

Kiddushei Ketana – Betrothal Of A Minor: A Halachic Discussion

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The Jewish world recently received a jolt, in the form of a new weapon unleashed in "divorce wars" – a man and wife battling over everything and anything in the face of their impending divorce. Apparently, a Mr. G., who had been battling with his wife, claimed in front of a Beit Din (Jewish court) that he had accepted *kiddushin* (betrothal) for his minor daughter (under the age of twelve), thus rendering her a married woman in Jewish law. However, he would not divulge the identity of the man to whom he had "married" her off, unless his wife acquiesced to various demands of his. This drastic action was taken, he claimed, as a "bargaining chip" against his wife, who would have to give in in order to extricate her daughter from the predicament into which her father had catapulted her.

To explain this episode, which burst upon the scene like a bombshell: in Jewish law, marriage takes place in two stages A) "*Kiddushin*" (called, for lack of a better word, betrothal), which effects a legal state of marriage; the woman is forbidden, under pain of adultery, to anyone other than the betrothed; however, the couple do not yet actually live together until (B) "*Nisu'in*", (effected by our "*chupah*") when the married state actually begins –the couple live together and are bound by all their various marital obligations. By Torah law, a woman can only be betrothed and/or married, with her full knowledge and consent. A minor has no power of legal consent; therefore, the Torah empowered a father to accept

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kiddushin on behalf of his not-yet-adult daughter, and to "give her over" in the *chupah* ceremony.¹

It is important to bear in mind that child marriage (for girls) was in former times a common practice, and the Torah thereby gave the father an opportunity to provide for her care and safety. This proviso of the Torah was seen as a benefit for the young girl. Although some of the Sages later frowned upon this practice,² certain generations found it advisable.³ In any case, in our society it is simply not done; it is, in fact, unheard of, and in many instances, illegal.

The purpose of this paper is to explain (a) what happened, (b) what the halachic status is, and (c) possible halachic resolutions.

The first point we have to consider is how "betrothal" – or *kiddushin* – is performed for a young girl by her father. She does not have to be present nor even aware of the procedure. The father simply accepts the *kiddushin* for his daughter from the groom in the presence of two witnesses. This authority is granted to him by the Torah.

Another aspect of the Torah's empowerment of a father is found in the Gemara, *Ketubot* 22a:

"How do we know that a father is believed to say that his daughter is forbidden to all [i.e., that he has accepted a betrothal for her]?" The Torah states,⁴ "I have given my daughter to this man...."

This teaches that although testimony that a woman is

married would normally require two kosher witnesses testifying to that effect in a Beit Din,⁵ we have here what is in effect a Torah decree – a "*G'zeirat Hakatuv*", that a father, who is just one person, and a close relative at that, making such a statement is to be believed.⁶

There is a dispute between Rav and Rav Assi⁷ as to the extent to which we believe a father who announces that he has accepted *kiddushin* for his daughter. Rav Assi's opinion is that we accept his word completely; if she cohabited with someone else, the court would put her to death for committing adultery, based on the father's testimony that he married her off. Rav, however, holds that the Torah's acceptance of the father's word does not extend to that degree; his trustworthiness is valid to the extent of rendering her forbidden to others, as a married woman should be, but not to punish her for adultery. The halacha is according to this latter opinion of Rav.⁸ This puts the father's trustworthiness in the same category as other cases where we have otherwise invalid testimony accepted by Scriptural decree, but where believability is somewhat limited.⁹ To what degree the father

5. See *Kiddushin* 65B,66A and *Gittin* 2B.

6. The degree to which the rationale behind this law is based on the father's ability to go and perform this very act now, is a matter of some debate. See *Tosafot Yeshonim*, *ibid*, דריה מנין; Ritva *ibid*; *T'shuvot Rabbi Akiva Eiger* II:53; *Chidushei Rabbi Akivah Eiger to Ketubot* 22A.

7. *Kiddushin* 63B.

8. Rambam, *Issurei Bi'ah* 1:23. For the basic halacha, see Rambam, *Ishut* 9:10, and *Shulchan Aruch Even Haezer* 37:20.

9. These include a) שיהא אנופשי חתיכה דאסורא – The law that a person is believed to say that a particular item is forbidden to him – e.g., this meat is *treif*, I am a *mamzer* (and am forbidden to marry a regular *Bat Yisrael*) (*Ketubot* 9A; *Kiddushin* 65A and countless places in *Shas*); b) "Yakir" – a father's credibility to

1. *Kiddushin* 3B, 4A and *Ketubot* 46B, 47A.

2. See *Kiddushin* 41A.

3. See *Tosafot*, *ibid*.

4. Deuteronomy 22:16.

has credibility is the crux of our problem and the major subject of this article.

This is the halachic underpinning of the now-notorious Mr. G. case. Mr. G, who felt himself an aggrieved party, unleashed a bombshell: he stated – in front of a Beit Din – that his daughter (who is in the custody of her mother) is a married woman by virtue of the fact that he, the father, had accepted *kiddushin* on her behalf! He refused to name either the "husband", or the witnesses, maintaining that he had done this in order to give himself the "upper hand" in his battles with his wife,¹⁰ inasmuch as it would now be up to him to decide whether or not to tell who the husband is. Naming the husband, of course, would not undo the act; however, it would allow the possibility of a *get* (Jewish divorce) being given to his daughter – but she would henceforth be a "divorcee".

Unfortunately, the story was recently picked up and run in a number of newspapers – with the dreadful result that the Torah and its laws were put up to ridicule and mockery. "How could the Torah give such power to a vindictive father,

tell us who his first-born is, how old his children are, and even that his child is not really his or is otherwise illegitimate. (*BB* 127B, *Kiddushin* 78B). See also footnote 53. This issue is discussed further in this article, section IV.

10. Mr. G. claims that he is one of a too-large number of husbands whose wives are in the process of litigating against them in the secular courts in order to receive a civil divorce, support, maintenance, custody, visitation decision, and, hopefully, a *Get*. Rather than being self-proclaimed *agunot*, Mr. G. says, these women are guilty of a serious transgression, and are under an obligation to have all such matters settled by a Beit Din – instead of receiving our sympathy, these women should be ostracized from our community, with pressure being brought to bear on them to drop their court cases, and come to Beit Din.

allowing such harm?" And once such matters became public, the temptation among certain elements to rail against Torah, Rabbis, *Poskim*, *Shulchan Aruch*, and "chauvinistic" right-wing Orthodoxy became irresistible. The story was quickly blown up into a claim that at least twenty such girls had this problem (a baseless claim). Further damage ensued: the offering of "solutions" were bandied about in the popular press, not exactly the appropriate place for serious, implication-laden deliberations. Thrown about were terms such as "nullification" of the purported *kiddushin*, a concept which is, as any knowledgeable *Posek* will affirm, outside the scope of our generation's purviews, for both halachic and practical reasons.¹¹

What the issue actually is, of course, is only the question of the *credibility* of the father – and the degree of belief that the Torah ascribes towards such a statement. It is along these lines that a solution may be sought, for the present case rests entirely on the father's claim that he contracted a secret marriage for his daughter. If the court decides to give no credence to the claim, the entire issue becomes moot.

However, an insidious attitude is emerging in the minds of many who are ignorant of the true intricacies of the case. What might heretofore have been discussed in a reasoned, rational way by recognized *Poskim*, has now become a public relations issue. A dangerous misperception is perilously close to being accepted, that if only enough pressure were applied to "the Rabbis" about a particular "problem" that "Torah" was causing (!), a "rabbinic way" would be found to alleviate that problem.

Indeed, "solutions" continue to be offered in the press –

11. See *T'shuvoth Rashba* I;1,185 and 1,206; *Rivash* 399. See *Even Haezer* 28:21 and *Chatam Sofer E.H.* I:108.

some nonsensical, others having some validity but presented in a simplistic, superficial, indeed demeaning fashion.¹² The dangers of this should be obvious to all. For example, "Why do the Rabbis care about one girl and slice through all that "Torah-red-tape", and not care about all those thousands [sic] of *Agunot*?¹³ Why can't "they" just solve that "problem" as well?" Thus, reports of the bizarre actions of one perverse father have opened up a Pandora's box of diatribes against the process of Jewish law, maligning it as the instrument of imposing the autocratic will of a few imperious, old-fashioned, out-of-touch scholars in their ivory towers upon multitudes of hapless victims. This is patently not so, as any serious investigation of the halachic process will easily demonstrate.

A few weeks after the original expose' of the "betrothal of a minor", *The New York Times* reported that a Beit Din in New York had nullified the father's action, and that the child had been declared free to marry anyone. It is, of course, ludicrous to ponder such a serious issue of Jewish law based on partial reports in secular newspapers. At the date of this writing, the Beit Din has not yet published its ruling; thus,

12. For example, a "Torah" newspaper kept headlining how a deceased *Posek* had "nullified" the *kiddushin*; it also printed a "*T'shuva*" from a "Rabbi" in a southern state in which he "solved" the problem by "ingenious" solutions – he decided that a father's right to betroth a child is limited to where the betrothal is clearly beneficial – a baseless opinion, contradicted by the Talmud itself in various places (*Ketubot* 40B, *Kiddushin* 41A and 64A). He also wrote that the father must state whom the betrothal involved – a nice try, but disagreed with by the Talmud in *Kiddushin* 63B and 64B.

13. Women who cannot remarry due to lack of a Jewish divorce or lack of proof that the husband is deceased.

it is impossible to analyze the specific halachic reasoning which motivated the decision of the court. However, there are a number of avenues of approach to resolve the problem, which, either singly or in combination, might be adopted to lead to such a conclusion. We will now present some of these halachic possibilities, note the various complexities and subtleties involved, and cite any precedents which may bear upon this case.

I – Is a Person Believed When He Declares Himself Wicked?

One point that has been made is that given modern-day conditions, a person stating that he has contracted betrothal for his minor daughter is casting himself as a wicked person. Certainly, then, Mr. G qualifies as "wicked" – he has stated quite openly to the Beit Din that he did it for the purposes of blackmailing his wife. It is an outrageous act, illegal by civil law, and thus we should be able to apply the halachic principle "*Ein Adam Maysim Atzmo Rasha*" – "A person cannot make himself wicked." This means that we do not believe a person when he testifies about himself in such a way that he is now considered a "*rasha*", a wicked person. This principle is stated in *Sanhedrin* 9B and *Ketubot* 18B.

As codified in *Shulchan Aruch*,¹⁴ this rule means only that a person cannot testify against himself that he is unfit to be a kosher witness or that he is unfit to be allowed to take a judicial oath.¹⁵ Nevertheless, there are many sources

14. *Choshen Mishpat* 34:25 and 92:5.

15. And would thus be limited to such sins of "wickedness" which disqualify a person from same (see *Choshen Mishpat* 34 and 92); it would also have as at least part of its rationale that a person can never, legally, testify about himself – whether for benefit or for detriment.

which indicate a more expansive meaning; to wit, a person is simply not believed to say he did any "act of wickedness".¹⁶ The matter is discussed at some length, with various opinions cited and proofs offered, in *Birkei Yosef*.¹⁷ The *Noda Biyehuda* takes the more limited position.¹⁸ The matter is also taken up by the *Minchat Chinuch*.¹⁹

What happens when the rule of "*Ein Adam Maysim Atzmo Rasha*" comes into play in a case where there is a specific Scriptural law that we *should* believe the person's statement (such as in our case)? A common case is where a person admits owing money due to his having stolen it, or a similar type of admission. Most sources indicate that since there is a Scriptural law that we do believe a person's admission of liability in monetary matters,²⁰ that extends to a case of "wickedness" as well. Though some dispute this, the consensus is clearly that he *is* believed.²¹

Another case would be the believability the Torah extends to a father who says his child is illegitimate.²² What if the father declares that this occurred when he — the father — cohabited with a woman forbidden to him under penalty of

16. See comments of Rabbi Akiva Eiger to *Ketubot* 18B and *Ketzot Hachoshen* 35:4. It is interesting to note that in the *sefer "Shev Sh'mat'so"* 7:5 (authored by the *Ketzot* at a younger age) the author refers to and retracts his position taken in the *Ketzot!* He takes the position that the rule only relates to witness disqualification.

17. *Choshen Mishpat* 34:33.

18. *Mahadura Kama, Even Haezer* 72 and 74.

19. End of *Mitzvah* 296.

20. See *Bava Metziah* 3B and *Ketzot Hachoshen* 34:4.

21. See *Ran* to *Ketubot* 32B (in *Rif*).

22. *BB* 127B; *Even Haezer* 4:29.

karet; certainly he is rendering himself "wicked". Nevertheless, *Rambam*²³ apparently says that he *is* believed — since the Torah extended to him that credibility, it extends to this case as well. The *P'nei Yehoshua*²⁴ questions why the *Shulchan Aruch* left out this case and suggests that perhaps the *Shulchan Aruch* holds that indeed the father would *not* be believed. The *Nimukei Yosef*²⁵ and *Shiltei Giborim*²⁶ both state clearly that the father would be believed in such a case *only* if he stated that he cohabited inadvertently, thus negating any "wickedness". The *Me'iri*²⁷ and others,²⁸ however, seem to concur with the aforementioned position of *Rambam*. One could assume that these opinions would hold the same in our case as well (i.e., that the father *is* believed).

In fact, the *Rishonim* discuss the exact case of our scenario of a father stating that he betrothed his minor daughter (the case they debate is one where he says he betrothed her through cohabitation to a person with whom relations are forbidden). *Rashba* and *Ran*²⁹ seem to say the father is *not* believed — and the *Maharit*³⁰ gives their reason as "*Ein Adam Maysim Atzmo Rasha!*" Thus, if we follow their position, it would be possible to declare Mr. G.'s claim to have betrothed his daughter as "null and void." However, *Ritva*³¹ says the man

23. *Issurei Bi'ah* 15:15,16.

24. *Kiddushin* 78B.

25. *BB* Chapter 8 (56A in *Rif*).

26. *Kiddushin* (32A in *Rif*).

27. *Kiddushin* 78B.

28. See *Teshuvot Beit Yitzchak* 54:14, interpreting a *Rosh*.

29. *Kiddushin* 64A; *Ran* (27B in *Rif*).

30. *Ibid*.

31. *Ibid*.

is believed. The Chazon Ish³² explains the opinions of Ran and Rashba in such a way that they concur with the Ritva holding that he is believed! If this is so, obviously Mr. G. will have to be believed as well.³³

It is not all clear, in the opinion of this writer, that the rule even applies here. All the cases cited are cases of *objective* wickedness i.e., one who performed a forbidden action. To say, however, that when a person performs a *totally legitimate* act with a *motive* of blackmail, or the like, it is transformed into an act whose performance would not be believed because it would be an admission of wickedness, is quite a leap. The act itself can hardly be termed "wicked", inasmuch as it is one sanctioned by the Torah. And after all, even the stated *purpose* in the case of Mr. G. is, on the surface, laudatory (getting his wife out of the civil courts so that they can resolve their divorce in the Jewish one). And so the act in and of itself is not "wicked", and the motive is not "wicked". But, admittedly, the connection between the two and their respective relevance was "wicked".

Are these not extremely subjective criteria? And, once we've moved away from objective wickedness, just how wicked would one have to be? What would be said if our society condoned, or encouraged, child marriages – but Mr. G. had done this particular one for his nefarious purpose – is that "wicked enough"? It is not within the scope of this article to weigh the evidence and issue an authoritative

32. *Even Haezer* 49:13.

33. There are also cases where the "wickedness" of the action is being justified by the perpetrator – the *Hagohat Ashri* (BK chapter 9) states that in such a case we do not apply the rule of "Ein Adam Maysim Atzmo Rasha". (One assumes that even according to this opinion, there must be limits and/or guidelines.) See also *Birket Yosef, Choshen Mishpat* 34:38.

ruling, but certainly one hopes that these issues were considered by the Beit Din convened to consider the problem and to offer an avenue of resolution.

II. The Invalidation of Trustworthiness of a "Nogea" (A witness who is an interested party)

It is well-known that being "nogea" invalidates a witness's testimony.³⁴ It has been suggested that Mr. G., by his own admission, is an interested party to his own "testimony", since he is using it to acquire what he desires.

Before examining the logic of the above, let us examine a basic question: when we are not dealing with technical "testimony" (i.e., of two kosher witnesses), but rather a Torah-decreed belief in a party's statement, does the disqualification of having a vested interest (*ucgiut*) apply? A most logical comparison, again, seems to be the halacha where a father is believed when he states that a child presumed to be his son is not his son at all.³⁵ What if the father makes this statement as a response to a claim for child support? Certainly he is *nogea*, having a vested interest in being released from the obligation to support his child! The Chatam Sofer³⁶ writes that the father is not to be believed, as does *T'shuvot Binyan Olam*.³⁷ However, the *Tashbatz*³⁸ and *Rivash*³⁹ state explicitly that he is believed.⁴⁰

34. *Choshen Mishpat* 37.

35. See *Even Haezer* 4:29.

36. *Ibid.* 1:76.

37. 6:11.

38. 2:90.

39. 41.

40. One could relate this question to the famous argument regarding the rationale of the disqualification of a *nogea* – whether

The logic of this approach seems questionable to this writer. The disqualification of *nogea* has to involve a specific monetary interest.⁴¹ It is not clear that it applies in our situation. In fact, the *Shulchan Aruch* specifically states that interests such as revenge do *not* constitute *negi'a*⁴² – moreover, this interest has to be present and immediate, and not speculative⁴³ (e.g. a pressure tactic).

Furthermore, the disqualification of *nogea* always means that there is a vested interest in the matter being testified about. In our case, Mr. G. has no more or less *ne'gia* in the matter of his daughter's marriage than any father has. (Every father, in fact, would seem to have a vested interest in his daughter's being married – and even so, is believed). What we have in our case is Mr. G. utilizing his very believability for what is a totally unconnected matter; although it is a lamentable utilization of the credibility that the Torah accorded to him, it makes him neither more nor less *nogea* in the issue of his daughter's marriage.

III "Din Merumah" – "A Deceitful Case"

Another approach suggested by some is based on the halacha of the procedures to be followed by a Beit Din when they suspect deceit by the litigants or the witnesses (*Din Merumah*). An examination of the relevant laws in *Shulchan Aruch* shows that the primary result of the law of *Din*

it stems from the possibility of lying, or from the concept that someone with a vested interest is considered a party to the case, and hence cannot testify. (The latter presents a problem only for technical testimony; a father is presumably always a party to his daughter's betrothal.) See *Ketzot*, *Netivot*, 37:1 at length.

41. *Ketzot* 37:2.

42. 33:16; see *Shach* there.

43. *Choshen Mishpat* 37:10.

Merumah is the obligation on the part of Beit Din to make a thorough examination of the witnesses⁴⁴ and to unearth the apparent falsehood, wherever its source.⁴⁵ After all is said and done, if the Beit Din feels that the case is deceitful it has the right, and in fact the responsibility, to withdraw from the case and, when necessary, declare that it not be dealt with by another judge or Beit Din in the future.⁴⁶ This would certainly obligate a Beit Din to whom Mr. G. appears not to let him say his piece and leave, but to subject him to a thorough grilling and, if he refuses, to dismiss the case.

In the case of Mr. G., however, he has already appeared at a Beit Din and made his statement without being grilled, and his statement was accepted. The Ramo rules that in such a circumstance, if the required questioning was not done properly, or if the witnesses did not answer the questions, the testimony is still valid *ex post facto* (*b'dieved*).⁴⁷ Thus, in the opinion of this writer, there would

44. See *Choshen Mishpat* 15:3 and 30:1. See *Even Haezer* 17:21 and 42:7.

45. See *Chidushei Haran* to *Sanhedrin* 32B in explanation of Rashi there.

46. See *Choshen Mishpat* 15:3 and G'ra *ibid* 7.

47. *Ramo*, *Choshen Mishpat* 15:3.

Though there are those who rule otherwise, (see *Shach* 30:5 and *Ketzot* 30:1) closer examination proves that this approach is faulty even according to these opinions. The rationale of the insistence – even *b'dieved* – of thorough questioning is the basic Torah Law that *all* witnesses require thorough questioning. *Chazal* removed this requirement in monetary cases (see *Choshen Mishpat* 30:1) and perhaps marital ones as well; (see *Even Haezer* 42:4 with commentaries). In a "Deceitful Case" *Chazal* reinstated the requirement (See *Teshuvot R. Betzalel Ashkenazi* 4). This would not seem to be applicable regarding a father's trustworthiness, where the requirement never existed! In addition, the "stringent" opinion (that the testimony is *not* acceptable even *b'dieved*) states

be a problem in utilizing this rationale for invalidating the credibility of the father.

IV Basic Unbelievability

It seems to this writer that we can combine the underlying themes of all the above approaches and come to a definitive conclusion.

The Torah mandates that evidence is affirmed by the testimony of two witnesses, regarding which the Torah writes "By the testimony of two witnesses shall the matter be established."⁴⁸ Rambam writes "When two witnesses appear before a judge, the judge shall rule, based on their testimony, even if he does not know whether or not they are telling the truth."⁴⁹ Two witnesses are the epitome of believability – Beit Din is enjoined to accept their words and to rule accordingly. Furthermore, the law is that they cannot retract once they have spoken.⁵⁰

In contrast to witnesses, we have areas in the Torah where specific people are granted belief – and even in those areas their believability is limited. Let us take three of them: A) a person's ability to say that something is truly forbidden to him. B) "*Yakir*" – the father's ability to declare who his firstborn is, and even to declare any of his children illegitimate, C) the halacha with which we are dealing – a father being able to state "I have betrothed my minor

that when dealing with a marital case, it defers to the "lenient" opinion (that the testimony *is* acceptable) and would necessitate a *Get*. However, this might not apply to our case, where a *Get* is impossible to obtain.

48. Deuteronomy 19:15.

49. Rambam, *Sanhedrin* 24:1.

50. See *Choshen Mishpat* 28 and 29.

daughter."⁵¹

These cases should not be classified as technical "testimony": rather we shall label them – "*credibility*", or believability.⁵² Indeed, in each of these cases, the person's (Torah-recognized) credibility is somewhat subjective and limited.⁵³

Obviously, this does not mean that we can arbitrarily or capriciously decide not to believe one to whom the Torah has granted believability. We cannot categorically tell Mr. G., for example, that we don't believe him. Nevertheless, there are cases where, due to the more subjective nature of this "credibility" (as opposed to the absolute nature of this "witness–testimony"), we have **halachic** guidelines as to when we can negate such statements. Let us therefore examine these precedents, and try to see into which category Mr. G.'s statement might fall.

a) A major rule in "credibility" (as distinct from "testimony") is the principle of "*Amatla*" – "a rationale." This means that if a person (in one of the categories above, whose statement is accepted on his say–so) makes a statement before the court (about which he is believed), and then subsequently retracts it *and gives a rationale why he made the earlier statement*, which he now declares was false—his

51. See Note 9.

52. See beginning of Chapter 4 of *Masechet Shevuot* where, regarding the "oath of testimony", we learn that "believability" is not sufficient – we require testimony. See *Chut Hameshulash* (3) where this basic idea is expounded and elaborated upon.

53. For example: In each of these cases, no punishment may be rendered purely on the basis of their Torah-granted believability. See *Kiddushin* 63B; Rambam *Issurei Bi'ah* 1:23; *Divrei Yechezkel* 21; *Shiltei Gibborim*, *Kiddushin* 32A in Rif. This is also the plain meaning of the Talmud in *Kiddushin* 63B – 64A.

retraction and explanation, rather than his original statement, are believed, provided his rationale is convincing, even compelling.^{54 55} In contrast, witnesses are never believed to retract, even with a valid *Amatla*.⁵⁶

How can jurisprudence justify the principle of "*Amatla*"? The first statement was believed by Torah law – why is the second one believed at all?⁵⁷ An explanation can be derived from an analysis of Tosafot⁵⁸ who state that the rule of

54. Rambam *Ishut* 9:31; *Magid Mishnah* *ibid*; *Tashbatz*, *Tur* 2:15. See also *Be'er Heitev Even Haezer* 47:8.

55. See *Even Haezer* 4:29 and 47:4, and *Yoreh Deah* 185:3, for examples of *Amatla*. These sources refer to "*Shavya A'nafshay*" and a father's credibility regarding the legitimacy of a child. Regarding *Amatla* in the case of a father's statement that he betrothed his daughter, see *Shev Shmat'so* 6:8 and 6:12 who concludes that the *Amatla* rule does apply. That is also the conclusion of the "Wise Men of Provence" who originally questioned this. See also *Chut Ha'Meshulash* 3 at length.

In *Even Haezer* 37:27 it seems that the Ramo requires that the *Amatla* be said כרי כרי ; חך כרי כרי ; upon further examination, however, this is not so. The Ramo is not discussing an *Amatla* where a reason for the first statement is given – he is discussing an additional claim made by the father – see *Taz* there #22; see also *Aruch HaShulchan* 37:71.

There is also an issue of *Amatla* being effective after a statement made in Beit Din: A consensus of *Poskim* rule that it would be – *Mahari Ben Lev* 1:39; *Nodah BiYehuda* I:60 ירה וער ; Rabbi Akiva Eiger 110; *Chut Ha'Meshulash* 3; *Anei Neizer* 134. Chazon Ish, however, maintains that *Amatla* in such a case would not be effective – see *Chazon Ish Even Haezer* 59:24.

56. *Choshen Mishpat* 29:1

57. See *Kovetz Shiurim Ketubot* 51 and *Kovetz He'arot* 78. R. Eichanon's explanation, however, would not extend to other cases besides the one of which he speaks.

58. *Yevamot* 118A ירה טריא with Maharsha; see *Beit Meir Even Haezer* 17:46 and *Noda Biyehuda Even Haezer* II:26 where

"*Amatla* does not give believability to the second statement – all it does is allow the person to "explain away the first one" i.e., to explain that he did not actually mean to forbid his daughter, or render his son illegitimate, etc. – (but just meant to protect himself, scare someone, etc.). Having "explained away" the original statement, it is now considered as if he has said nothing! By the rule of *Amatla*, the person can "explain away" his statement – i.e. that his purpose in saying it was only for some other purpose, but he "really didn't mean it."⁵⁹

Apparently, then, the credibility of his first statement is not all that absolute – it is subject to being shunted aside by a compelling and believable explanation as to why it was said. The salient point is not that we accept the retraction – what we accept is his explanation that the first statement was made in jest, or to frighten someone, etc.

Since this is so, it seems to this writer that Mr. G.'s case has two factors subjecting his statement to this rule of *Amatla*:

1) In his original statement to the Beit Din, Mr. G. said that he did what he did as a ploy in his battle with his wife who had wronged him. Thus, Mr. G. himself has given the *Amatla* – that he is making this statement as a punishment, or inducement, to his wife. True, he did not retract but, as explained, the focus of the halacha of *Amatla* is not the retraction, but the explanation of the context of the first statement which nullifies its credibility. Here, he has provided it for us as well!

2) There is also a "built-in" *Amatla* – i.e., when the reason and rationale of the first statements are self-evident to all –

this is elaborated upon.

59. See sources of note 54 where the very etymology of *Amatla* is explained as meaning this.

as in the present case – then we have the "*Amatla*" even without his statement! This is not the same as just saying that we have an understanding that he's lying; without the rule of *Amatla* governing such statements, just saying "we don't believe you" is directly in conflict with his Torah-granted credibility. We are not able to do that. However, given the rule of "*Amatla*" which bids the Court to accept a rationale of why a person would make a false statement, it seems logical that we can accept a built-in, obvious, "*Amatla*".

b) As stated earlier, a person's unsupported statement that something is truly forbidden to him is believed. There are sources that state that where there are clear indications that his statement is false, we do not grant him credibility.⁶⁰ Our case – where marriage with a minor is completely unacceptable and unheard of, and the father will not supply the name of the "husband" nor the witnesses – is obviously

60. *Be'er Heteiv Even Haezer* 4:37.

True, there is some dispute about this, (see *Pitchei Teshuva* there 4:34) but the dispute stems from a unique aspect of this law (i.e., according to some, he is believed even in the face of witnesses to the contrary). If we accept the basic comparison from "*Shavya A'Nafshay*" to other forms of "credibility" (which probably do not share this uniqueness) we are left with the basic rule that we can ignore credibility when there are clear-cut indications to the contrary. See also *Even Haezer* 178:9 where there is a cited dispute about believing a husband that his wife is forbidden to him (i.e., she has willingly committed adultery) *after* the Rabbinic decree that one cannot divorce a wife against her will – that is, since it is entirely plausible that he is only saying so in order to divorce her, we should not believe him. Although the dispute there has no clear resolution, it is clear that the issue there is one of the degree to which we would suspect him of lying – not the basic principle. (We obviously never consider this in a case of "testimony".)

such a case.

c) The *Ramo* in *Even Haezer* 178:9 rules clearly that where there is an acrimonious dispute between parties, we do not grant credibility to someone who says "*Shavya A'Nafshay*".⁶¹ In fact, the *K'neset Ha'Gedola* 115:27 writes that the same would apply when one is battling with a father-in-law, and he states that his wife is forbidden to him!

Actually, a strong case can be made that our comparison is even more definitive. Many sources⁶² indicate that the father's credibility to state "I have betrothed my daughter" is the exact law that says "*Shavya A'Nafshay*" – i.e., a minor daughter is so much within the aegis of her father that his statement regarding her betrothal entails the very same concept as it would regarding himself – that is, we say that a man can render his daughter forbidden as he can himself. According to these opinions obviously whatever rules govern "*Shavya A'Nafshay*" will govern our case as well. Although there are those who strongly dispute this explanation of a father's credibility (see *Teshuvot R. Akiva Eiger* II:53), their argument is with the point that they are the very same law – the basis for comparing the laws of "credibility" would still be valid according to all.

That we are dealing with an acrimonious dispute is certainly the case with Mr. G. (and all future Mr. G.'s); it is

61. Although *Pitchei Teshuva* there (22) and in 115:28 brings an opinion that that halacha is stated only with regard to someone who has been caught lying in the past about this, from the *G'ra* 17, the *Chatani Sofer Even Haezer* II:106, the *Yam Shel Shlomo Yevamot* II:18, and the *Chinuch Mitzva* 266, it is clear that there is a consensus that in any case, there is no credibility at all granted to any statement coming during a feud.

62. See *Rambam Issurei Bi'ah* 1:23; *Maharshadam Even Haezer* 9; *Chut Hameshulash* 3; *Divrei Yechezkel* 21.

the opinion of this writer that we can utilize this procedure regarding all such cases and simply refuse to accept his statement as believable.

For all of the above reasons, it seems clear that Mr. G. does not have the credibility which the Torah granted a father acting on behalf of his daughter. Thus, his daughter is not to be considered a married woman.

This bizarre case has brought to the public's attention a law of the Torah of which most people were unaware. There is no question that it is anachronistic; for that reason, it is not practiced, nor has it been for many hundreds of years. Nevertheless, this does not detract from the status of the law as one of the concerns which the Torah has for the welfare of children. Giving a father the means to provide for his child when she is too young to make a decision for herself is in no way "unfair" or "ridiculous". Indeed, there is not a society today which does not give parents a measure of control over their children's lives. And rightfully so. Who more than father and mother love the child and care for future? It is a sad commentary on the perversity of the modern age that such a loving procedure can be so basely employed—and so widely misunderstood.

Women and the Reading of the Megilla

Rabbi Alfred S. Cohen

Sources And Reasons

The Sages of the Talmud specifically included women in the obligation to hear the Megilla of Esther read aloud on Purim:

Women are obligated in the reading of the Megilla [even though it is a mitzvah which occurs only at a certain time—Purim—and generally women are absolved of mitzvot which are time-bound] since they too were [saved] in that miracle.¹

The question we will address in this study is whether a woman may read the Megilla aloud for a group and thereby exempt others, including men and women, or perhaps only women.

Before entering into a detailed discussion of the halachic criteria delineating this question, it would be most instructive to pursue this inquiry as part of a broader understanding of Jewish law as it pertains to women. One of the components of halacha, as in other systems of law, is that it seeks to develop principles which apply in consistent fashion to similar situations. Thus, it would seem desirable to seek a

1. *Megilla* 4a. Rashi explains that Haman's decree was issued against all Jews—men, women, children.

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