibliography. One of most important monographs dealing with this topic is the book written by A. Grossman. This author presented a wide picture of femininity in the Bible, Talmud, texts written by *geonim*, local laws and regulations, and rabbinical *Responsa* mostly from *Ashkenaz* and Spain. The issue of regulations regarding abandoned women was addressed in Grossman's article on the legal status of women in the works of a Jewish scholar from Perpignan Menahem ha-Meiri².

The term "*medinat ha-yam*" literally means "an overseas city". It is used in Talmud for any country outside the land of Israel (with the exception of a few territories to the east).³ As far as Provence and Languedoc are concerned, the term "*medinat ha-yam*" applied to any other country, except for the Land of Israel, which was commonly referred to in a traditional manner.

Regarding the words "*medinat ha-yam*", rabbi Abraham ben David of Posquières (c. 1125 – 1198) wrote in his *Responsa*⁴ that, according to Spanish Talmudist R. Judah ben Barsilai, the latter described the place where he lived as "our exile in an overseas city". This notion means the place situated far from the land of Israel, with the above mentioned exceptions. In the Middle Ages, the term was expanded to include nearly any country outside the Land of Israel. I. Agus translated this expression as "distant country",⁵ which is also appropriate.

The term "*medinat ha-yam*" was used, among other things, in legal descriptions of the act committed by a married man when abandoning his wife, for debtors refusing to pay their debts, and commercial partners taking property belonging to someone else outside their homeland⁶. This analogy could be justified by the fact that marital partnership was regarded in the Middle Ages as a commercial deal: the man ritually acquired the woman and provided her with food and clothes, in exchange for a number of services that she was obliged to give to her husband. In this paper, this model will be placed and tested in the context of the legal and social status of women with regard to the following issue: how the notion of "overseas" influenced the life of a Jewish family, and in particular Jewish women.

The question is, why did men go overseas, leaving their wives behind? The most frequently mentioned reason is commercial purposes.⁷ Both rich and poor men went abroad looking for greater wealth. Although some of them had

¹Bitel, 2002; Carbasse, 1995; Emery, 1987; Erler & Kowaleski, 2003; Gilles, 1995. Goitein, 1978; Grossman, 2004; Herlihy, 1995; Jacquart & Thomasset, 1985; Lavoie, 1996; Philips, 2003; Picot, 2001; Scandaliato, 1998; Wernham, 1987; Winer, 2006.

²Grossman, 2002.

³See Rashi's commentary on BT Gittin 2:1. See also: Rosenfeld, 2010: 349-373.

⁴Rabad's *Responsa*, 1964: 230, via Responsa project of Bar-Ilan University.

⁵I. Agus, *Urban Civilization in Pre-Crusade Europe*, v.1 (Leiden, 1965), p.94.

⁶Rabad's *Responsa*, 1964 : 141.

⁷ See Rashba's *Responsa*, 2000: 1:924, via Responsa project of Bar-Ilan University.

considerable property, such as large vineyards, they still went away in search of fortune. They were certainly much more mobile than their womenfolk. One *Responsum* attributed to Rabbi Abraham ben David of Posquières describes a young man who was married under an oath, saying that he would not leave his wife's country (probably, Languedoc) during three years¹. Before the end of this term it became evident that he was unable to support his family, therefore it was decided to let him go abroad in order to join his father and to try to become wealthy². To do so, he had to leave his wife and children.

The problem of leaving for a distant country has considerable importance in Jewish law in the Middle Ages, and not only because it influenced the status of female community members. This was a meaningful issue with regard to commercial affairs. Preventive measures were taken so that men did not transfer somebody else's belongings abroad. For example, a creditor was allowed, on account of a court judgment, to seize the property of a debtor that had been left in the city when he went overseas.³

Women abandoned by their husbands, who had gone far away in order to start a new life, had to cope with very challenging conditions. They needed to be offered some independence to live on their own, which was rather problematic. Traditionally it was exclusively the husband's right to repudiate his wife as he pleased. The wife was usually not allowed to initiate divorce proceedings. According to one *Responsum* by the Sages of Provence, if a woman dared to say that her husband was repulsive to her, her destiny was absolutely in the hands of her husband.⁴ It was him who could repudiate her or leave her permanently with the status of "*agunah*" – the married woman who could never be divorced due to her husband's refusal to give her a notice of repudiation after they separated or because he went away and has not returned and it is not known if he is dead or alive etc.

While the husband was absent, his wife, when in need, had to demand material support through a court. Though sometimes women whose husbands went abroad were wealthy, in several cases described in *Responsa* dealing with married men going to a distant country, their wives complained to the court that they did not have resources to live on their own.⁵ When leaving their families, men rarely provided them with any considerable funds, and almost never reached an agreement with their relatives about who could potentially support their needy wives. We find virtually no examples proving that abandoned women could ever rely on their spouses' relatives. It was almost always some relative of the woman in question (for example, her brother) who fed and clothed her.

In legal terms, it was the husband's duty to provide food, clothes, a home and any other necessities for his wife and children. Women themselves were not regarded as financially reliable unless they were quite socially prominent.

¹Rabad's *Responsa*, 1964 : 2.

²Ibid.

³Rashba's *Responsa*, 2000: 3:13.

⁴Schreiber, 1967: 79:123.

⁵Rashba's *Responsa*, 2000: 1:1113; 2:165.

We have examples of texts dealing with widows who made debts on condition that they would be paid if they remarried. A *Responsum* written by R. Solomon ben Abraham Adreth of Barcelona (1235 – 1310), tells the story of a widow who received gold coins from the sister of her deceased husband and her family on condition that the debt would be paid after she remarried. She was, however, obliged to give them her house and vineyard as a pledge.¹ Any other provider of material benefits was regarded as illegitimate and his expenses were not to be refunded. According to this *Responsum* by Rashba,² a complaint was brought before the court by the brother of a deceased woman who had been abandoned (but not repudiated) by her husband. This person wanted his expenses for supporting his sister and for her funeral and burial arrangements to be covered by her husband who had left for a distant country. However, the case was dismissed by the court on account of the law that regarded any volunteer effort made in favor of somebody else's wife being non-refundable³. The only permissible solution was making debts that could possibly be paid later by the husband if he returned. It is clear, however, that the woman was not considered liable by law since it was her husband's duty to pay her debts. Therefore, giving her credit if her husband was away was not profitable for creditors.

It was generally admitted that marriage was a public matter⁴, and it was supposed to take place in the presence of a meaningful number of witnesses. It was likened to a purchase: just as goods are released from the owner and transferred to a buyer, so the woman is released from the authority of her father in order to be transferred to the husband, who acquires a spouse. Then, in case of repudiation, the woman could be released from the authority of her husband and placed under her own authority. The right to dissolve marriage was given exclusively to the husband. This ancient right was confirmed, in particular, by Rashi,⁵ who had a great impact upon the development of Jewish law in various communities, including those of Provence and Languedoc. The woman was not allowed to initiate her own repudiation. Nonetheless, the power of the husband over her free-born Jewish wife was not absolute. In the hierarchy of women in Jewish law there was a distinction clearly made between the lowest strata of female persons (captives and slaves) and free-born married women. The latter were allowed to be freed by a Jewish court from conjugal duties imposed by the law in case their spouses went abroad. The reason behind such leniency derived, however, from the comparison of a married woman to a slave. Members of the Jewish court of Naples R. Yacov ben Isaac, Hillel ben Samuel of Verona (c. 1220–c. 1295) and Moshe ben Menachem ha-Parush, who dealt with a legal case involving both Jewish communities of Marseille and Naples,⁶ wrote: “As we were lenient toward a female captive, let us then be lenient

¹Ibid: 2:105.

²Ibid: 2:142.

³Ibid: 2:6.

⁴Schreiber, 1967: 2 ; 6 ; 10 ; 11 ; 26 ; 28 ; 69.

⁵Rashi's, Responsa, 1943: 73.

⁶Loeb, 1886: 1 - 19.

toward a married woman.”¹ However, it is important to underline that permission to initiate the dissolution of a marriage was considered by rabbis to be an exceptional liberty taken in favor of a socially disadvantaged group in the Jewish community. In Provence the issue was sometimes complicated due to the practice of early marriages. Thus, we find the rabbi David ben Levi insisting upon the necessity of offering a notice of repudiation from the first husband to a woman who was married while underage and who later remarried another man.² If the woman was first married while a child, she was not allowed to remarry without notice of repudiation. Even if the witnesses for the first marriage went abroad³, she still needed to be repudiated in order to remarry.⁴ Repudiation could be annulled by the husband, but not in the case when the notice of repudiation was sent from abroad.⁵ In Catalonia a woman married while a minor usually did not need any notice of repudiation. In Provence, however, this was unavoidable.

Going overseas, men left not only their wives, but their children as well, there being very few examples of men taking their sons with them,⁶ *and there being* no evidence of this regarding daughters. It seems important to underline that according to Jewish law, women were not responsible for taking care of their children, except for breastfeeding babies.⁷ If she refused to breastfeed, the the community was allowed to compel her to do it. As for older children, it was their father who was responsible for paying their expenses. For example, it was admitted that if someone taught the sons when their father was overseas, the latter was still expected to pay for the teacher’s services.⁸ If the father was absent, it was the Jewish court that appointed a guardian for abandoned children.⁹

There were two possible solutions determined by the Jewish law in the case where a person went overseas and abandoned his wife, both of them ultimately depending on the will of the husband. He could either stay married or repudiate his wife, before his departure or after it, by sending an agent who would deliver a notice of repudiation to the wife. It was possible to prepare the notice of repudiation and to declare that this document would become valid if the husband did not return within a determined period.¹⁰ The husband was also allowed to prepare the notice of repudiation and to transfer it to the third party, rather than directly to his wife. In this case he was able to wait and, probably, change his opinion and annul the decision to repudiate his wife.¹¹

¹Schreiber, 1967: 11:63a.

²Ibid, 16:71

³R. Abraham ben David of Posquières also uses the expression “*medinat ha-yam*” in similar cases, see Rabad’s *Responsa*, 1964: 141.

⁴Ibid.

⁵Ibid, 61:107.

⁶Rashba’s *Responsa*, 2000: 1:1252.

⁷See BT *Ketubot* 49b, 65b; Schreiber, 1967: 81:125; 52:97; Winer, 2006: 107-108.

⁸Rashba: 7:516.

⁹Ibid: 2:32.

¹⁰Ibid: 2:142.

¹¹Rashba’s *Responsa* attributed to Ramban: 147, via *Responsa* project of Bar-Ilan University.

Women who were not repudiated and remained legally married even after being physically abandoned by their husbands were a group very poorly protected by the law. As long as their husbands continued to be regarded as responsible for feeding and clothing these women, no one else was entitled to do so, with an exception made for those who obtained the right to support an abandoned woman from the Jewish court.

Concerned about the extremely difficult living conditions faced by abandoned Jewish families, rabbinical authorities extended a certain amount of leniency to women whose husbands went to a distant country. If the husband being abroad decided to repudiate his wife while being sick or very old or about to die, rabbis did not insist upon checking if he was still alive when his wife received the notice of repudiation in order to avoid the necessity to provide two testimonies for confirming his death and to let the abandoned woman remarry soon after her divorce¹. Otherwise she had to wait for official proof of her husband's death.

Less attention was paid to the contents of the notices of repudiation. In one of his letters R. Solomon ben Abraham Adreth mentions a woman who had been born in Narbonne, gave birth to her children in Marseille and then was divorced and received her notice of repudiation in Montpellier from her husband who in turn lived at that time in Majorca². This *Responsum* reflects the the issue of mobility of Jews in Provence and Languedoc. The question asked by Jewish judges from Montpellier deals with the fact that the place of the woman's birth was not indicated in her notice of repudiation. Instead, her husband mentioned Marseille – the city where their children had been born. The answer provided by R. Solomon shows no intention of questioning the validity of that notice of repudiation on account of lack of details. The rabbi's only concern was that every detail mentioned in the documents should be correct³. As soon as the information written in the notice of repudiation was true, he had no objections.

Rabbinical authorities tended to encourage married couples to dissolve their marriage if husbands decided to go abroad for a long time. The rabbis' intention was to prevent illegitimate relations among Jews and let women remarry in accordance with Jewish law. Men could perceive more marital opportunities as soon as there was polygamy, for example, in Sefardi communities.⁴ It seems important to note that other married women were not allowed to take the same liberties. Abandoned women were allowed to initiate the dissolution of marriage. For this purpose, they could send an agent in order to obtain the notice of repudiation. This was possible, of course, if it was known where the husband went. If the agent failed to perform his mission due to any reason, the woman was given the status of *agunah*, - a term referring to a woman whose husband left her without a notice of repudiation. The meaning of this term is broader than the topic of this paper, since even if the husband

¹Rabad's *Responsa*, 1964: 141.

²Rashba's *Responsa*, 2000: 4:197.

³Ibid.

⁴Ibid:1:205.

was present but refused to repudiate his wife although she wanted to be repudiated (or if he could not provide a notice of repudiation due to physical or mental disabilities), she was regarded as *agunah*, which literally means “chained”. In consequence, such a woman was unable to remarry. Material support of abandoned women who were given *agunah* status was a matter to be brought before the judges, because their missing husbands continued to be considered responsible for their material support.

The agent was appointed in a public place in the presence of two witnesses. The woman who intended to appoint an agent was supposed to say: “I appoint this person at this place to be the agent for bringing me my notice of repudiation.”¹ Then the agent could agree or refuse to perform this mission, which was usually paid for by the woman who needed to dissolve her marriage. Here we see how a Jewish woman became visible in a community space, playing an important social role. However, usually women in Jewish communities in the Middle Ages were not expected to appear in public. In most cases, synagogues did not contain *ezrat nashim* – a women’s section where women could stay while attending common prayers, and there is no evidence that they prayed together with Jewish men in the same prayer hall.

The right to send an agent to the husband who was assumed to be living abroad was an exceptional step introduced for the sake of the Jewish community rather than for Jewish women. Married women whose husbands stayed at home were not allowed to do the same. It is striking that the same liberty was given to women who were raped by non-Jews.² Such victims of violence and oppression were encouraged to initiate repudiation on account of the law prohibiting any woman who engaged in sexual relations with anyone else, except her husband, from sharing marital intimacy with him. The reason behind the permission to send an agent who would receive the notice of repudiation for abandoned wives was the intention to prevent illegitimate offspring – *mamzerim*.³ According to Deut. 23:3, children issuing from, among other things, adultery between a married woman and a man other than her husband, were not allowed to marry an Israelite person. *Mamzerim* were regarded by Jewish communities as very undesirable, and various laws were created in order to prevent illegitimate relations that could result in the birth of a *mamzer*.

If, however, an agent sent by an abandoned woman trying to obtain her notice of repudiation was unable to find her husband, or there were rumors that the latter had probably died, the woman faced another difficulty that was sometimes insuperable: the death would have to be confirmed by two credible witnesses. Rabbis mention various criteria for credibility. In general, rulings regarding the means of proving the death of a husband who left his wife in Provence, Languedoc and Catalonia were more severe than in other countries where more leniency was given to abandoned women. Rashba responded⁴ with

¹Rashi’s *Responsa*, 1943: 73, via Responsa project of Bar-Ilan University.

²Ibid.

³Rashba’s *Responsa* attributed to Ramban, 137.

⁴Rashba’s *Responsa*, 2000: 2:32.

regard to a horrible case when in an unknown city in German lands many Jews were killed by the Christian population, including somebody who came there after leaving his wife and children in another city. Afterwards a man, who had been forced to convert during the above mentioned events, returned and said to the woman that he had seen her husband dead. Although, bringing horrifying news, it meant the woman could be released from the status of *agunah* which she possessed after her husband went away, which would afford her the opportunity to start a new life. On account of this testimony, the woman successfully reclaimed a part of the property that belonged to her husband and was guaranteed to her according to her marriage contract, but when she attempted to recover another part of that property, she was interrupted by the guardian of her son who protested saying that two credible witnesses saw that man who arrived from abroad eating food that was considered impure according to Jewish law. Therefore, he publicly violated a very important prohibition. Due to this misdeed he was declared non-Jewish. The guardian having personal interest in that matter proposed to dismiss the witness, since only Jewish men could be regarded as credible witnesses. This dispute shows, among other things, that in the lands of Ashkenaz the rules regarding witnesses for the cases of *agunot* were less strict than in Southern France and Catalonia. Rashba in his *Responsum* not only agreed with the guardian questioning the credibility of the witness, but also declared that in that very case, a law created for periods of war should apply. Thus, the woman lost the only opportunity to get rid of her unfavorable legal status.

In the Middle Ages, drastic changes were imposed on Jewish women abandoned by their husbands who were going “to a distant country” for any purpose. Their legal and social status changed, as well as their living standards. Deprived of any kind of support from their husbands, they were able, at the same time, to obtain significant liberties that were not available to married women. Abandoned women were allowed to initiate proceedings for the dissolution of their marriage. They were able to raise a complaint with Jewish judges and to speak on their own behalf. Abandoned women became visible in the public space of Jewish communities due not only to the critical conditions in which they were placed, but also because they were encouraged by society to be more active in public affairs than other women, whose activities were often limited due to traditional standards of morality. In summary, those women were allowed more decision latitude than at the time when they lived with their husbands. Sometimes we even find them telling us their stories in the first person. *Responsa* by the Sages of Provence contain an interesting text dealing with a Jew from Marseille who tried to confirm marital rights that he claimed to have with regard to a young woman from Naples. He said in the presence of the judges that the witnesses who signed their marriage contract had left overseas. The woman said the following words while defending herself: “I was a minor at that time, I was less than 3 years old suckling the breasts of the nurse that my mother hired for me.”¹ This very personal speech

¹Schreiber, 1967: 11.

offers us important details about femininity in the Euro-Mediterranean world in the Middle Ages. One *Responsum* written by R. Isaac Alfasi (1013 – 1103), who fled from North Africa to Southern Spain and greatly influenced the rabbinical tradition in the Western Mediterranean, quotes a Jewish woman whose husband went overseas and was probably killed by pirates, though his death was never confirmed by credible witnesses. Her husband's relatives were cruel to his widow. They killed her child and stole her property. So she asks the rabbi: "My marriage contract has been lost, what is the law then?"¹

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¹See Rif's *Responsa*. n° 165, via Responsa Project of Bar-Ilan University.

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