



Dipartimento di Economia e Finanza Cattedra: Principles of Civil Law

*“The Jewish Wedding: relation between italian, israeli and jewish laws about
the marriage”*

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INTRODUCTION

The purpose of this thesis is to unify two topics that all the jews around the world have to deal with during their lives: the relation between jewish rules and the effective laws of the country where they live. Especially, I wanted to talk about marriage because it's a very interesting topic within the jewish rules that are in some way accepted in most parts of the world. There is a strong relation between these rules, the ones of the States of Israel and Italy, because of generally accepted agreements.

To write this thesis I used the help of my rabbi other than the knowledge of what I have studied in all my life about jewish laws in the Torah, the Talmud and the Shulchan Aruch, comparing them with what I've studied about italian law, and searching the information that I needed to have about italian and israeli laws.

The thesis is composed of three main parts: the first two parts have the aim to explain in the more detailed possible all the parts of the jewish marriage, from the engagement to the divorce, analyzing all the types of contracts that the couple have to deal with in their new life. The third and last part of the work contains an introduction to israeli's legal system and how its rules are correlated to the biblical ones. The thesis finishes comparing the three different laws trying to understand when and where there are correlations between them, and in particular what are the conditions of jewish laws generally accepted by the two countries.

PART ONE:

1.1 Before the marriage: tenaim and ketubah

In the Jewish tradition, when a couple decides to engage themselves in marriage, the first step imposes a meeting between the families of the bride and the groom. Families' meeting is very important but it isn't needed to complete the engagement: Jewish law permits the wedding even if the families aren't favourable to the celebration. The Talmud says that the couple will be engaged when the man will give to his future wife a ring: while in the past there were also other ways to be engaged (like giving money to the bride's family in exchange of her), this is nowadays the only way to get a wife. The engagement ring is usually given in a private way, to avoid the ghet problem.

In some communities the engagement is celebrated in a party in which the engagement conditions were stipulated: these conditions are the so-called Tenaim. This celebration involves the families of the couple and their closest friends and its goal is the one of organize the wedding in all the details: from the place and the date to the financial duties of the two parties. This agreement is usually written by the rabbi and has legal purpose if one of the two parties doesn't respect it. The breach of the Tenaim is considered a very serious action: one of the most important rabbis of Jewish history, Elia ben Shlomo Zalman, says that not respecting the Tenaim is even worse than a ghet. Nowadays the Tenaim celebration is in disuse for its important legal implications. The engagement could be celebrated even without the Tenaim ceremony, but in this case the potential legal compensations will be decided by the Beit Din, the Jewish courthouse.

Differently from the Tenaim, the Ketubah is a written contract already used by Jews. The Ketubah is the wedding contract and it's written to report all the financial duties that the husband will have with his wife. The financial duties of the husband are already given by the Jewish rules written in the Talmud, but the halacha, the Jewish law, imposes on all the couples that are going to marry to write this document. The Ketubah will be given to the wife during the engagement benedictions or before the wedding ones. In our days engagement and wedding blessings are done on the same day, so the Ketubah is given from the husband to the wife during the ceremony and signed by the witnesses. The aim of the Ketubah was the one of protecting the wife from the divorce making it very expensive for the husband. In the past the Ketubah aim was to settle a minimum and a maximum that the husband would pay in different situations that take the couple to a divorce, while today it establishes a precise

amount of money for the possible divorce situation. The Ketubah contract provides that the dowry given to the wife to her husband will be given back in case of breach of the contract. In the Jewish law a couple can't live without the Ketubah contract, so if it is lost, the husband and wife have the duty of writing a new one. In every case the clauses of the first Ketubah are always efficient during all the wedding years.

1.2 Marriage celebration: erusin, kiddushin and nissuin

As written in the Talmud essay of Kiddushin, these ones could be given in three ways: with money, with the action and with the cohabitation. This first way to give the kiddushin is the one actually used by all the communities around the world: the groom has to give money or some equivalents (the ring) to the bride after the ceremony of the engagement benedictions. This moment expects the groom to give the ring to the bride saying the traditional sentence: "Watch, you are legitimized to me throughout this document for Moshe and Israel's laws". The second way to give the kiddushin, the one through the action, wants the groom to give to the bride a document in which there is written the name of the couple and other formalities of the wedding. Differently to the Ketubah, that is given to the future wife after the kiddushin ceremony, this isn't a document with the aim of proving the celebration of the wedding, but is the way in which the marriage will be formalized. The last possible way to complete the kiddushin is the cohabitation one: if a man says the sentence "Watch, you are legitimized to me throughout this cohabitation" in front of two witnesses and goes in a private room with the future wife. This last way of giving the kiddushin isn't already valid in the most communities around the world because it seems like a sort of prostitution act. The only way of giving kiddushin already used is the one of giving them by money. In this way the husband is legitimizing the wife to himself, in a way that anyone can take her in the future. Once given the kiddushin to a woman, she will not be able to marry anyone else until the divorce is completed.

The fulfillment of the nissuin wants the bride to be taken under the chuppah, the symbol of cohabitation that will give efficiency to the wedding, the place where the husband would take property of his wife. The Jewish tradition also wants the couple to take some private moments for them.

The kiddushin contract gives to the future husband and wife a legal duty that only the divorce and the death of one of the couple could break, but them alone can't establish all the duties

between wife and husband: with the kiddushin the groom can't live with the wife, as is written "the engaged girls are prohibited and the married ones are permitted by means of chuppah and kiddushin". The change between engagement and marriage will be completed only after the nissuin ceremony.

1.3 Legal entities: rabbi and witnesses

The kiddushin ceremony has to be celebrated by a rabbi in order to prevent any kind of inaccuracies. To carry out the ceremony for the Jewish law the participation of at least ten men is essential, and at least two of them are named as witnesses. The presence of the witnesses is important because they are the warranty of the legal act between the parties. Without the witnesses the marriage won't be, in any case, considered valid. The figure of the rabbi isn't important for its sacerdotal figure, but only as warrantor of all the procedures.

Obviously, for the Jewish laws a wedding could be celebrated only between two persons legally able to take decisions: boys are considered able after the bar-mitzvah, the day in which they become 13 years old, while for girls the legal age is 12 years, after the bat-mitzvah. If one of the two parties isn't able to want and mean the marriage will not be considered valid without the permission of a legal entity that decides for them.

1.4 The wedding ceremony

In memory of the biblical episode of Jacob, that takes Leah in wife because her father hides her face before the marriage, the tradition wants the groom to see the face of his future wife before the ceremony, to be sure that he is going to marry the right woman.

The wedding is celebrated by the rabbi that reads the seven benedictions for the circumstance, with a cup of wine that will be given to the couple at the end of the ceremony. After this step, the groom gives a ring to the bride under the chuppah, the nuptial tent. The wedding ceremony ends when the husband breaks the cup, in memory of Jerusalem. In orthodox communities, after the celebration of the marriage the couple take some time for themselves, that is considered as the first moment for them as husband and wife.

1.5 Prohibitions and obstacles to the jewish marriage

For the halacha, the jewish law, not every kind of wedding can be celebrated, there are many couples whose wedding is prohibited by the law.

A jewish man can't take as wife a non jewish woman, neither a woman whose conversion has not been validated from a rabbi or someone born from relations between a married woman with a man that isn't her husband. A second wedding between a couple that has divorced is prohibited if the woman has a new husband or if the cause of the divorce was adultery. Obviously a man can't marry with his mother or grandmother, neither with sister, stepsister, stepmother, uncle, etc... Last but not least, Cohen, the maximum sacerdotal figure in the jewish religion, can't be married with a divorced woman, in addition to all the prohibitions previously elected.

The Jewishness of the members of the couple has to be easily demonstrated for everyone: physical or behavioral interest isn't enough to celebrate a wedding, both the parts have to be of the same religion. In the jewish view, weddings out of the jewish circle contribute to the destruction of Israel's nation. Mixed couples are far from the idea of kiddushin, an idea of jewish family with at its basis the Torah and its rules. With mixed couples the decisions about the jewish future of the child are of difficult expectations and the family will tend to run him away from the community.

The word mamzer is associated with a child born out of the wedding, when the father isn't the husband of the mother but another man. The mamzer is considered jew in all, but he can't take a normal woman in wife, he can marry himself only with another mamzer.

The only permitted weddings between blood relatives are the ones with the stepsister (both parents have to be different), the former wife of the father in law, the daughter in law of brothers or sisters, the cousin, the wife of the son in law if divorced or widow and the sister of a dead wife.

PART TWO:

For the Jewish religion, the wedding represents the sanctification of the union between man and woman with the aim of procreation and education of the sons that will be born from this relation. Genesis, the first book of the Torah, explains how the man isn't considered complete until his nuptial and physical union with the wife. The procreation concept is one of the most important ones mentioned in Jewish religion, Jews have the duty of getting married and have descendants.

2.1 Marriage conditions: rights and duties of husband and wife

The Jewish law has established some rights and duties that the couple has to fulfill one to the other. The man has the duty of giving food, clothes and all what is needed for the house, but also the one of guarantee regular sexual relations with his wife, depending on how much he is busy at work. The husband has to warranty an inheritance to the wife in case of divorce or death and to pay medical expenses, any ransom or funerary expenses. Last, the sons have to guarantee the support of the widow and the daughters born from their parents (their sisters), and are guaranteed with the right of inheritance of the ketubah contract. In exchange of this, the husband has the right on all the possessions of his wife: from the money of her work to everything she finds out until the inheritance of all her goods.

Obviously all these rules are regulated by a sort of case law that protects both the parties from their requirements: the husband has the right on the money of the wife but he has to correspond her with money for all what she needs, but if she doesn't want back food and clothes she can take her money using them in the way she wants. Moral relations are also regulated in Jewish law, the husband has the duty to always celebrate his wife, any abuse is considered more serious than any mistreatment between other persons.

2.2 Sexual intercourse: legal and illegal practices

In the rules given to the Jews in the Torah, there is a section dedicated only to women, that are the ones of the niddah, when the woman is considered impure. After the childbirth and

during the her periods the woman is considered impure for jewish laws, she can't have sexual relations with her husband and in some orthodox communities she neither sleeps in the same bed of her man. As written many times in the Torah, the disrespect of niddah rules can take serious damages to the woman, arriving also to the death. The only way to purificate herself for a niddah woman is the mikveh, a ritual immersion in a rainy water pool. This bath represents a purification for the women, but also men use to do it before big recurring events such as Rosh HaShanah (first day of the new year) and Yom Kippur (the atonement day).

2.3 Rights of the woman in the jewish law

The halacha talks about the woman as an independent authority responsible for all her actions, good or bad they are. In reality the woman isn't really independent, she leaves under the tutelage of the father or the brother first, and then under the one of the husband. The role of the father is supervisory, he has the right of deciding who his daughter is going to marry but the last decision is up to the girl. Women don't have the same rights of men in processual depositions, legal acts or transactions, indifferently on the fact they are ritual or civil.

A real oppression of women's rights arrives when the husband is missing without a certain death or when this one doesn't want to give her the divorce. Differently than for women, in this case a man could marry again with some special permissions, permissions that any woman will never have. Many women in the years have tried to clarify this situation, arriving at the conclusion that if there is a little evidence of the death of her husband she can marry back again. This situation is very difficult because if one day the first husband comes back, and so is alive, he has the right on his wife and all the childs born from the new relation will become mamzers. In many ketubbah's contracts women have tried to introduce a sort of retroactive clause for this case, but most of the orthodox rabbis don't agree with this, so that women can't take greater juridical capacity than the one that they already have.

2.4 The divorce and the ghet document

In the jewish law the divorce is an allowed action but couples are advised against it: husband and wife will arrive at it only in the case in which neither the rabbi is able to repair the relationship. As for the wedding, also the divorce is a document that has to be signed by both

the parts. The husband has the right to decide if he wants to divorce or not, while if only the wife wants it she can't get it without the agreement of the man. In the years the Beit Din, the Jewish courthouse, have put right to this with penalties to force the husband to divorce if asked from his wife. In three cases the wife could ask the divorce to his husband: when he has big diseases that make him unpleasant to his wife, when he violates the essential duties that he has to his wife and when they are sexually inconsistent.

In Jewish law there isn't a court that establishes if the divorce is more or less lawful, but it's decided only by the agreement of the two parties. The Beit Din has the right to attend the decision only in the case in which the parts don't agree, trying to understand what are the conditions mentioned in the ketubah and if the man can give the ghet and the woman can receive it.

If the wife doesn't want to concede the divorce the husband can unilaterally have it in different cases:

1. the wife convert to another religion making impossible the Jewish rules in the house
2. the wife is adultery and the husband has two witnesses of this
3. the wife has improper behaviours
4. husband and his father are publically offended by the wife
5. the wife refuses sexual relationships for more than one year
6. after ten years the wife is still sterile
7. the wife refuses to change house at parity of economic and commodity conditions
8. the wife refuses to go in Israel

In the same way, also the wife can force the husband to divorce in different cases:

1. The husband converts to another religion trying to force also his wife
2. The husband is adultery
3. The husband suffers big physical problems
4. The wife can't have sexual relations with him
5. The husband doesn't want sexual relation with her
6. The husband wants sexual relations when she is clothed
7. The husband is disabled and can't have sexual relations for more than six months
8. The husband is impotent
9. The husband has an horrible work
10. The husband hits her and usually through her out of home

11. The husband doesn't sustain his wife and doesn't permit her to see her parents
12. The husband doesn't want her to go to a wedding or to a funeral
13. The wife wants to go to live in Israel but the husband refuses

The ghet is a sort of book of detachment that the husband has to write and to give to his wife before their separation. If the ghet isn't given in a free way it isn't considered valid and the wife can't have another wedding. The writing process of the ghet is not easy because of the risk of adultery if it isn't written in the right way.

PART THREE:

3.1 Israel's legal system basis

In 1922, when the League of Nations gives the proxy of the Palestine to the Great Britain, the british administration allowed the ottoman legal system, introducing the Common Law only when the previous law wasn't clear. This situation originates two big problems to lawyers: if Common Law has to be used only when there were big gaps in the previous law, and if the similarity way has to be applied in all cases. In the years the situation changed with a bigger use of Common Law, with judges formed in anglosaxon way.

In 1948, with the independence of the State of Israel, the rules changed again. There wasn't a real constitution but something very similar, a collection of rules written in a handbook called "Basis of the Rights Law", which says that if a court has to solve questions without legal basis, it will decide on the principles of Israel: freedom, justice, equity and peace. We can think that where laical rules don't arrive, courts have to use the jewish laws. In the years two thinking tendencies have developed: one more traditionalist which supposed that the jewish rules are the right way to solve unsolved questions, while the other says that the jewish rules are so limited and the way of the analogies using Common Law is the best to solve these problems.

Since independence there were more ways of thinking about the biblical rules applied in the modern society. A first opinion, the sionist-religious one, thinks that traditional rules have to become laws in the State of Israel. This thesis was supported by rabbis and intellectuals who think that Israel can't use rules given by others to have political, cultural and spiritual freedom. They think that the use of these rules was too important to create a new big union within jewish people. With this trend they wanted Israel to be the Jewish State, not only from people point of view but also in the legal point of view, changing the british and ottoman rules in force.

The second opinion was supported by people that thought that his first opinion was valid but it would become laical in the years for the evolution of social context that wasn't the biblical one anymore. A third opinion affirms that the biblical rules aren't replicable in the modern society because of the peculiarities that judges had at that time.

The last opinion, supported by most academics and judges, didn't want the application of jewish rules as legal rules of the State of Israel, because most israeli jurists don't have the abilities to understand and interpret in the right way biblical rules.

3.2 How jewish rabbinic court works

One of the most important sections of the israeli law that has its origins in the jewish rules is the one of the divorce, practices carried on by the rabbinical courts. Primarily, these courts have the task of dealing with weddings and divorces between jewish people in Israel according to Torah's rules. Obviously, the coexistence of religious and laical rules has created problems within the Rabbinic and the Supreme Courts, with the second ones that wanted to impose their control on the firsts.

The judgments of rabbinic courts on wedding and divorced have been transcribed since 1948 and many laical lawyers have been studying them. In some cases, when one of the two parts isn't pleased by the rabbinic court decisions (usually for economic aspects), it could decide to involve the district court for the examination of the situation.

The Rabbinic Court could be involved also for other topics, when both the parties agree to solve the debate within the jewish rules.

3.3 Relation between italian, israeli and jewish law on the marriage

As we have seen before, the jewish rules are recognized by israeli legal system: when two jewish israeli citizens want to divorce, they will do it using Torah's rules.

Consensual divorce is easy to get, courts have to intervene only in cases of dissent between the parties, firstly trying to conciliate the couple. Rabbinic courts have the independence on controlling the causes of divorce of a couple, with the possibility of rejecting them in some specific cases. Preserving a marriage against the wants of the couple isn't an usually done practice for the adultery risk, one of the main sins of jewish religion, mentioned also in the Ten Commandments. To avoid easy divorces, the Rabbinic Court has decided that once divorced and married with someone else, a couple can come back in another wedding.

The jewish consensual divorce has been recognized also by italian courts: what have been decided by the Italian Rabbinic Court have immediate efficiency in italian law as if the decision has been taken by a regular italian court. This is possible thanks to a new law introduced in March 1989, (legge 101), when the UCEI (Unione delle Comunità Ebraiche Italiane) and the Repubblica Italiana stipulated an agreement that puts the jewish marriage at

the same level of a religious catholic one. From 1989 a Jewish marriage is completely recognized as an official marriage for the Italian law if the basic civil formalities are respected: publication in the council house, the presence of a worship minister with Italian citizenship, and the copy on the registers of the civil country. Obviously, a wedding will be celebrated within the Jewish laws only if the couple wants it, being Jewish is only a necessary condition to do it. Once the couple gets married respecting the Jewish laws, the law of 1989 gives to the rabbinic court of the city the possibility also to make the couple divorce. If for the Italian law a divorce between two persons is validated when done in the religious way, a divorce without the signature of the Ghet document will not be considered as valid from a rabbinic court, forbidding the wife to get married again in a religious way until the Ghet, and making future sons of the new relations considered as Mamzer.

As we have seen in the first part, Jewish rules provide pre-wedding agreements between the two parts that regulate the financial conditions of the couple, other than rights and duties of husband and wife. The rule of writing the Ketubah is in force in Jewish tradition from its start, while in Italian law we don't have any of similar since our days. In the last years Italian lawyers have been trying to introduce premarital agreements laws, to introduce regulations on the personal relationships of the couples and financial agreements between the families that will have to be respected.

CONCLUSIONS:

As explained in the introduction of this work, the aim was to understand in detail all the particular rules that are characteristic in jewish tradition.

Starting from the engagement contract to arrive at the marriage one, the aim of the first two chapters is to understand all the peculiarities of the jewish wedding, with all the permissions and prohibitions linked to it. In the last chapter we learned how the israeli legal system works and all its relations with the biblical and rabbinical rules, in particular the ones regarding the marriage.

The thesis ends with a final comparison between all what we have learned in the previous chapters with what the italian law says about marriage and divorce, and how some religious rules are commonly accepted by countries as Israel and Italy.

From this work we can understand how old rules as the jewish ones are still valid in the years and in the centuries. The thesis is focused only on two countries, Israel and Italy, but there are a lot of other countries around the world that commonly accept jewish religious rules about the wedding, allowing jewish people to marry and divorce with their traditions.

