

From Philotas to Hillel: 'Betrothal' Contracts and their Violation

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A recently published Greek papyrus written in January 134 BCE in Herakleopolis (middle Egypt, south of Fayyum) reads:¹

(ἔτους) λς Χο(ιὰκ) ιθ̄ περὶ γάμον. συ(νετάξαμεν) παρα(γγείλαι).
τοῖς ἄρχου[σι]
παρὰ Φιλώτου τοῦ Φιλώτου
τῶν ἐκ τοῦ πολιτεύματος.
ἐν τῷ ἐνεστῶτι ἔ[τ]ει ἐμνη-
τευκάμην Νεΐκα[ι]αν Λυσιμά-
χου καὶ τοῦ σημα[ι]νομένου
αὐτῆς πατρὸς ὀμ[ό]σαντος
δώσειν ἐμοὶ αὐτ[ῆ]ν καὶ τὴν
σταθεῖσαν ἐπ' αὐ[τῆ]ν φερνὴν,
ἐφ' ἣ καμοῦ εὐδοκοῦντος
οὕτως οὐ μόνον ὀρισμῶν
γενομένων κα[τ]ὰ κοινὸν
ἀλλὰ καὶ τῆς κατὰ τὸν νό-
μον αποκ[.] ς γενη-
εῖς δεδηλον[.]...
θείσης καὶ ἐπὶ [τ]ούτοις
ἀπαλλαγέντων ἡμῶν
μετ' οὐ πολὺν χρόνον
ὁ Λυσιμαχος συνήρμοκεν
ἄνευ λόγου ἑτέρω ἀνδρὶ
τὴν Νεΐκαιαν πρὶν ἢ λα-
βεῖν παρ' ἐμοῦ τὸ εἰθιμέ-
νον τοῦ ἀποστασίου
[[τὸ]] βυβλίον. διὸ ἀξιῶ,
ἐὰν φανῆται, συντάξει
γράψαι τοῖς ἐν τῇ κώμῃ
Ἰουδαίοις παραγγεῖλαι τῷ
Λυσιμάχῳ ἀπαντᾶν
ἐφ' ὑμᾶς ἵν' ἐὰν ἡ [αἰ] οἶα
[γ]ράφω διαλη(φθῆ)ι περὶ αὐ(τοῦ) κα(τὰ) τὸν νό(μον) ἐμοὶ δ' ἐπαναγ-
[κάσαι ca. 4] . [ca. 2] . [ca. 2] ...ψ.....χ

Year 36. 19 Choiak. Regarding a marriage. We have given an order to issue a summons. To the archons from Philotas son of Philotas, a member of the *πολίτευμα*. In the current year I betrothed Nikaia daughter of Lysimachos. The said father swore to give her to me along with the dowry laid down for her, and with which I was in agreement. So after not

¹ J.M.S. Cowey and K. Maresch, *Urkunden des Politeuma der Juden von Herakleopolis (144/3-133/2 v. Chr.) (P. Polit. Iud.)*, Papyrologia Coloniensia 29, Wiesbaden 2001, 56-71, no. 4. I am grateful to Professor Hannah Cotton for drawing my attention to this papyrus.

only vows(?) were exchanged between us but also the ἀπόκλυσις (?)² according to the law (or the Law) ... , we parted on those terms. Not long afterwards, Lysimachos without justification joined Nikaia to another man before having received from me the customary bill of divorce.³ Therefore, I request, if you think it right, that you give the order to write the Jews in the village to summon Lysimachos to appear before you, so that if the matter is as I write, his case may be decided according to the law (or the Law), and at the same time [he] may be forced ... to me ...

Nikaia's father agreed to give her to Philotas as a wife. Nikaia was considered 'betrothed' to Philotas according to Jewish law. The English word 'betrothal' loosely renders the Hebrew terms *'erusin* and *qiddushin*. The Septuagint uses the verb ἐμνηστεύειν, that occurs in the papyrus, to render the Hebrew term *'eres*. According to Jewish law, 'marriage is effected through two distinct stages. The first stage is *'erusin*. The *'arusa*, i.e., the "betrothed" woman, did not cohabit with her husband; she continued to live in her parents' home. Otherwise her legal status approximated that of a married woman. The relationship could be terminated only through a formal divorce or by the death of one of the parties. The second stage, the *nissu'in*, is associated with the taking of the bride by the groom into his home; this stage completes the marriage'.⁴ It was before entering this second stage, i.e. while Nikaia still held the status of 'betrothed' (*'arusa*), that her father gave her to another man as a wife, before she was formally divorced. Since Nikaia was considered to be 'married' to Philotas, any child Nikaia might have from the second man would be in danger of being considered *mamzer*, 'bastard'. The editors of this papyrus consequently infer that the hellenized Jews of Egypt acted according to Jewish law in matters of marriage and divorce.⁵

Another piece of information concerning the practice of Jews in Egypt during the Roman period is preserved in rabbinic literature, in a tradition concerning Hillel, who flourished about a hundred and fifty years after the time of the papyrus under discussion, at the beginning of the first century CE.

Hillel the elder expounded the text of the marriage contract (*ketubbah*). In Alexandria, someone would betroth a woman (*meqaddeshim nashim*); and someone else would come and snatch her (and marry her).⁶ When the case came before the sages, they intended to

² The Greek is obscure. The editors suggest two possible readings: (1) ἀπόκαυσις (2) ἀπόκλυσις, but acknowledge that neither can be satisfactorily interpreted (66-7). Contextually the word must refer to the decisive stage of marriage, *qiddushin* according to Jewish law. The verb *qiddesh* in Hebrew has two distinctive meanings: (1) to purify one's body by immersion in water (e.g., *mYoma* 3:4; 1QS 3:4-5); (2) to betroth a woman. If a more satisfactory solution cannot be found in the Greek lexicon, it could be suggested that the word ἀπόκλυσις is a calque of the Hebrew word *qiddushin*.

³ As noted by the editors, the terms τὸ ... τοῦ ἀποστασίου βυβλίου reflect the Septuagint translation of the Hebrew term כריתות 199 in Deut. 24:1, 3 and elsewhere.

⁴ M.A. Friedman, *Jewish Marriage in Palestine: A Cairo Genizah Study* (Tel-Aviv, 1980), I, 192-3.

⁵ Cowey and Maresch, 56-60.

⁶ According to the Vienna MS of the *Tosefta*: קוּן הַשׁוּק מִן הַחוּטְפָה בֵּא אַחַר 'someone else would come and snatch her from the street'. Gulak prefers the reading of the Erfurt MS: בֵּא אַחַר וְהוּטְפָה מִן הַשׁוּק וְהוּטְפָה, literally 'someone else would come from the street and snatch her', but the sentence can also mean that someone unrelated would come and expropriate her (rather than

rule that the children were bastards (*mamzerim*). Hillel the elder told them (the children), ‘produce your mothers’ marriage contracts (*ketubbot*)’. They did, and these were found to contain the following text: ‘When you enter my home, you will be my wife, according to the law of Moses and the Jews’. Accordingly, it was ruled that these children were not bastards.⁷

This tradition and the papyrus from Herakleopolis attest that the Jews of Egypt acted according to Jewish law in marital matters. Interestingly, the situation is similar: in both cases women married other men after being ‘betrothed’. Hillel’s solution was radical: from the formula found in the contracts he inferred⁸ that before the woman entered the man’s home she would not be considered married, and thus he made *nisu'im* rather than *'erusin* the incontrovertible legally binding act. The case of Philotas illustrates well the situation faced by Hillel. Surely, a connection between the specific case of Philotas and the problem of the Alexandrian Jews some hundred and fifty years later cannot be established beyond doubt, but it can be plausibly maintained that in both cases some Jews in Egypt considered the stage of *'erusin* to be less obligatory than normative Jewish law would have it — perhaps because of ‘the influence of legal systems in Egypt’.⁹ The

‘snatch’); see A. Gulak, *Das Urkundenwesen im Talmud im Lichte der griechisch-ägyptischen Papyri und des griechischen Rechts*, Jerusalem 1935, 37, n. 6; contrast R. Katzoff’s note in the updated Hebrew version of Gulak’s book (Jerusalem 1994), 55, n. 26.

⁷ *tKetubboth* 4:9 (ed. Lieberman, p. 68); *yKetubboth* 4:8 (28d); *yYevamoth* 15:3 (14d); *bBava Mezi'a* 104a. The bracketed sentence occurs only in the Babylonian Talmud, but is implied also in the other versions of the tradition.

⁸ It is commonly assumed that Alexandrian Jews added the conditional phrase ‘When you enter my home, you will be my wife, according to the law of Moses and the Jews’ to the *ketubbah* in order to avoid the problem of bastard offspring (e.g., Y.I. Halevy, *Doroth ha-Rishonim* I, Berlin and Vienna, 1913, 103; H. Albeck, ‘Betrothal and Betrothal Writs’, *Studies in Memory of Moses Schorr*, eds. A. Weiss and L. Ginzberg, New York 1905, 16 [Hebrew]). Elsewhere I have raised the possibility that the phrase in its present form as found in the rabbinic traditions concerning Hillel (cited above, n. 6) already reflects Hillel’s interpretation of two distinct formulae attested in Palestinian *Ketubboth* (note the change from Hebrew to Aramaic in the formula as cited in the rabbinic tradition): (a) דאכניש יתה [‘that I might bring her into my house, so that she will be [my wife]’], Friedman, *Jewish Marriage*, II, 38 (no. 2, line 6); cf. also *ibid.*, 455 (no. 50, line 9); (b) the common ‘proposal clause’ דתהוין לי לאנתו כדת משה ויהודאי [‘that you will be my wife according to the law of Moses and the Jews’], Friedman, *Jewish Marriage*, I, 147-67; see M. Kister, ‘*Ke-dat Moshe ve-Israel: Nuances of a Legal-Religious Formula and its Evolution*’, *Atara L’Haim: Studies in the Talmud and Medieval Rabbinic Literature in Honor of Prof. H.Z. Dimitrovsky*, eds. D. Boyarin et al., Jerusalem 2000, 202, n. 2 (Hebrew).

⁹ As argued by Gulak, *Urkundenwesen*: ‘Dieselbe Baraita belehrt uns auch darüber, dass es zur Zeit Hillels in Alexandrien oft verkam, dass die Braut nach der Trauung von einem anderen Manne geraubt und gehehlicht wurde, da man sich dort über die strengen Bestimmungen der Verlobnisgesetze hinwegsetzte (37); In diesem Sichhinwegsetzen über die Vorschriften betreffs der Verlobten ... spiegelte sich der Einfluss der zu jener Zeit in Aegypten herrschenden Rechtssysteme wieder’ (40).

problem that Hillel faced regarding bastards in Egyptian Jewry could have been, then, a product of non-normative marriage practices of several generations.

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