# Their Husbands' Agents and Emissaries: Talmudic Theory and Lived Law in Medieval Ashkenaz

Rachel Furst

The active and vital involvement of Jewish women in the economic life of their communities in medieval northern Europe has become an axiom of historical scholarship. Some historians even maintain that in the high to late Middle Ages, the Jewish women of German-speaking Ashkenaz were more involved in financial pursuits, including moneylending and trade, than at any other time or place in pre-modern Jewish history.[1] Others assert that the financial clout of these women significantly improved their legal and social standing.[2] Evidence for Jewish women's commercial activities

* This article expands upon a section of the PhD dissertation I completed at Hebrew University of Jerusalem in 2015. It is dedicated, with gratitude and appreciation, to Professor Suzanne Last Stone, whose inspirational teaching and generous, gentle guidance had a formative impact on my thinking about law and society during the years I worked on that project. Thank you to additional mentors, colleagues, and friends who discussed the subject with me then and since; and especially to Dana Fishkin, Marc Herman, and Maud Kozodoy, as well as the editors and anonymous readers of this journal, who commented on earlier drafts.

1 William C. Jordan, *Women and Credit in Pre-Industrial and Developing Societies* (Philadelphia: University of Pennsylvania Press, 1993), 21. See too Michael Toch, "Die jüdische Frau im Erwerbsleben des Spätmittelalters," in *Zur Geschichte der jüdischen Frau in Deutschland*, ed. Julius Carlebach (Berlin: Metropol Verlag, 1993), 37–48. For a contrasting examination of the professional activities of Jewish women in southern Europe, see Sarah Ifft Decker, *The Fruit of Her Hands: Jewish and Christian Women's Work in Medieval Catalan Cities* (University Park: Pennsylvania State University Press, 2022).

2 See especially Judith Baskin, "Mobility and Marriage in Two Medieval Jewish Societies," *Jewish History* 22 (2008): 223–43 (232–33); Louis Finkelstein, *Jewish*

appears in Latin and vernacular documentary sources from the era,[3] as well as in Hebrew chronicles,[4] a famous elegy,[5] and some passages from *Sefer Ḥasidim*.[6] The body of archival sources from the twelfth, thirteenth, and even

*Self-Government in the Middle Ages* (New York: The Jewish Theological Seminary of America, 1924), 377–79; Simha Goldin, *Jewish Women in Europe in the Middle Ages: A Quiet Revolution* (Manchester: Manchester University Press, 2011), 98–99; and Avraham Grossman, *Pious and Rebellious: Jewish Women in Europe in the Middle Ages*, 2nd ed. (Jerusalem: Zalman Shazar, 2003), 198–209 and 496–97 (Hebrew). Martha Keil, too, has argued that women's economic activities ameliorated their social and legal standing within the Jewish community, though not their ritual or religious status; see her "Public Roles of Jewish Women in Fourteenth and Fifteenth-Century Ashkenaz: Business, Community, and Ritual," in *The Jews of Europe in the Middle Ages (Tenth to Fifteenth Centuries)*, ed. Christoph Cluse (Turnhout, Belgium: Brepols, 2004), 317–28. For a contrasting view, see Jordan, *Women and Credit*, 22–23.

3 For Germany, see especially the work of Keil in n. 2 above. For France, see William C. Jordan, "Jews on Top: Women and the Availability of Consumption Loans in Northern France in the Mid-Thirteenth Century," *JJS* 29 (1978): 39–56. For England, see Emma Cavell, "The Measure of Her Actions: A Quantitative Assessment of Anglo-Jewish Women's Litigation at the Exchequer of the Jews, 1219–81," *Law and History Review* 39 (2021): 135–72; Victoria Hoyle, "The Bonds that Bind: Money Lending Between Anglo-Jewish and Christian Women in the Plea Rolls of the Exchequer of the Jews, 1218–1280," *Journal of Medieval History* 34 (2008): 119–29; and Hannah Meyer, "Gender, Jewish Creditors, and Christian Debtors in Thirteenth-Century Exeter," in *Intersections of Gender, Religion, and Ethnicity in the Middle Ages*, ed. Cordelia Beattie and Kirsten E. Fenton (London: Palgrave MacMillan, 2011), 104–24. Susan L. Einbinder has argued that a few Hebrew documentary sources provide supporting evidence as well, see her "Pulcellina of Blois: Romantic Myths and Narrative Conventions," *Jewish History* 12 (1998): 29–46.

4 Eva Haverkamp, ed., *Hebräische Berichte über die Judenverfolgungen während des Ersten Kreuzzugs* (Hannover: Hahnsche Buchhandlung, 2005), 286–89 and 532–33; and see Grossman, *Pious and Rebellious*, 198–99.

5 On the poetic and prose accounts penned by Eleazar b. Judah of Worms to memorialize his wife and daughters, murdered in 1196, see Lucia Raspe, "Between *Judengasse* and the City: Jews, Urban Space, and Local Tradition in Early Modern Worms," *JJS* 67 (2016): 225–48 (229–37) and the scholarship cited therein; and see too Elisheva Baumgarten, "Gender and Daily Life in Jewish Communities," in *The Oxford Handbook of Women and Gender in Medieval Europe*, ed. Judith M. Bennett and Ruth Mazo Karras (Oxford: Oxford University Press, 2013), 213–28.

6 See, for example, Jehuda Wistinetzki, ed., *Sefer Ḥasidim* (Frankfurt: Wahrmann, 1924), 311 (no. 1265) (Hebrew), hereafter SH; SH, 133 (no. 465); and Hebrew MS 1566, Bodleian Library Oxford, fol. 178a, translated and discussed in Judith R.

fourteenth-century German realms is limited, however, and the relevant material has been examined only minimally to date. As a result, scholars have relied disproportionately on responsa and other rabbinic texts in their assessments of this historical phenomenon.

Among the most influential and commonly cited of these rabbinic sources is a landmark ruling issued in the mid-twelfth century by Rabbi Eliezer b. Nathan of Mainz (Ra'aban, c. 1090–1170)[7] concerning the financial and legal liabilities of married women.[8] Against the prevailing halakhic consensus, R. Eliezer obligated husbands to provide financial cover for their wives' debts and other monetary transactions and required them to represent their wives in legal disputes. He also insisted that married women were allowed—and even obligated—to take courtroom oaths in the course of litigation. Regardless of the halakhic justification for these positions, R. Eliezer made it clear that his ruling was informed by the economic realities of the day,[9] which demanded that all women be able to function as responsible financial actors:

> In the current era, when women are agents, and merchants, and negotiate, and lend and borrow, and pay and collect (debts), and deposit (pledges) and are entrusted (with them)—if we

Baskin, "From Separation to Displacement: The Problem of Women in *Sefer Hasidim*," *AJS Review* 19 (1994): 1–18 (6–8).

7 For biographical and bibliographical information, see Avigdor Aptowitzer, *Mavo Le-Sefer Ra'abiah* (Jerusalem: Mekitsei Nirdamim, 1938), 49–57 (Hebrew); Simcha Emanuel, *Fragments of the Tablets: Lost Books of the Tosaphists* (Jerusalem: Magnes Press, 2006), 52–59 (Hebrew); Efraim E. Urbach, *The Tosaphists: Their History, Writings, and Methods*, 5th ed. (Jerusalem: Bialik Institute, 1986), 173–84 (Hebrew).

8 David Deblitzky, ed., *Sefer Ra'aban: Hu Even Ha-Ezer*, vol. 1 (Bnei-Brak, 2012), 426–34 (no. 115) (Hebrew), hereafter Ra'aban, and the parallel texts cited there, n. 224. Parts of this responsum also appear in David Deblitzky, ed., *Sefer Ra'abiah: Hu Avi Ha-Ezri*, vol. 3 (Bnei-Brak, 2005), 449–53 (no. 1037) (Hebrew), hereafter Ra'abiah; Yakov Farbstein, ed., *Sefer Or Zaru'a*, vol. 2 (Jerusalem: Makhon Yerushalayim, 2010), 110–12 (*B. Kam.* nos. 348–54) (Hebrew), hereafter OZ; and Yaacov Farbstein, ed., *She'elot U-Teshuvot Maharam me-Rutenburg*, vol. 1: *Defus Prag* (Jerusalem: Makhon Yerushalayim, 2014), 225–26 (nos. 411–14) (Hebrew), hereafter Maharam P.

9 See Ze'ev Falk, "*Ma'amad Ha-Ishah Be-Kehilot Ashkenaz Ve-Tzarfat Be-Yemei Ha-Benayim*," *Sinai* 48 (5721): 361–67 (365) and Urbach, *Tosaphists*, 176–77. Jacob Katz, however, insisted that R. Eliezer's ruling was not a concession to historical circumstance but, rather, a legitimate reading of talmudic law; see his review of "Efraim Elimelekh Urbach, *Ba'alei Ha-Tosafot*," *Kiryat Sefer* 31 (1955): 9–16 (15).

> say that they may not take oaths concerning their business dealings, we make it impossible for anyone to live[10]—for people will come to avoid doing business with them.[11]

Although his ostensible purpose was to describe the commercial activities of women in his own time, R. Eliezer's statement is laced with talmudic allusions: the very terms he used to refer to female agents (*apitropsot*), merchants (*ḥenvaniyot*), and negotiators (*nose'ot ve-notenot*) evoke a talmudic category of married women who managed their husbands' properties and were held to certain legal standards as a result.[12] Despite the difficulty of disentangling the real phenomena from these legal formulae, contemporary scholars have read R. Eliezer's words as testimony to the critical roles that medieval Ashkenazi women played in the financial affairs of their families and communities, on the presumption that a woman's status as her husband's emissary or guardian of his property was a mark of distinction.[13]

The legal implications of this designation and other facets of R. Eliezer's ruling are, however, more complex than most historical studies acknowledge.[14] Even as R. Eliezer expanded the opportunities for married women to engage in commercial activities by ensuring that their customers had legal recourse, he curtailed their fiscal agency by entrenching the assumption that all assets they handled were their husbands' rather than their own. In requiring a husband to pay his wife's debts and to represent her in court, R. Eliezer effectively advocated a corporate view of marriage, in which the wife, as an assumed emissary of her husband, maintained a financially dependent

10 I.e., endanger commerce. The literal reading is in accordance with *b. B. Kam.* 91b. See too *b. B. Kam.* 15a, where the Talmud reasons that monetary law pertains equally to women and men because the Torah was concerned that both have the means of sustaining life. Rashi ad loc, s.v. "*Ki heikhi*" explains that were women not bound by monetary laws, merchants would avoid dealing with them.

11 Ra'aban, no. 115. R. Eliezer goes on to assert that "even if by law she should not be made to take an oath, due to an ordinance of the marketplace (*takkanat ha-shuk*), she should be made to take an oath." All translations are by the author, unless otherwise specified.

12 See *m. Ketub.* 9:4 and *m. Shevu.* 7:8.

13 See especially Goldin, *Jewish Women*, 99; and Grossman, *Pious and Rebellious*, 208–9.

14 An exception is Elisheva Baumgarten, "Charitable Like Abigail: The History of an Epitaph," *JQR* 105 (2015): 312–39 (319–22), who focuses on the implications of R. Eliezer's ruling in the realm of charitable donations.

profile. The reception and the repercussions of this maneuver have been examined in several legal studies that compare it to the medieval English doctrine of "coverture" and implicitly question the extent to which halakhah recognizes married women as independent legal persons.[15]

In addition to its consequences for the legal status and financial agency of married women vis-à-vis the outside world, R. Eliezer's ruling also bore implications for the more intimate relationship between these women and their spouses. In this realm, a wife's designation as her husband's agent was far from a mark of distinction; indeed, it was outright harmful to her. By defining all married women of his era as guardians of their husbands' property, R. Eliezer empowered married men to insist, in accordance with the Mishnah, that their wives account under oath for their routine use of conjugal property.[16] In addition to underscoring the husband's presumed ownership of family assets, authorizing men to demand oaths from their wives introduced an inherently combative element to the couple's financial relationship. In a society that took oaths seriously and tried hard to avoid them,[17] this put married women at a serious disadvantage when navigating

15 Maidi S. Katz, "The Married Woman and Her Expense Account: A Study of the Married Woman's Ownership and Use of Marital Property in Jewish Law," *Jewish Law Annual* 13 (2000): 101–41 (119–26); Ariel Rosen-Zvi, *The Law of Matrimonial Property*, 5th ed. (Tel-Aviv: Ramot Press, 1995), 204–7 (Hebrew); Ronnie Warburg, "A Comparative Analysis of a Wife's Capacity to Pledge Her Husband's Credit for Domestic Necessities in Anglo-American Law and Jewish Law," *Jewish Law Annual* 13 (2000): 213–35 (227–29); Itamar Warhaftig, "*Aḥrayut ba'al le-ḥovot ishto be-mishpat ha-ivri*," *Shenaton Le-Mishpat Ha-Ivri* 2 (1975): 259–91 (263–70). See too Alyssa M. Gray, "Married Women and *Tsedaqah* in Medieval Jewish Law: Gender and the Discourse of Legal Obligation," *Jewish Law Association Studies* 17 (2007): 168–212 (188–202). Regarding coverture, see Cordelia Beattie, "Married Women, Contracts, and Coverture in Late Medieval England," in *Married Women and the Law in Premodern Northwestern Europe*, ed. Cordelia Beattie and Matthew Frank Stevens (Woodbridge, UK: Boydell Press, 2013), 133–54; Christopher Cannon, "The Rights of Medieval English Women: Crime and the Issue of Representation," in *Medieval Crime and Social Control*, ed. Barbara A. Hanawalt and David Wallace (Minneapolis, MN: University of Minnesota Press, 1999), 156–85; and the essays in K. J. Kesselring and Tim Stretton, eds., *Married Women and the Law: Coverture in England and the Common Law World* (Montreal: McGill-Queen's University Press, 2013).

16 *m. Ketub.* 9:4; *m. Shevu.* 7:8.

17 For attitudes toward oath-taking in Ashkenaz, see Irving A. Agus, *The Heroic Age of Franco-German Jewry* (New York: Yeshiva University Press, 1969), 133–36; Jeffrey R. Woolf, *The Fabric of Religious Life in Medieval Ashkenaz (1000–1300)* (Leiden: Brill,

marital disputes. Strikingly, this implication of R. Eliezer's ruling has not been the focus of scholarship to date.

Jewish court cases from the twelfth and thirteenth centuries demonstrate just how detrimental the legal approach promoted by R. Eliezer and his contemporaries could be. In practice, women who sought to advance independent business interests, to isolate their own properties from those of their husbands, or to safeguard funds that belonged to their children from previous marriages found themselves saddled with the burden of proving that contrary to the norm, they had not been granted free access to their husbands' assets. So, too, did women who stood accused of stealing from their husbands, sometimes as the simple consequence of making independent decisions concerning the use of conjugal property. In the following pages, I will first review and evaluate the legal underpinnings of R. Eliezer's ruling, and I will then examine a set of court records from late thirteenth-century Ashkenaz that showcases a woman entangled in litigation against her spouse. These records are embedded in a halakhic responsum, but much like archival materials, they enable us to ground R. Eliezer's dispositive ruling and glimpse its real-world effects.

## Limited Liability: Married Women and the Law of Damages

R. Eliezer b. Nathan's ruling was prompted by a lawsuit brought by a man called Reuben against a married woman from whom he had previously borrowed funds. Reuben had deposited a pledge with the woman to secure his loan, and while in her care, the item had been mishandled (or, had, perhaps, gone missing). In a standard case of this nature, the defendant, like any caretaker, would be required either to pay back the value of the object or to take a courtroom oath foreswearing negligence.[18] But in this instance, the defendant's husband, here called Simeon, claimed that his wife could

2015), 72; and Uziel Fuchs, "Three New Responsa of R. Isaac of Vienna," *Tarbiz* 70 (2000): 109–32 (110 n. 8) (Hebrew). See too Ephraim Shoham-Steiner, "'And in Most of Their Business Transactions They Rely on This': Some Reflections on Jews and Oaths in the Commercial Arena in Medieval Europe," in *On the Word of a Jew: Religion, Reliability and the Dynamics of Trust*, ed. Nina Caputo and Mitchel B. Hart (Bloomington: Indiana University Press, 2019), 36–61.

18 In rabbinic parlance, this type of oath is called *shevu'at ha-pikkadon*, as per Exod 22:10.

neither pay nor swear, for as a married woman, she had no independent assets and, moreover, he objected to her appearing in court and had the legal right to prevent her from doing so. The dispute was forwarded to R. Eliezer, who rejected Simeon's claims resoundingly and instead obligated him to compensate Reuben on his wife's behalf.

Despite R. Eliezer's rebuff, Simeon's attempts to shield his wife from either paying for her presumed negligence or taking an oath to foreswear it were well-informed arguments with firm legal grounding. The Mishnah asserts that married women, like mentally incapacitated individuals, young children, and slaves, are exempt from compensating their victims for damages they inflict:

> A deaf-mute, a cognitively disabled person, or a minor—an encounter with them is disadvantageous (*pegi'atan ra'ah*), for one who injures them is liable, but if they were (the ones) who injured others, they are exempt. A slave or a (married) woman—an encounter with them is disadvantageous, for one who injures them is liable, but if they were (the ones) who injured others, they are exempt.[19]

The passage goes on, however, to distinguish married women and slaves from the others listed insofar as their exemption from paying damages is only temporary: "They must pay (compensation) later on—if the woman is divorced or the slave is freed, they are liable to pay (compensation)."[20] The provisional nature of married women's liability in the Mishnah underscores their fundamental status as autonomous adults, but it also highlights their limited ability to function as such. As autonomous adults, married women (unlike deaf-mutes, cognitively disabled people, or minors) are legally accountable for their actions, but they cannot be made to pay damages, because, presumably, they have no assets of their own with which to do so.[21] Indeed, under Jewish law, a woman cedes control (though not technical ownership) over most of the property she brings into her marriage, and most of the assets

19 *m. B. Kam* 8:4 (*b. B. Kam.* 87a).

20 Ibid.

21 The Talmud argues that husbands and masters do not need to pay for these damages because that would allow wives and slaves to wreak havoc and hold their husbands and masters accountable.

she acquires in the course of her marriage are automatically acquired by her husband in exchange for his commitment to provide for her material needs.[22]

Whereas the Mishnah refers explicitly only to cases of personal injury, the early medieval geonim applied this rule to all monetary litigation. They also insisted that the Mishnah exempts married women not only from paying for the damages they cause but also from taking oaths in the event they deny such claims.[23] This extension of the Mishnah's logic is not obvious or incontestable. Nevertheless, it was widely accepted throughout the geonic era, further marginalizing married women as legal and economic actors by excluding them from the courts, and consequently, limiting their ability to conduct responsible economic activity.[24] The geonim recognized that exempting a married woman from taking an oath in such circumstances was unfair to the plaintiff, who was left with no legal recourse, but they also seemed to suggest that the plaintiff himself was liable, insofar as he chose to conduct the transaction with a partner whose legal status he knew to be problematic. Most geonim did insist that the court write a promissory note for the plaintiff,

22 *m. Ketub.* 4:4 and 4:7–12; *b. Ketub.* 46b, 47b, 51a, and 52b. For a basic overview of married women and ownership of property according to Jewish law, see Katz, "Married Woman," 103–10.

23 The rulings of various geonim appear in Ra'abiah, no. 1037; OZ *B. Kam.* nos. 348–354; and Yaacov Farbstein, ed., *She'elot U-Teshuvot Maharam me-Rutenburg*, vol. 2: *Defus Cremona, Lvov, Berlin* (Jerusalem: Makhon Yerushalayim, 2014), 579 (no. 61[29]), hereafter Maharam C, L or B. Some of these are also included in B. M. Levin, ed., *Otsar Ha-Ge'onim: Teshuvot Ge'onei Bavel U-Perushehem*, vol. 12 (Jerusalem: Mossad Ha-Rav Kook, 1943), 63 (*B. Kam.* Teshuvot, nos. 200–201). One exception to the prevailing geonic approach is the ruling of Natronai Gaon, who insisted that married women take courtroom oaths when required to do so by law; see Robert Brody, "Amram Bar Sheshna – Gaon of Sura?" *Tarbiz* 56 (1987): 327–45 (337) (Hebrew) and Gideon Libson, *Jewish and Islamic Law: A Comparative Study of Custom During the Geonic Period* (Cambridge: Harvard University Press, 2003), 108. Sherira Gaon and Hai Gaon also made a qualified statement on the matter; see Simcha Assaf, ed., *Teshuvot Ha-Ge'onim* (Jerusalem: Ha-Madpis, 1927), 16 n. 12. Curiously, neither Natronai's ruling nor Sherira and Hai's ruling is included in the Ashkenazi collections cited.

24 This unprecedented extension of the Mishnah's logic suggests that the geonim were more concerned with maintaining modesty standards than with clarifying the truth of a claim; see Eliezer Hadad, *On the Status of Women in Rabbinical Courts*, Policy Paper 100 (Jerusalem: Israel Democracy Institute, 2013), 23 (Hebrew).

stating that in the event the defendant was widowed or divorced, she would be obligated to return to court to pay for her damage or negligence.[25]

Even prior to R. Eliezer b. Nathan, the medieval Ashkenazi scholars who addressed this issue adopted a different approach. R. Gershom b. Judah "Me'or Ha-Golah" (c. 960–1040), for example, emphasized the distinction between unmarried women, who are treated exactly like men and required to pay in cases of negligence, and married women, who are (temporarily) exempted on technical grounds. In contrast to the geonim, he insisted that in the (rare) event a married woman did own independent resources, she was to be treated like an unmarried woman and obligated to pay immediately.[26] More significantly, R. Kalonymos (tenth century, Northern Italy) ruled that a married woman who was involved in her husband's business activities might become obligated to take an oath as a consequence of *his* exchanges and transactions. Specifically, R. Klonymous declared that one who had deposited money or valuables with a caretaker or money-lender was allowed to demand an oath from all household members involved in the business, as well as from the creditor himself.[27] In addition to emphasizing that oaths cannot be taken by proxy, this ruling held married women responsible to a third party for their direct or indirect involvement with their husbands' business activities.

Nevertheless, R. Eliezer's ruling represented the most significant departure from the prevailing geonic consensus on both practical and theoretical planes. In justifying his position, R. Eliezer asserted, on the one hand, that the married woman in question was required to take an oath because she was an independent legal actor, and, on the other hand, that her husband was obligated to pay her debt, as she acted as his agent when she took the pledge and made use of it. Despite the seemingly contradictory nature of these requirements, R. Eliezer argued forcefully that both were in effect:

25 Or, presumably, to take an oath if she persisted in her claim of innocence, although that is not explicit in geonic writings.

26 Ra'abiah, no. 1037; OZ *B. Kam.*, no. 350; Maharam B, no. 61(29); and Maharam L, no. 498. R. Gershom addressed a case in which one married woman had deposited valuables with another married woman.

27 See David Kassel, ed., *Teshuvot Ge'onim Kadmonim* (Berlin, 1848), 34b–35a (no. 107); Joel Mueller, ed., *Teshuvot Rabbenu Kalonymos me-Lucca* (Berlin, 1891), 8–9 (no. 2); Mordekhai on *b. Shevu.*, no. 46.

> When one deposits a pledge with a married woman or loans her (money), her husband may not say, "I have acquired this, for that which my wife acquires is (effectively) acquired by me," and enjoy (the acquisition) with pleasure, while the other suffers a loss. Heaven forbid, may the matter be deleted and not spoken, for who gave her the pledge or the loan so that (her) husband might acquire it?! Therefore, if there are witnesses that Reuben deposited a pledge or loaned to Simeon's wife, or if she admits such in court, or if she claims with regard to the pledge that she was negligent or threw it into the river—certainly Simeon is absolved of responsibility, for there is no greater injury than that, and what difference is there between a bodily injury and a monetary one. But if she claims "I consumed (the pledge or loan)" or "I spent it on my needs," it seems to me that the husband must pay for her. For all women in these times are guardians of their husbands' assets, and a guardian is an emissary… Therefore all of her business transactions are (considered) his missions.[28]

In other words, in the case of damage to property, R. Eliezer believed that a married woman was to be held personally accountable, much as she would be held accountable for physical injuries she inflicted—even if the constraints of the halakhic system meant that she could not compensate those damages. In run-of-the-mill money matters, however, he assumed a married woman was operating as her husband's agent, with his consent; the husband thus became legally and financially responsible for her activities. In day-to-day business situations, that is, R. Eliezer was unwilling to allow a married woman's relationship to her husband to be exploited in a manner that would harm others. To avoid that situation, he obligated her husband to assume responsibility for (most of) her financial transactions.[29]

28 Ra'aban, no. 115.

29 This approach also had implications for the acceptability of charitable donations made by married women. The Talmud limits the amount that charity collectors are allowed to take from married women, on the assumption that the assets they pledge are not their own. Nevertheless, R. Eliezer b. Nathan permitted collecting even large amounts, arguing that married women surely pledged the money as their husbands' agents. In the realm of charity, however, R. Eliezer's position was largely rejected by his colleagues and successors. For further discussion,

## In the Family: Married Women and Their Husbands' Property

On a methodological level, R. Eliezer resolved the legal handicap that the Mishnah imposed on married women by turning a limited talmudic category into a universal presumption. The Mishnah alludes to a unique class of married women dubbed *nose'ot ve-notenot betokh ha-bayit* (literally, women who conduct business within their homes), that is, women who have direct access to their husbands' monetary assets and regularly make use of them.[30] Women who fall into this category are assumed, when conducting financial transactions, to be handling money that is not their own,[31] and they are assumed to be doing so with the implicit approval of their husbands. As we have seen, R. Eliezer argued that the married women of his own day were, on the whole, sufficiently engaged in family finance to warrant applying this restricted category on a broad scale.

R. Eliezer's position granted the married men of medieval Ashkenaz the mandate to insist that their wives account, under oath, for their use of marital property. According to the Mishnah, a man whose wife is involved in his financial affairs may demand that she take an oath to disavow embezzling or misusing his money, even if he does not have clear grounds for suspecting that she did so.[32] Similarly, the Sages rule that a man who has appointed his wife to serve as his shopkeeper (*ha-moshiv et ishto ḥenvanit*) or as guardian of his assets may demand that she take an oath at any time. According to a minority opinion in the Mishnah, he may even demand that she take an oath to disavow the misuse of basic household items and expenditures,

see Baumgarten, "Charitable," 319–22 and especially Gray, "Married Women," 188–205.

30 See *m. Shevu.* 7:8 as well as *m. Ketub.* 9:4 and 9:8. Concerning the phrase and its meaning, see Katz, "Married Woman," 112.

31 Thus, according to a baraita cited in *b. B. Bat.* 52b, a married woman who is *nos'et ve-notenet be-tokh ha-bayit* is required to bring proof that deeds of sale and loan documents issued in her name were acquired through use of her own funds and not the funds she is administering on behalf of others.

32 *m. Shevu.* 7:8. This oath is of rabbinic status; a Torah-based oath may be required of the defendant only when there is a definitive claim against her. See Katz, "Married Woman," 111–14.

such as her spindle and her dough.[33] These women are listed in the Mishnah alongside other individuals who may be required to take oaths even in the absence of a definitive claim against them, including a business partner, a sharecropper, a guardian, and one who administers a joint inheritance. Presumably, all of these individuals have a tendency to help themselves to more than their due, rationalizing to themselves that their efforts on behalf of the owner render such actions acceptable.[34] Yet the Mishnah also records an opinion in the name of Rabbi Simeon, who maintains that a man's heirs may demand such an oath from his widow only at the point in time that she asks them to pay out her marriage contract, or *ketubbah*; that is, only when she seeks to disentangle herself and her own properties from the conjugal estate. According to the Talmud, Rabbi Simeon's rule is applicable even to the husband himself.[35]

This tannaitic dispute had reverberations well into the Middle Ages. R. Jacob b. Meir "Tam" of Ramerupt (1100–1171) understood the law to be in accordance with Rabbi Simeon: in the absence of a definitive claim, he argued, a husband cannot force his wife to take an oath unless they are negotiating a marriage settlement. Thus, in a spousal dispute cited frequently by his successors, R. Tam ruled that a married woman may credibly identify an item in her possession as the property of a third party (rather than her husband's), and her husband cannot force her to take an oath to verify that claim.[36] (If, on the other hand, a man filed a definitive monetary claim (*ta'anat bari*) against his wife, R. Tam insisted that she be treated like any other defendant and obligated to take the appropriate oath.) The implication of R. Tam's ruling is that the category *ha-ishah ha-nos'et ve-ha-notenet be-tokh*

33 *m. Ketub.* 9:4. The Talmud (*b. Ketub.* 86b) questions the parameters of the dispute between the Sages and R. Eliezer, who represents the minority opinion: does R. Eliezer think that the wife may be required to take an oath about household expenditures even when the husband has not appointed her shopkeeper or guardian? Or does he simply think that if the husband has appointed her shopkeeper or guardian, he may require her to take an additional oath about household expenditures together with the oath about business activities? This debate relates to a more general discussion of *gilgul shevu'ah*, or "rolling oaths;" see *b. Kidd.* 27b.

34 *b. Shevu.* 48b.

35 *m. Ketub.* 9:8; and see too *b. Ketub.* 88b.

36 Tosafot on *b. Ketub.* 88b, s.v. "*Le-afukei*." See too: Ra'abiah, no. 1016; Maharam P, no. 982; Mordekhai on *b. Ketub.* no. 223; Hagahot Maimoniyot, *Hilkhot Ishut* 16:10; and Rosh on *b. Ketub.* 88b.

*ha-bayit*—that is, the woman who may be required to take an oath even in the absence of clear misconduct—is effectively limited to widows or divorcées. However, as R. Eliezer b. Joel Ha-Levi (c.1140–c.1225), grandson of R. Eliezer b. Nathan, noted, the mishnaic term *ha-ishah* is generic and does not suggest that married women should be excluded. R. Eliezer b. Joel, therefore, rejected R. Tam's ruling and citing the Maghrebi R. Isaac b. Jacob Alfasi (1013–1103) as precedent, he asserted, in accordance with the Sages, that a husband may demand an oath whenever he suspects his wife of financial misconduct.[37] Although R. Eliezer b. Nathan did not address the question directly, this seems to be the more straightforward reading of his position as well.

## *Nose'ot ve-notenot* in Medieval Ashkenaz: A Universally Applicable Category?

Both R. Eliezer's halakhic ruling and his general appraisal of the economic roles held by the women of his era were widely embraced by his contemporaries as well as by scholars of subsequent generations. Indeed, most halakhic authorities in twelfth and thirteenth century Ashkenaz ruled that even women who did not actually conduct business with their husbands' assets should be considered *nose'ot ve-notenot* and therefore subject to all of the category's legal implications.[38] Thus, when weighing in on an altercation involving two men, one of whom claimed to have deposited an item with the other's wife that was later mishandled, R. Ḥayim b. Isaac "*Or Zaru'a*" (late thirteenth to early fourteenth centuries) contended:

> It seems to me that the husband (must) pay, for in this day, (all) women are agents of their husbands' properties and engage in commerce and are their husbands' emissaries and are like legally-appointed representatives…[39]

37 Ra'abiah, no. 1016; see also Rif on *b. Ketub*, 26a.

38 See Tosafot on *b. B. Bat*. 51b s.v. "*Kibbel min ha-ishah yaḥzir la-ishah*"; R. Asher b. Yeḥiel on *b. B. Bat*. 3:58; Mordekhai on *b. B. Kam*. 8:90–92; and Simcha Emanuel, ed., *Responsa of Rabbi Meir of Rothenburg and His Colleagues: Critical Edition, Introduction and Notes* (Jerusalem: World Union of Jewish Studies, 2012), 303 (no. 57). See too Katz, "Married Woman," 115–16.

39 Menahem Avitan, ed., *Teshuvot Maharaḥ Or Zaru'a* (Jerusalem, 2002), 244–45 (no. 254), hereafter Ḥayim OZ. See too Ḥayim OZ, New Responsa no. 17, and Irving

Such assertions correlate with other evidence of Jewish women's commercial activities in this period and were unquestionably informed by facts on the ground. Nevertheless, statements of this nature were formulated first and foremost as legal arguments, and the reality was surely more varied than a straightforward reading would suggest. Not all women in medieval Ashkenaz, married or otherwise, were engaged in commercial activity, and not all women had access to or control over their husbands' properties. The following case, adjudicated before a Jewish court in Germany in what was likely the 1270s or 1280s, provides a poignant reminder that some married women found themselves in very different situations. Widespread acceptance of R. Eliezer's position meant that they had to contend with the consequences of his legal presumptions nonetheless.

Despite her close connections to a prominent, scholarly family, the widow of Abraham b. Israel led a difficult life.[40] When her husband died, leaving minimal assets and a young daughter to support, the woman—whom I will call Dina[41]—pursued the primary course open to young widows in her situation and quickly sought a new partner.[42] But before doing so, Dina deposited the small sum her husband had left with his brother, the scholar R. Yedidyah b. Israel[43] (who was also her cousin), intending it as a trust for her orphaned daughter.

Agus, ed, *Teshuvot Ba'alei Ha-Tosafot* (New York: Yeshiva University Press, 1954), 247–48 (no. 129).

40 For the narrative presented herein, see Maharam P, no. 982. See too Urbach, *Ba'alei Ha-Tosafot*, 568–69 and Irving Agus, *Rabbi Meir of Rothenburg*, vol. 2 (Philadelphia: Dropsie College, 1947), 609–11.

41 Although this responsum includes an unusual number of specific names and places, neither of the two primary litigants are identified: Dina, whom I have named for ease of reference, is called simply "the woman" or "the wife," and the husband is described only as "the son of Isaac of Coburg" or "her husband."

42 On the position of widows in medieval Jewish society, see among others, Grossman, *Pious and Rebellious*, 459–75; Etelle Kalaora, "Jewish Widows' Homes in Ashkenaz in the 12th and 13th Centuries," *Jewish Studies Quarterly* 28 (2021): 315–30; and Cheryl Tallan, "Medieval Jewish Widows: Their Control of Resources," *Jewish History* 5 (1991): 63–74.

43 Yedidyah b. Israel of Nuremberg (mid-thirteenth–early fourteenth centuries) was a colleague of R. Meir of Rothenburg; he was also active as a scholar and rabbinical court judge in Speyer and Cologne. For more biographical details, see Urbach, *Ba'alei ha-Tosafot*, 566–70 and Agus, *Teshuvot Ba'alei Ha-Tosafot*, 233.

Her actions proved to be prudent, for Dina soon remarried the son of Isaac of Coburg, a stingy man who did not support his family, and Dina was forced to pinch pennies for bread and basic necessities, assuming responsibility for her children's welfare as the family moved from town to town, struggling to make ends meet. Over time, Dina managed to put aside twenty-two *dinarim* to buy a silken garment for her daughter, which she deposited for safekeeping with her mother (R. Yedidyah's aunt) in Würzburg.[44] When her husband discovered this, he traveled to Würzburg and tricked his mother-in-law into giving him the valuable. Dina took her husband to court and charged him with theft, but he maintained that, according to Jewish law, a married man automatically assumes ownership over his wife's acquisitions.[45] He insisted that all the garments and other valuables Dina had given her daughter were his and that she was, effectively, the thief.[46] The local court, headed by a certain R. Moses,[47] was swayed by the husband's arguments, and the judges required Dina to swear under oath that none of what she had given her daughter belonged to him, either directly or indirectly.[48]

Dina seems to have acted alone until this point, but after the court's ruling, she turned to her cousin R. Yedidyah.[49] R. Yedidyah petitioned the

44 Maharam P, no. 982; and see Agus, *Rabbi Meir*, 610.

45 Maharam P, no. 982. The phrasing of his argument regarding a husband's ownership of his wife's acquisitions derives from several talmudic passages; see *b. Naz.* 24b, *b. Git.* 77a–b, and *b. Sanh.* 71a.

46 For other cases in which married women conducted independent business with conjugal property and were later accused of having stolen or mishandled it, see Emanuel, *Responsa of Rabbi Meir*, 303–6 (no. 57) and 396–99 (no. 110).

47 Urbach, *Ba'alei Ha-Tosafot*, 569 n. 24 conjectured that the "R. Moses" involved in this altercation was Moses Azriel b. Eleazar Ha-Darshan; we know that he judged for a Jewish court near Erfurt in 1272. For biographical information, see Israel Ta-Shma, *Studies in Medieval Rabbinic Literature*, vol. 1: Germany (Jerusalem: Mosad Bialik, 2004), 173–74 (Hebrew).

48 Maharam P, no. 982: "They required her to swear that she did not give anything of his or of hers." "Hers" (*mi-shelah*) is apparently a reference to items that she herself had acquired but became her husband's according to the talmudic laws governing marital property (or possibly to the *melog* properties over which her husband had usufruct).

49 This is not explicit in the responsum, but it seems the most reasonable explanation for R. Yedidyah's sudden involvement at this stage of the case. Moreover, R. Yedidyah does not seem to have functioned as Dina's courtroom representative, at least not during the initial stage of the proceedings. For a case in which he did serve in such a capacity, see Rachel Furst, "A Return to Credibility? The

judge, contending that Dina should not be forced to take an oath, since her husband had not granted her access to his assets and, in fact, would sooner have gambled away his money than given it to his wife. In accusing Dina's husband of gambling, R. Yedidyah was not only casting aspersions on his character but throwing his basic credibility into doubt: according to the Mishnah, playing with dice is one of the activities that disqualifies a person from giving testimony or taking oaths. But R. Moses insisted that there was sufficient credence to the husband's claim and that Dina was obligated to take the oath.

Calling upon his connections, R. Yedidyah wrote to his colleague R. Meir b. Barukh of Rothenburg,[50] appealing to him with Dina's tale of woe and effectively asking him to overturn R. Moses' objectionable ruling. In principle, R. Yedidyah surely agreed with most of his scholarly contemporaries that married women of the era should be considered their husbands' agents and emissaries.[51] Yet as he had contended in his original petition, R. Yedidyah asserted that Dina's husband had not appointed her a guardian of his property, thus indicating that she herself should not be considered a "*nos'et ve-notenet*," despite the common assumption. R. Meir, for his part, was loath to get involved in the decisions of a local court, fearing that R. Moses would feel slighted, and he pleaded with R. Yedidyah not to show his response to anyone other than R. Moses himself. Nonetheless, he conceded that he did not agree with R. Moses' decision. His own reading of the talmudic sources instead accorded with R. Tam's ruling that even a husband who does give his wife access to his assets may not force her to take an oath unless he claims definitively that she stole from him and can substantiate his accusation. Thus, he asserted, Dina should not be required to take the oath the court demanded.

In spite of R. Meir's instructions, his objections were made public. R. Moses, as predicted, was highly offended. To add insult to injury, the orphan's grandmother showed up in court following the arrival of R. Meir's letter to denounce R. Moses and his colleagues and warn them that soon all the rabbis

Rehabilitation of Repentant Apostates in Medieval Ashkenaz," in *On the Word of a Jew: Religion, Reliability, and the Dynamics of Trust*, ed. Nina Caputo and Mitchell B. Hart (Bloomington, IN: Indiana University Press, 2019), 201–21.

50 R. Yedidyah turned to R. Meir with halakhic queries on numerous occasions, and some of their correspondence is preserved in the collections of R. Meir's responsa. For additional examples, see Urbach, *Ba'alei Ha-Tosafot*, 566–70.

51 See R. Yedidyah's own ruling on the matter in Agus, *Teshuvot Ba'alei Ha-Tosafot*, 247–48 (no. 129).

would agree to overturn their ruling. In an irate letter to R. Meir, R. Moses accused the latter of shaming him and R. Yedidyah of maligning him and misrepresenting his ruling. He insisted that Dina's husband had lodged a definitive and detailed claim and that his court's ruling was therefore legitimate and consistent with R. Meir's own position. Moreover, he supported R. Isaac Alfasi's approach (and included a copy of the latter's ruling). "And is it to be tolerated," he asked, "her taking her husband's money from before his eyes and giving it to her daughter?"[52] To exonerate himself, R. Moses enclosed a statement signed by his colleagues on the bench, which verified that their ruling had been based on the husband's definitive and detailed charge. And, he added, neither Dina nor her husband was related to him, implying that he had no personal stake in the affair and thereby implicitly criticizing R. Yedidyah, who was an interested party in that regard. R. Meir—who had not wanted to get involved from the beginning—chose to withdraw, and the responsum ends with a half-hearted attempt at reconciliation and a brief endorsement of R. Moses' decision:

> Permit me, our teacher and rabbi, R. Moses. Since you say that [the ruling] followed you and what I instructed to conceal has been revealed, I will not engage further in matters between you and our teacher and rabbi, R. Yedidyah, if not beneficially, to make peace between you. And our teacher and rabbi, R. Moses, is worthy of being relied upon, that [the husband] has made an absolutely definitive claim, and thus you definitively obligated her [to take] an oath.[53]

How the affair concluded for Dina and her husband is less certain. In the course of protesting R. Meir's involvement, R. Moses revealed that the couple had actually reached a compromise soon after their confrontation in court. But R. Moses did not provide the details of that agreement, and by all other indications, Dina was forced either to concede the property she had set aside for her daughter or to take the oath she wanted so badly to avoid.

52 Maharam P, no. 982.

53 Maharam P, no. 982.

## Conclusion

Contemporary scholars have described legal personhood as the collection of rights and duties that inheres in an individual under the law.[54] Those who emphasize law's constructive nature suggest that the particular rights and duties that constitute personhood are somewhat arbitrary; they are merely those functions that allow an individual to operate within a particular legal system. Yet others, including many feminist theorists, argue that far from being random, the rights and duties that constitute legal personhood in a given society are a reflection and implementation of underlying social ideas about what it means to be a person, particularly in relation to property, and often of underlying political agendas as well.

The definition of legal personhood in relation to property seems particularly apt in the context of Jewish law because financial constraints are the outstanding expression of married women's dependency on their husbands and one of the manifest ways in which married women's legal capacities differ from those of their unmarried peers. Fundamentally, halakhah considers men and women equals before the law, insofar as they are held equally accountable for their actions in both criminal and civil matters.[55] Nonetheless, as we have seen, married women, along with slaves, are excused from paying damages they have accrued, either because they do not have the assets with which to do so, or because they do not control their own assets. In ruling that married women who become single (through death or divorce) and slaves who become free citizens (via manumission) are retroactively required to repay damages they accumulated while dependent, the Mishnah underscores the relationship between personal status and legal/financial functionality. Although some scholars have argued that such limitations to women's equality before the law are a mere technicality,[56] the equating of married women and slaves

54 The following discussion draws upon Ngaire Naffine and Margaret Davies, *Are Persons Property? Legal Debates About Property and Personality* (Aldershot and Burlington: Dartmouth/Ashgate, 2001); Ngaire Naffine, "Can Women be Legal Persons?" in *Visible Women: Essays On Feminist Legal Theory*, ed. Susan James and Stephanie Palmer (Oxford and Portland, OR: Hart Publishing, 2002), 69–90; and eadem, "Who Are Law's Persons? From Cheshire Cats to Responsible Subjects," *The Modern Law Review* 66 (2003): 346–67.

55 *b. B. Kam.* 14b.

56 Shulamit Valler, *Women in Jewish Society in the Talmudic Period* (Tel-Aviv: Hakibbutz Hameuchad, 2000), 103 (Hebrew).

in this context suggests that the capacity to own property is an essential determinant of legal personhood.

The mere fact that Dina, and other married women, were allowed to sue their husbands in the Jewish courts of medieval Ashkenaz is evidence that they remained independent legal persons in some fundamental ways. By contrast, in much of medieval Christian Europe, and in England in particular, a married woman did not possess a sufficiently independent legal personality to enable her to bring suit against her spouse, except under very specific and limited circumstances.[57] Yet when Dina's husband rebutted her charge of theft, claiming that all the funds she had funneled to her daughter belonged to him, he was, legally speaking, on solid ground. Under Jewish law, marriage does not affect a man's ability to own property or the status of the assets he holds. As we have seen, however, a woman cedes control over most of the property she brings into her marriage, and most of the assets she acquires in the course of her marriage are automatically acquired by her husband. This means that most of the money a woman handles in the course of her marriage belongs to her husband, and not to herself; and it severely limits a married woman's ability to dispose of, or conduct business with, the assets she does own.

Various sources indicate that in medieval Ashkenaz, married women, as well as their unmarried peers, did engage in a wide range of economic activities, which they often conducted independently of their husbands, seemingly demonstrating their financial autonomy. The scholars of the era, R. Eliezer among them, were keenly aware of the gap between these facts on the ground and the constraints of the legal system they had inherited. Faced with a situation in which married women could not be held legally liable for their financial transactions and were functionally excluded from participation in the Jewish courts (and therefore, presumably, had to be sued in non-Jewish courts when necessary), R. Eliezer found a way to retain them, and their customers, within the halakhic fold. But instead of taking the radical step of allowing for their independent legal personhood and equating them

57 See, among others, Sara M. Butler, *The Language of Abuse: Marital Violence in Later Medieval England* (Leiden: Brill, 2007), esp. 31; and Christopher Cannon, "The Rights of Medieval English Women: Crime and the Issue of Representation," in *Medieval Crime and Social Control*, ed. Barbara A. Hanawalt and David Wallace (Minneapolis, MN: University of Minnesota Press, 1999), 156–85 (163–65).

with unmarried women, he found a more congenial solution that kept them legally subordinate to their husbands.

There is a certain level of irony in the fact that the legal ruling most often cited as evidence for the high level of economic activity and increased domestic (as well as communal) power for Jewish women in Ashkenaz would seem to have functioned, in reality, both to undermine that activity and to reduce that power. By looking beyond a superficial reading of R. Eliezer's words and exploring the consequences of the ruling for the legal and financial agency of married women vis-à-vis the outside world, we have seen how R. Eliezer's ruling solved one problem for those women by creating several others, more insidious and long-lasting in their effects. We have also looked at how that decision played out in one case study, in the hope that it may open the door to further exploration of the complexities of Jewish women's lives in medieval Ashkenazi society, and especially in the context of their marital relationships. But another important lesson here is methodological. Responsa, though notoriously difficult to interpret, read carefully and in dialogue with each other, can shed light not only on the legal rulings they contain, but also on their real-life consequences.