PROJECT MUSE®

The India Trade and the Emergence of the Engagement
Contract: A Cairo Geniza Study

Amir Ashur

The Medieval Globe, Volume 3, Issue 1, 2017, pp. 27-46 (Article)

Published by Arc Humanities Press

➔ For additional information about this article

<https://muse.jhu.edu/article/758504>

THE INDIA TRADE AND THE EMERGENCE OF THE ENGAGEMENT CONTRACT: A CAIRO GENIZA STUDY¹

AMIR ASHUR

IT WAS THE year 1118, and Sitt² al-Nasab had decided to take her husband, Solomon ha-Kohen, to court. Prior to their marriage, Solomon had promised that he would supply her with her own domicile, separate from the living quarters of his mother and sister, whom she disliked. However, since their marriage, the couple had been sharing a house with his female relations and Sitt al-Nasab was now at the end of her tether. The time had come, she felt, for her husband to fulfil his promises and rectify their living situation. After lengthy negotiations, an agreement was reached: the lower floor of the house would be set aside for the sole use of Sitt al-Nasab, and neither Solomon's mother nor his sister would be allowed to enter—not even to ask for “a single match.”³

These events are not an episode from a medieval soap opera, but are taken directly from a legal document created and kept in Fustat (Old Cairo): just one of 300,000 manuscript fragments found in the storeroom of the Ben Ezra Synagogue.⁴ In addition to the fascinating human story it tells, I argue that this docu-

This article is an adaptation of papers given at the World Congress for Jewish Studies, held in Jerusalem in 2009, and at the British Library in 2010. It is based on my PhD dissertation, “Engagement and Betrothal Documents from the Cairo Geniza,” completed under the supervision of Prof. Mordechai Akiva Friedman at Tel-Aviv University in 2006. I want to thank Prof. Friedman for reading an earlier draft of this article and for his valuable comments. My wife, Racheli Wittert, assisted me in translation and adaptation from the Hebrew. Any errors found in this article are mine alone.

1 The Cairo Geniza Collection is now scattered in libraries and archives around the world, with the largest repository being the Taylor-Schechter Collection of more than 193,000 items, housed at the University Library, Cambridge (hereinafter abbreviated as TS). Other collections referred to in this article are cited as BL (London, British Library), Bodl. (Oxford, Bodleian Library), and JTS (New York, Jewish Theological Seminary of America).

2 A polite term of address for a woman, e.g. “lady.”

3 TS 16.35, lines 17–20; published and discussed by Marmer, “Patrilocal Residence,” 67–82.

4 The foundational study is that of Goitein, *A Mediterranean Society*. On the Geniza and its discovery, see Hoffman and Cole, *Sacred Trash*. While the cataloguing of this vast collection is still in process, major reference works include: Reif, *Published Material from the Cambridge Genizah Collections*; Jefferson and Hunter, *Published Material from the Cambridge Genizah Collections*; Baker and Polliack, *Judeo-Arabic Manuscripts in the Cambridge Genizah*

ment represents the improved status of Jewish women in twelfth-century Egypt: a development that stems from broader social and economic changes caused by trade with India, reflected in a new set of conditions which start to appear in pre-nuptial agreements of this period.⁵

Twelfth-century pre-nuptial agreements from the archive of the Cairo Geniza differ greatly from their modern cousins. Today's "pre-nups" almost always concern financial arrangements, usually favouring the wealthier party who seeks to secure his or her assets in the event of a divorce. Marriage agreements from the Geniza are much broader in scope: they constitute the platform on which married life was founded, and can contain a wide range of stipulations designed to regulate the relationship of the married couple. In most cases, these stipulations were designed to support the rights of the bride. For example, in many such agreements, it is the wife who is assigned the right to choose the couple's abode, to conduct her own financial affairs, and so on. When compared with modern "pre-nups," it is apparent that their aim is completely different: the former are concerned with "the day after"—that is, the day of divorce; while pre-nuptial agreements from the Geniza deal with everyday life—married life, with its complexities and difficulties. They aim to smooth the future path of the married couple, to anticipate and resolve any disagreements that might arise. These contracts take a decidedly common-sense approach to marriage, recognizing that there will inevitably be conflicts, changing circumstances and viewpoints. They also recognize that a marriage might not be successful, and that the couple may wish to divorce.

What contributed to the emergence of this new type of legal arrangement? At the beginning of the eleventh century, the Jewish community of Fustat was a diverse, multi-cultural society, with Jews from Palestine, North Africa, and the Mediterranean living side by side. This community flourished under the liberal Fatimid regime and even took part in state politics.⁶ Indeed, Jews and Muslims cooperated in business ventures, and Jews lived in mixed neighbourhoods, rather

Collections; Neubauer, *Catalogue of the Hebrew Manuscripts in the Bodleian Library*; Danzig, *A Catalogue of Fragments of Halakha and Midrash*. Thanks to the Friedberg Genizah Project, high resolution digital images of most of the Geniza documents can be accessed online at: <http://www.jewishmanuscripts.org/>.

5 On the Geniza documents as sources for the India trade, see Friedman, "Qusayr and Geniza Documents on the Indian Ocean Trade," 401–9; Goitein and Friedman, *India Traders of the Middle Ages*; Lambourn, "Borrowed Words in an Ocean of Objects." For published sources in Hebrew, see Goitein and Friedman, *India Book I–IV*.

6 The "Head of the Jews," for instance, was part of the Sultan's entourage, and other Jews served as viceroys, court physicians, and in other official capacities. See Goitein, *A Mediterranean Society*, 2: 345ff.

than being restricted to certain areas of the city. And because the economy of this society was based on Mediterranean maritime trade, the merchant population was continually changing and further diversifying. At the end of the eleventh century, however, in the wake of the First Crusade (1096–1099), Mediterranean commerce was taken over by Italian merchants, and both Jews and Muslims were forced to turn their focus to the East, toward India. This change was dramatic, and it had a dramatic effect on marriage and family life.

Technically, Jewish marriage consisted of three stages:

1. The engagement (Hebrew: *shiddukhin*), which was only a promise to marry, with no legal implications. The promise could be annulled and normally nothing adverse occurred.
2. The betrothal (*erusin* or *qidushin*), which can be considered as the heart of the Jewish marriage process. It is a binding contract which can only be cancelled by a bill of divorce.
3. Marriage (Hebrew: *nisu'in*). The couple is now living together as a family unit.

In practice, however, only two stages of this process were usually performed: either engagement and marriage, or betrothal and marriage. The drawing-up of pre-nuptial agreements during the preliminary stage was not, in itself, a new development: the Talmud mentions the “betrothal deed” (שטר אירוסין *shetar irusin*) and such documents are found in the Geniza as early as the tenth century. According to both the Palestinian and Babylonian Talmuds (redacted in the fourth and sixth centuries, respectively), it was customary to ensure that a betrothal would not be carried out without prior financial arrangements, which were called פסיקתא (*pesiqta*), and could be agreed upon without any written deed. For example:

How much will you give to your son? Such and such a sum, and how much will you give to your daughter? Such and such a sum ... these being matters concerning which *qinyan*⁷ is effected by a mere verbal arrangement.⁸

This Talmudic engagement contract was an acknowledgment of mutual consent, in which the bride and groom agreed to marry each other on a certain date in the future, and it could also deal with some of the monetary issues relating to the marriage.⁹

⁷ A legally binding act required by Jewish law.

⁸ Palestinian Talmud *Ketubbot* V.1, 29c; Babylonian Talmud *Ketubbot* 102b and parallels. See Falk, *Jewish Matrimonial Law*, 91. See further Schremer, *Male and Female* [in Hebrew], 140, 270, 289.

⁹ Friedman, *Jewish Marriage*, 1: 239–311; Ashur, “Engagement and Betrothal,” 72–91.

However, this mutual consent was not legally binding and it could not be enforced by either side. This is exemplified by the following case, recorded in a collection of *responsa* by Babylonian legal authorities dating from the tenth century.¹⁰

Reuben had two daughters and Shimon engaged¹¹ himself to one of them and [Reuben] accepted. And this is the custom in our place, if anyone wants to betrothe¹² a girl: if she is an adult, she appoints her father to accept the betrothal by his own will; and if she is a minor, [her father] accepts her betrothal as was mandated by the sages. [...] And [so] the people came to the synagogue, and Shimon stood up and gave the ring to Reuben and declared 'Your daughter will be betrothed to me by this ring.' And they told him 'Specify, specify [the name of the girl whom you betrothed].' But he did not do this and sat down. And the people told Reuben: 'You should take from him two bills of divorce¹³ because they are both forbidden to him, for he did not specify which one of them he betrothed.'¹⁴ And Reuben said, 'He betrothed the one he engaged,¹⁵ even though he did not specify her name now, and I have a witness that he engaged her.' And the witness stood and declared that he [Shimon] had engaged her, and also Shimon declared that he betrothed the one he had engaged but was excited and forgot to specify her name. And some of the people answered him: 'Even though you engaged her, because you did not specify her name they are both forbidden to you, because you can change your mind and betrothe the other one, even if you did not engage her first.'

This case was brought before the prominent Babylonian exegete and philosopher, Rabbi Saadia ben Josef Gaon (d. 942), who ruled: "We pay no attention to Shimon's earlier engagement and we see no necessity to support his argument, for if he wished to renege on his engagement, he was at liberty to do so." According to the Gaon, the fact that a specific girl was engaged does not necessarily mean that

¹⁰ *Sha'arei Zedeq*, Salonika, 1792; 40, no. 12.

¹¹ Hebrew, *shidukhin*, "engagement," the first stage of marriage.

¹² Hebrew, *qidushin* "betrothal," the second stage of marriage.

¹³ Hebrew, *get*. The bill of divorce is required to annul betrothal, and a betrothed woman cannot marry another man unless her betrothal is annulled.

¹⁴ The groom did not specify the name of the girl he betrothed, so both girls were considered to be betrothed to him.

¹⁵ Reuben, the father, explains that even though the groom did not specify her name, we can be sure that he had in mind to betrothe the one he engaged.

the groom intended to betrothe her later on, and because he did not mention her name when he gave her father the ring one might assume that he had changed his mind. So the prior engagement was no more than a general consent to marry and had no legal ramifications whatsoever.

But this *lassiez-faire* situation would change over the course of the next century. In his *Sefer ha-Sheṭarot* (Book of Legal Deeds), compiled in Barcelona at the beginning of the twelfth century, Rabbi Judah ben Barzillai (also known as al-Barceloni) states that “Today, in most places, we are accustomed to make the engagement contract in a legally binding¹⁶ manner.”¹⁷ He then quotes a sample of such a deed:

We, the undersigned witnesses, are clearly cognizant that Mr. So-and-So [the father of the prospective bride] and Mr. So-and-So [the groom] said to us: ‘Act as our witnesses and perform a legal act¹⁸ to our mutual benefit, for people have engaged us and the matter has been mulled before Heaven.’ And [the father said,] ‘I engaged my daughter, Miss So-and-So, to the aforementioned Mr. So-and-So [the prospective husband], to give her away as a wife and to fix the marriage with God’s will on such and such a date. And I undertake hereby¹⁹ to give him, between now and the said date, the following jewelry and real estate [...]. And should, Heaven forbid, I fail to carry out all the aforementioned obligations by the set date, I hereby entrust him [...] to attach my person and my goods in the recovery of all the above-mentioned obligations. He shall be empowered to fine me the amount of such and such dinars²⁰ and the fulfilment of all obligations in addition. He may also transfer the penalty to any Gentile authority, and any expense incurred by him in consequence of my refusal he may recover at my hand.’ [...] Should, Heaven forbid, the groom delay his appearance at the set time and his fulfilment of the obligation of marriage towards Miss So-and-So the bride and his father-in-law, ‘I [the groom] hereby entrust my fiancée and my father-in-law [...], and I appoint them trustees to attach any of my possessions so that my obligations be fulfilled. They may furthermore demand the following penalty, and transfer it to any Gentile authority. I shall be obliged to fulfil their every condition,

¹⁶ That is, as a valid contract (and not only as general consent).

¹⁷ Barceloni, *Sefer ha-Sheṭarot* [Heb.], deed no. 49.

¹⁸ That is, a *qinyan*, an act required by Jewish Law.

¹⁹ By a legally binding act, as required by Jewish law.

²⁰ A fine will be imposed on the father if he fails to fulfil his obligations regarding the marriage.

and any expense incurred by them in consequence of my refusal they may recover at my hand, without sustaining any loss whatsoever.’²¹

A new type of marriage document, moreover, begins to appear in the second decade of the twelfth century: the “engagement deed” (שטר שידוכין *shetar shidukhin*), which aimed to serve a different purpose than the “betrothal deed.” Unlike this sample deed from Barcelona, the new engagement deeds from the Geniza would no longer focus entirely on the promise to marry, or even on financial arrangements, but would serve as contract that bound both parties to marry on a set date and could include many additional stipulations as the circumstances required.

The most important of the pre-nuptial stipulations which begin to appear in twelfth-century Fustat may be summarized as follows.

1. **Restrictions on the husband’s freedom of movement.** This stipulation specifies the length of time that the husband was permitted to be absent from his home, and sometimes even specifies that he should ask permission of his wife before doing so: “He shall not travel away from her outside Fustat unless she agrees.”²² In other cases, the husband is required, before setting sail on his voyage, to give his wife a “conditional bill of divorce” (Hebrew: *get zeman* גט זמן) – that is, a bill of divorce that will come into effect should the husband not return home within the agreed time: “And he will not travel to the Land of Israel and Yemen or to the far away countries unless he will write her a conditional bill of divorce.”²³
2. **Protection of the wife’s freedom of movement.** Twelfth-century pre-nuptial agreements from the Geniza occasionally preserve stipulations that are not found in earlier or later periods, in which the husband is forbidden to restrict his wife’s freedom of movement. For example, “He had bound himself never to mention to her any obligation to stay at home. He promised not to prohibit her from going to any place that a respectable Jewish woman was supposed to visit, such as a synagogue, a public bath, and to parties of congratulation or condolence, or the marketplace for selling and buying linen. Nor would he forbid her to go to the house of her sister to see how she was ...

²¹ Barceloni, *Sefer ha-Shtarot*, deed no. 72; the translation is based on Falk, *Jewish Matrimonial Law*, 93-94.

²² Bodl. MS. Heb. f. 56, fol. 46, אלא ברצאה: ען דיאר מצר אלא ברצאה; edited in Ashur, “Engagement and Betrothal Documents,” 191-93.

²³ TS NS 224.52 גט זמן: חתי יכתב להא גט זמן; edited in Ashur, “Engagement and Betrothal Documents,” 229-30.

whenever she liked, nor would he forbid her sister to come to his house.”²⁴

3. Stipulations regarding the husband's behavior. Numerous pre-nuptial agreements preserve stipulations which sanction the husband should he physically or verbally abuse his wife (or her parents). For example, one agreement states that the husband undertook upon himself that her mother would live with her in one apartment,²⁵ and that he would feed her and support her, and that he has no right either to abuse her nor act violently against her.”²⁶ In another contract: “No one from his family is allowed to enter his wife's house, nor his mother or sister, and no one is allowed to annoy her nor abuse her, and he shall not raise his hand against her.”²⁷

Besides such stipulations (only a few of which are quoted above) we find other important changes and developments. In a few cases, women appear in court as the representatives of the bride when the pre-nuptial agreement is drawn up, whereas it was customary for the bride to be represented in court by a male relative only—usually her father, brother, or paternal uncle.²⁸ Representation by a female relative would have helped to ensure that the bride's voice and wishes would be heard, and so ensure that she secured the rights she desired.²⁹

Not only was this new type of deed legally binding, there is evidence that the Jewish courts in Egypt refused to marry a couple before checking that neither of the parties was currently engaged to someone else.³⁰ This is shown in the Judeo-Arabic engagement deed edited and translated below:³¹

²⁴ TS 8 J 29.13, as translated by Goitein, “The Sexual Mores of the Common People,” 54.

²⁵ Her mother was probably a widow, and the groom undertook upon himself that she will live with them at the same house. By this act the wife will be more protected from any maltreatment of her husband.

²⁶ JTS MS 8229.1: וקביל עלוהי שתהא אימה עמה בדירה אחת ואוכלת על שולחנו וניזונת מנכסיו ואין לו רשות: edited in Ashur, “Engagement and Betrothal Documents,” 287-88.

²⁷ TS 13 J 2.22: translated by Marmer, “Patrilocal Residence,” 67-82.

²⁸ See Friedman, *Jewish Marriage*, 216-32.

²⁹ For example, in some pre-nuptial agreements, the wife is allowed to work, her earnings remains under her possession, and her husband is not permitted to use this money. For other stipulations of this nature, see Ashur, “Protecting the Wife's Rights,” 381-89.

³⁰ Ashur, “Engagement and Betrothal,” 13, n. 9 and 183, n. 7.

³¹ TS 8 J 5.2 a-d, edited in Ashur, “Engagement and Betrothal,” 108-13. Judeo-Arabic refers to the many Arabic dialects spoken by Jews living in the Islamicate world, as well as to Arabic written in Hebrew script. See Blau, *Emergence and Linguistic Background*; Wagner, *Linguistic Variety*; Friedman, *A Dictionary*.

- 1 כאן קד חצר אלי בית דין מ עואץ אלאסכנדראני ביר מנשה הזקן נַע
- 2 ואחצר בידה שטר מוחזק בכט ר צדקה הלוי החזן ישַעו ידיע
- 3 בן נפיע [א]מצי טלאקה לזוגתה הלאלה בת ישועה עלי יד וכיל
- 4 להא ואנה אבראה מן כל חק להא פי גהתה וצמן דרכהא פי דלך
- 5 פאלתמס מנה בית דין אחצאר שהאדה עלי תחקיק דלך פאחצר
- 6 שני עדים והמא שבת בר מחפוט אלבנא ואבו אלכיר בן
- 7 אלאסכנדראניין פקטעא אלשהאדה בצחה מערפתהמא
- 8 בכטוט אלשהוד אלדי פי אלשטר וחצורהמא באלאסכנדריה
- 9 עלי קבץ הלאלה הנזכרת ללגט אלמכתתב להא מן מטלקהא
- 10 עואץ דנן פלמא תבת דלך בבית דין אלתמס אלזיגה במצר
- 11 פחיניד חצרנא מעה ושידך בפנינו לסת אלכואת בת אליה
- 12 נַע מטלקה יהודה הלוי בר מנשה נַע בעד וקופנא עלי אל
- 13 גט אלדי בידהא ותאריכה חד עשר יומי ביר[ח] אב שנת אַתמב
- 14 לשטרות ותבותה בין ידינא איצא ואסתקר בינהמא אן יכון
- 15 אלמקדם ארבעה דנאניר מתנה מעת הכניסה אחצר
- 16 מן דלך דינאריין תסלמהא יחיי הלוי בר אברהם זוג אכתהא
- 17 להא מע כאתם פצה עלי סביל אלודיעה ובקי דינאריין

Verso

- 1 אסתקר אחצארה איאהא להא ענד אלדכול ואלמוכר
- 2 אתני עשר דינארא טאבי מעליי ואלדכול פי חדש סיון
- 3 מן שנתנא³² הדה ואלתזם אלמשדך דנן עלי נפסה אנה
- 4 אן טלב אלפסך קבל אלדכול כאן להא עליה ארבעה דנאניר
- 5 מתנה ואן יכון אלסכן במצר ואשרט עליהא אנה א' וקת
- 6 אכתאר מנהא אלספר מעה תוזר אהלה שהר מן אלזמאן
- 7 לא תמתנע ען דלך בחית יעידהא אלי מצר וצמן יחיי
- 8 זוג אכתהא לה ענהא דלך ואנהא אן טלבת אלפסך קבל
- 9 אלדכול כאן ללמשדך דנן עליה ארבעה דנאניר מתנה
- 10 ואקנינא מן אלמשדך ומן יחיי אילין כל מנהמא עלי מא
- 11 הו מנסוב אליה מן דלך קנין גמור חמור בכלי הכשר
- 12 לקנות בו מעכשו בביטול כל מודעין ותנאין ומה
- 13 דהוה קדמנא כתבנא וחתמנא דליהוי לזכו ולראיה
- 14 וכאן דלך לילה אלתלתא אלכאמס ואלעשרין מן
- 15 ניסן שנת אלפא וארבע מאה וארבעין ותלתה

32 Should read שנתנא, for ש > ס shift: see Blau, *Grammar*, 37, 287.

Page B

1	שנין למנין שטרות בפסטאט מצרים דעל גילוס נהרא
2	מותבה רשותיה דאדוננו מצליח הכהן ראש ישיבת
3	גאון יעקב תכון משרתו לנצח שריר ובריר וקיים ג ת ש ח
4	נתן הכהן בר שלמה הכהן נע מ א נ
5	חלפון הלוי ביר מנשה נע עואץ בר צדקה ט

Mr. 'Iwāḏ, from Alexandria, son of Manasseh the elder, may he rest in Eden, came to the court and brought with him a legal deed [*shetar*] written by Zedaqa Halevi the cantor, may God protect him, known as the son of Nufay', in which he ['Iwāḏ] affirmed that he had divorced his wife Hilāla, daughter of Joshua, by a proxy [*wakil*] whom she had sent, and that he released her from anything he owes her, and he is guarantor for her regarding this matter. And the court asked him to bring witnesses [*shuhud*] to support his story, and he brought two witnesses: Shabbat b. Maḥfuz al-Banā and Abu al-Khayr, both from Alexandria. And they both testify that they both recognize the signatures of the witnesses that are signed on the deed [*shetar*], and that they were both present in Alexandria at the time the aforementioned Hilāla received the bill of divorce [*get*] which had been written for her, from her husband, the aforementioned 'Iwāḏ. After the court approved all of the above, he ['Iwāḏ] asked to marry [*jīza*] in Fustat. Then we joined him [and went to the house of the prospective bride]³³ and he engaged Sitt al-Khuwāt, daughter of Elijah, may he rest in Eden, the divorcée of Judah Halevi, son of Manasseh,³⁴ may he rest in Eden, in our presence after we had examined her bill of divorce, which is dated to the 11th of Av 1442 Era of Documents [8 July 1131], and it was also approved by us. And they both agree that the advance payment [*muqdam*]³⁵ [to the bride] will be four dinars, as a gift from the time of the wedding, of which he [now] brought two dinars, which were given to Yiḥya Halevi, son of Abraham, her sister's husband, [in trust] for her, together with a silver ring, in a capacity of deposit ['*alā*

33 In most cases, women were not supposed to appear in court, and this might be the reason for the witnesses' testimony to the effect that they went with the groom to the bride's house in order to engage her; see Goitein, *A Mediterranean Society*, 332–36.

34 Her bill of divorce is found in TS 10 J 2.19. The eleventh of Av was nine months before this engagement took place. Eleven months will pass between her divorce and her remarriage.

35 It was customary to divide the marriage payment (*mohar*) into two separate payments, one advanced and one postponed; see Friedman, *Jewish Marriage*, 1: 271–88.

sabīl al-wadī'a].³⁶ And regarding the two remaining dinars, it was agreed that he shall give them to her at the time of marriage. And the delayed payment [*muakhkhar*]³⁷ is twelve dinars, good, excellent.³⁸ And the marriage was set to take place on the month of Sivan of this year.³⁹ The fiancé undertook to pay her, in the event that he cancels the marriage, four dinars, as a gift. And [he also undertook] that they will live in Fustat. He also stipulated that whenever he should ask her to accompany him and visit his family she will not prevent it, as long as he will return her to Fustat. And Yihya, her sister's husband, guaranteed on her behalf that if she will ask to cancel the marriage, he shall pay four dinars as a present to the fiancé. We performed a *qinyan* [a legally binding act] between the fiancé and the aforementioned Yihya, with respect to each and every one of the things ascribed above,⁴⁰ a complete *qinyan* with a valid legal instrument fit for doing so, effective immediately, nullifying all secret dispositions and conditions. And we wrote and signed it concerning what was performed before us so that it will stand as a title of rights and as proof. All of this took place on Tuesday, twenty-fifth of Nisan, 1443 Era of Documents [12 April 1132], in Fustat, Egypt, situated on the river Nile under the jurisdiction of our Master Maṣliaḥ Hakohen, the Head of the Yeshiva of Ge'on Ya'akov,⁴¹ may his position be established forever. Strong, firm and valid.⁴² [Signatures] Nathan Hakohen b. Solomon Hakohen, may he rest in Eden. Ḥalfon Halevi b. Mannase, may he rest in Eden. 'Iwād b. Zedaqa, may his end be good.

What occasioned the creation of this new form of contract? Why, indeed, was the Talmudic betrothal deed deemed unsuitable? The answer, I contend, lies in the fact that the betrothal deed, in traditional Jewish law, changed the marital status of the couple. A betrothed couple was, in fact, considered almost married; a deed of divorce was required should either of the parties wish to annul the betrothal. In

36 The use of rings as a betrothal gift was common practice, but in this case it is considered as a pledge, to verify that this is an engagement; see Friedman, *Jewish Marriage*, 1: 208–9.

37 That is, the delayed part of the marriage payment.

38 The value of the coins was also confirmed by their weight, and this statement is to clarify that the coins were evaluated correctly.

39 That is June, two months later.

40 Each of the stipulations is binding.

41 This is the Palestinian Yeshiva (academy), whose members fled Damascus after the crusaders' invasion and moved to Fustat. Maṣliaḥ Hakohen was in office from 1127–1139.

42 A common formula appearing in every Jewish legal document, meaning that it was done according to the law and it is legally valid.

such a case, the betrothed bride was considered a divorcée.⁴³ If the fiancé should disappear and his location be unknown, his future bride would thus become “chained” (*aguna*), unable to marry another until her fiancé should either reappear and produce a bill of divorce or be confirmed as deceased. By the beginning of the twelfth century, in Fustat, the prospect of becoming “chained” had become a real and substantial fear for women, and this may have been the impetus for the appearance of a new deed, which contracted the couple to a future marriage but without changing their marital status. Thus there would be no need for a bill of divorce to annul it, and there was no fear that the future bride would be trapped in a defunct marriage.

For the journey to India, which Jewish merchants had begun to undertake, had huge economic potential, but it was also a dangerous journey. Many merchants lost their lives on the way and the perils of the voyage are recounted in numerous letters from the Cairo Geniza. One trader wrote to his family:

We [are about to] set sail in a ship with not a single nail of iron in it, but held together by ropes; may God protect with His shield! [...] I am about to cross the great ocean, not a sea like that of Tripoli; and I do not know if we will ever meet again.⁴⁴

As another merchant put it, in a letter to his wife: “We will not be reunited unless God wills.”⁴⁵ Nor were the dangers restricted to maritime journeys alone. Merchants also lost their lives travelling through the desert from Egypt, on the way to the port cities on the shores of the Red Sea. Moreover, the journey to India was a long one and a round trip could take several years. In the heyday of the Mediterranean trade, by contrast, merchants had been able to take their wives and families with them, for the journeys were comparatively short and safe. Merchants could also reside in different places on their route, or marry into a local Jewish community. This was not the case in the India trade: there were hardly any Jewish communities on the long route (Aden was the only major port with a Jewish community) and so merchants could not, in most cases, take up residence. Married merchants had, therefore, to abandon their wives back in Egypt for long periods of time. The wives who stayed home accordingly had to take care of the com-

⁴³ There are some examples for a bill of divorce for a betrothed bride, e.g. ENA 972.10, In a contemporary betrothal deed, the bride is referred to as מתרבה מן האירוסין (divorced from betrothal): Goitein and Friedman, *India Book I*, 247-53.

⁴⁴ TS 12.39, lines 14–15, margin, lines 8–12, as translated in Goitein and Friedman, *India Traders*, 159.

⁴⁵ Ibid., 159: TS Arabic 40.56, line 3.

mercial interests their husbands had left behind, as well as of their households. Furthermore, many women had to seek employment in order to support themselves and their children. This state of affairs thus contributed to the economic liberation of women and to their increased freedom of movement.

This new socio-economic situation is the force behind some of the unique stipulations which begin to appear in the new engagement contracts from the 1110s onward: within a decade or two of the turn toward India. For example, a stipulation could be added to a pre-nuptial or marriage contract which set a date for divorce to come into effect should the husband fail to return by that date. One can presume, based on the dangers of the trip, that a relatively large number of merchants disappeared at sea without leaving a trace. And accordingly, young women were reluctant to marry or to become betrothed out of fear they might be forever chained to a vanished husband. The creation of the engagement deed enabled merchants to engage and marry women whose economic and social rights were enlarged in exchange, and who were free to move on with their lives if their husbands did not return in a reasonable amount of time.

The likelihood that the circumstances surrounding the India trade helped to trigger the development of these unique stipulations can be corroborated by estimating the percentage of India traders in the total population. As S. D. Goitein noted, hundreds of traders are mentioned in the India Book documents,⁴⁶ most of which date from ca. 1080–1160. He also estimated the total population of Jews in Fustat in the 1160s to about 3300 people.⁴⁷ It seems, therefore, that a large portion of the male population was involved in the India trade, meaning that an even larger percentage of women, children, and kin were directly affected by it. We can further posit that this had a sizeable impact on Jewish society at large, and that women from other circles could have demanded the same rights and prerogatives that their fellow merchants' wives had attained. Hence these stipulations and innovations become more widespread among other strata of the Jewish community in Fustat. But these stipulations could not be effective without a Jewish leadership that had the power to enforce them in courts, and the period under discussion is also a time when we see the emergence of strong and influential Jewish leaders. One, Mevurakh ben Saadya, played a decisive role in freeing the wife of an India trader who had disappeared, and who had not benefitted from a prior engagement contract.⁴⁸ Another, Maṣliaḥ Gaon, maintained close relationships

⁴⁶ See note 2, above.

⁴⁷ Goitein, *A Mediterranean Society*, 2: 140–41.

⁴⁸ This instance shows that, for whatever reason, not all women made use of these stipulations, which could save them both time and sorrow.

with one of the most prominent India traders, Ḥalfon ben Nethanel Halevi,⁴⁹ and with the “Representative of the Merchants” in Aden, Maḍmūn ben Ḥasan.⁵⁰ In a later period we find another Jewish leader, Samuel ben Hannaya, who was also active in freeing chained women.⁵¹

In summary, I have shown that the socio-economic changes related to the India trade affected Jewish married life in Fustat and contributed to the improvement of the legal status of women in this period through the development of the pre-nuptial agreement. (Needless to say, other factors or parallel developments may also have contributed to this phenomenon, but these factors are yet to be identified.) As part of this process, women—not just brides, but their female relatives—became more closely involved in legal processes, acting as witnesses and trustees, and so lending their own voices and perspectives to the legal texts, revealing much about their personal and domestic concerns.⁵²

49 Friedman, *India Book IV/A*, 90ff, 115ff and more.

50 See, e.g., Goitein and Friedman, *India Traders*, 377–89.

51 See Ashur, “Engagement and Betrothal,” 185, and the sources cited there.

52 Friedman, “Women and the India Trade,” 157–85.

APPENDIX: TRANSLATIONS AND EDITIONS OF ENGAGEMENT DEEDS

I. Engagement deed, 1159¹

- 1 באחד בשבת שבעה ועשרין יומי לירח סיון אתע כן הוה
- 2 שידיך כגק הבחור נתן [...] הזקן הנכבד ב[ר] כגק מרור [...] ^{הכהן} הזקן
- 3 הנכבד נע ית סת אלבהא בת כגק מרור אברהם החזן הזקן נע
- 4 והתנו ביניהם שיהא המוהר ארבעין דינרי דדהבא [...] יקדם לה [...]
- 5 עשרה דינרי דדהבא טאבי מעליי מעת הכניסה ^{וזמנה אלול משתא דא} ואישתירון להא
- 6 תלתין דינרי דדהבא טאבי מעליי וקיבל על עצמו [שתהא]
- 7 ס[ת] אלבהא משדכתא דא נאמנת במאכל ומשקה דמס[פקין בגו]
- 8 ביתא ועל טע[נת ש]מא [ואנה] לא יתזווג עליה [ולא יבקין]
- 9 גאריה תכרההא ומתי פעל [שי] מן דלך כאן עליה אלמ[וכר]
- 10 ועלי אנהא אלמותרה ללא[נפצא]ל ואן יכון סכ[נהא] ...
- 11 פי מכאנא יכתץ יהוד [...] וא[קנינא] מן כגק
- 12 הזקן הנכבד בר כגק [...] ה הכהן הזקן הנכ[בד] בד ... סת
- 13 אלבהא משדכתא דא על כל מה דכת ומפרש ל[עילא]
- 14 שריר ובריר וקיים [...] בר ישועה נעג

On Sunday, 27th of Sivan 1470 [1159 CE], His Honor, Greatness, and Holiness, the young man, Nathan [...], the esteemed elder son of His Honor, Greatness, and Holiness [...] Hakohen, the esteemed elder, concluded a match with Sitt al-Baha, daughter of His Honor, Greatness, and Holiness, our teacher and master Abraham the cantor, the elder, may he rest in Eden. And they both agreed that the *mohar* will be forty gold dinars, of which he shall pay her in advance [...] ten gold dinars [...] from the day of marriage, which is set to take place on Elul.² And there will remain incumbent on her thirty gold dinars, good, excellent. And he undertook upon himself that Sitt al-Baha, the fiancée, will be regarded by him as trustworthy in the conduct of her household in all matters concerning food and drink and claims, and that he will not keep a slave girl disliked by her.³ And if he

¹ TS 6 J 1.12r, edited in Ashur, "Engagement and Betrothal," 101–3.

² That is, three months later.

³ This is the monogamy clause, which forbids the husband from marrying another wife. On this clause, see Friedman, *Jewish Polygyny* (Hebrew), 28ff; and Ashur, "Protecting the Wife's

will do any of the above, he has to pay her late installment and divorce her, if she chooses to do so.⁴ And she will live [...] in a Jewish neighborhood [...]. And we performed a *qinyan* between His Honor, Greatness, and Holiness the esteemed elder, son of [...] Hakohen, and the esteemed elder [father of ... Sitt] al- Bahā, the aforementioned fiancée, on the above-mentioned stipulations. Strong, firm and valid [...] son of Yeshu‘a, may he rest in the garden of Eden.⁵

2. Engagement deed, 1157⁶

בתלתא בשבה דהוא עשרין ושבעה יומי לירח ניסן דשנת	1
אלפא וארבע מאה ושתי תין ותמניא שנין לשטרות בפסטאט	2
מצרים דעל נילוס נהרא מותבה רשותיה דאדוננו	3
שמואל הנגיד הגדול נגיד הגולה יהי שמו לעולם	4
כן הוה שידך אבו אלופא הבחור היקר בר אבו אלעלא ית סת אלתנא	5
בת ר יוסף החזן סט והתנו ביניהון שיהא המוהר	6
ארבעין דינרי דדהבא יקדם מנהון עשרה דינרי	7
דהבא [בעת] הכינוס וזמנו עד חדש ניסן אתסט	8
לשטרות וישתיירון לה עלוהי תלתין דינרי דדהבא	9
מאוחרין טאבי מעליי ושרוט בנות ישראל אל	10
מעלומה אלנאמנות במאכל ומשקה וטענת שמא	11
ואנה לא יתזוג עליהא ולא יבקי גאריה תכרההא	12
ומתי פעל שי מן דלך כאן עליה אלקיאם במוכרהא	13
ואן יכון עמלהא להא ומתי חצר חדש ניסן אתסט	14
ותמנע ען אלדכול בהא פקד אשהדנא אבו אלופא	15

Rights." Such stipulations were already found in marriage agreements from the ancient Middle East: see Lewis, Katzoff, and Greenfield, "Papyrus Yadin 18," 37, 243–47. The same stipulation is found in a Greek marriage contract from Alexandria, dated 12 BCE, in which the husband undertook not to "bring any other woman into (the house)," and the wife is also required to refrain from "consorting with another man"; see Brashear, "An Alexandrian Marriage Contract," 383.

⁴ According to Jewish law, divorce is an act that can be done by the husband only, and a wife cannot force him to divorce her. Here, it is clearly stated that the wife has the right to demand a divorce; see Friedman, "Divorce," 103–26.

⁵ Only one witness signed, suggesting that this is a draft or an incomplete contract.

⁶ BL Or. 5536.2, edited in Ashur, "Engagement and Betrothal," 81–85.

⁷ The *ד* is omitted.

ע"ב

- 1 המשדך ב[ן] רב אבו אלעלא עלי נפסה והו פי צחה
- 2 מן עקלה וגואז אמרה אן ענדה ופי דמתה עשרה
- 3 דנא מצרייה חוב גמור לסת אלתנא משדכתא
- 4 דא מתי עאד בדא לה ען אלדכול בהא בחדש ניסן
- 5 אתסט ואקנינא מן אבו אלופא אלמדכור עלי גמיע
- 6 מא נסב אל[יה] פי הדא אלשדוך קנין גמור חמור
- 7 בכלי הכשר לקנות בו מעכשיו ברצונו בלי אונס
- 8 כלל בביטול כל מודעין ותנאין תם [אקנינא] מן סתהם
- 9 ואלדה סת אלתנא דא אן ענדהא עשרה דנא חוב
- 10 גמור מעכשיו לאבו אלופא המשדך מתי עאד
- 11 בדא לסת אלתנא אבנתהא ען אלדכול באבו אלופא
- 12 אלמדכור פי אלתאריך אלמדכור ואקנינא מן סתהם
- 13 עלי דלך בעד צחה אלמערפה בהא קנין גמור חמור
- 14 מעכשיו ברצונה בלי אונס כלל בביטול כל מודעין
- 15 ותנאין והכל קיים בר ר (!) אבו אלעלא מלחק
- 16 בין אלסטור ואלגמיע צחיה
- 17 סעדיה בר אברהם נע אלעזר הכהן בר עטייה הכהן סט

On Tuesday, 27th of Nisan 1468 Era of Documents [1157 CE] in Fustat, Egypt, situated on the Nile river, under the jurisdiction of our Master Samuel, the great Nagid, the Nagid of the Diaspora, may his name be established forever, Abu al-Wafā,⁸ the young man, son of Abu al-ʿAlā, concluded a match with Sitt al-Thanā, daughter of Rabbi Joseph the cantor, may his end be good. And they both agreed that the *mohar* will be forty gold dinars, of which he will pay in advance ten gold dinars at the time of marriage, which is set to take place by the month of Nisan 1469 Era of Documents.⁹ And there will remain incumbent on her thirty gold dinars, good, excellent. And [here are] the well-known conditions imposed by the daughters of Israel:¹⁰ she will be regarded by him as trustworthy in all matters concerning food and drink and any claim. And that he will not marry another woman as long as he is with her and will not keep a slave girl disliked by her, and if he will do any of the above he has to pay her late installment. And her earnings will remain in

⁸ For this title see Goitein, *A Mediterranean Society*, 5: 85, 529.

⁹ Exactly one year later.

¹⁰ These stipulations were so common that it was often enough to simply mention them as "well-known," but here the stipulations are detailed, one by one.

her possession. And if the month of Nisan 1469 [1158 CE] arrives and he will not marry her, the aforementioned Abu al-Wafā, the fiancé, testifies upon his oath, in our presence, when he is in the soundness of his mind and freedom of his will, that he has in his possession ten Egyptian dinars as a complete debt for the aforementioned Sitt al-Thanā, the fiancée, [to be paid] if he will change his mind and will not marry her on Nisan 1469. We performed a *qinyan* with Abu al-Wafā on the above-mentioned conditions, a complete and weighty *qinyan* with a legal instrument fit for doing so, effective immediately, in accordance with his will, without any sort of compulsion, nullifying all secret dispositions and conditions. Afterwards, we performed a *qinyan* with Sitthum, Sitt al-Thanā's mother,¹¹ [who testifies] that she has in her possession ten dinars as a complete debt, [to be given,] effective immediately, to Abu al-Wafā the fiancé, if her daughter Sitt al-Thanā will change her mind and refuse to marry the aforementioned Abu al-Wafā on the date agreed upon. We performed a *qinyan* with Sitthum regarding the above, after we approved her identity,¹² a complete and weighty *qinyan* effective immediately, in accordance with his will, without any sort of compulsion, nullifying all secret dispositions and conditions. And everything is valid. 'b. R. Abu al-ʿAlā' is written between the lines.¹³ And everything is valid. (Signatures) Saadya b. Abraham, may he rest in Eden. Elazar Hakohen b. ʿAtiyya Hakohen, may he rest in Eden.

11 In this case, the bride's mother represents her in court although her father is still alive. We might assume that the mother represented the bride more favourably than a male representative.

12 Respectable women covered their faces in public, so the court had to identify her before continuing the legal process.

13 Between lines 4–5. Sometimes the scribes inserted additional data between the lines for various reasons, and then noted it at the bottom of the deed, as done here, in order to confirm that the addendum was made by them.

Bibliography

- Ashur, Amir. "Engagement Documents from the Cairo Geniza." Master's Thesis, Tel Aviv University, 2001.
- . "Engagement and Betrothal Documents from the Cairo Geniza." Ph.D. diss., Tel Aviv University, 2006.
- . "Protecting the Wife's Rights in Marriage as Reflected in Pre-Nuptials and Marriage Contracts from the Cairo Genizah and Parallel Arabic Sources." *Religion Compass* 6/8 (2012): 381–89.
- Baker, Colin F. and Meira Polliack. *Judeo-Arabic Manuscripts in the Cambridge Genizah Collections: Arabic Old Series (TS Ar. 1a–54)*. New York: Cambridge University Press, 2001.
- Barceloni, Judah. *Sefer ha-Shetarot* [Heb.]. Edited by S. I. Halberstam. Berlin: Bidez T.H. Ittskovski, 1898.
- Blau, Joshua. *A Grammar of Mediaeval Judeo-Arabic. 2nd ed.* Jerusalem: Magnes Press, Hebrew University, 1995.
- . *Emergence and Linguistic Background of Judaeo-Arabic: A Study of the Origins of the Neo-Arabic and Middle Arabic*. 3rd ed. Jerusalem: Ben-Zvi Institute for the Study of Jewish Communities in the East, 1999.
- Brashear, W. "An Alexandrian Marriage Contract." In *Classical Studies in Honor of David Sohlberg*, edited by R. Katzoff, Y. Petroff, and D. Schaps, 367–84. Ramat-Gan: Bar-Ilan University Press, 1996.
- Danzig, Neil. *Catalogue of Fragments of Halakhah and Midrash from the Cairo Genizah in the Elkan Nathan Adler Collection of the Library of the Jewish Theological Seminary of America*. Jerusalem: The Jewish Theological Seminary of America, 1997.
- Falk, Ze'ev W. *Jewish Matrimonial Law in the Middle Ages*. Oxford: Clarendon Press, 1966.
- Friedman, Mordechai Akiva. "Divorce upon the Wife's Demand as Reflected in Manuscripts from the Cairo Geniza." *The Jewish Law Annual* 4 (1981): 103–26.
- . *Jewish Marriage in Palestine: A Cairo Geniza Study*. 2 vols. Tel-Aviv: Chaim Rosenberg School of Jewish Studies, Tel-Aviv University; New York: Jewish Theological Seminary of America, 1981.
- . *Jewish Polygyny in the Middle Ages: New Documents from the Cairo Geniza*. Tel-Aviv: The Bialik Institute, 1986.
- . "Qusayr and Geniza Documents on the Indian Ocean Trade." *JAOS* 106 (2006): 401–9.
- . "Women and the India Trade [in Hebrew]." In *From Sages to Savants: Studies Presented to Abraham Grossman*, edited by J. R. Hacker, Y. Kaplan, and B. Z. Kedari, 157–85. Jerusalem: The Zalman Shazar Center, 2010.

- . *India Book IV/A: Ḥalfon and Judah ha-Levi—the Lives of a Merchant Scholar and a Poet Laureate according to the Cairo Geniza Documents* [in Hebrew]. Jerusalem: Ben-Zvi Institute & The David Moses and Amalia Rosen Foundation, 2013.
- . *A Dictionary of Judeo-Arabic Based on India Book Letters and Other Texts from the Geniza and Additional Sources*. Jerusalem: Ben-Zvi Institute and The David Moses and Amalia Rosen Foundation, 2016.
- Goitein, S. D. *A Mediterranean Society: The Jewish Communities of the Arab World as Portrayed in the Documents of the Cairo Geniza*. 6 vols. Berkeley: University of California Press, 1967–1993.
- . “The Sexual Mores of the Common People.” In *Society and Sexes in Medieval Islam*, edited by Afaf Lutfi Al-Sayyid-Marsot, 43–61. Malibu, CA: Undena Publication. 1979.
- Goitein, S. D. and Mordechai Akiva Friedman. *India Traders of the Middle Ages: Documents from the Cairo Geniza: India Book*. Leiden and Boston: E.J. Brill Publishers and Ben Zvi Institute, 2008.
- . *India Book I: Joseph Lebdi—Prominent India Trader, Cairo Geniza Documents* [in Hebrew], Jerusalem: Ben-Zvi Institute and The David Moses and Amalia Rosen Foundation, 2009.
- . *India Book II: Maḍmūn Nagid of Yemen and the India Trade, Cairo Geniza Documents* [in Hebrew], Jerusalem: Ben-Zvi Institute and The David Moses and Amalia Rosen Foundation, 2010.
- . *India Book III: Abraham ben Yijū—India Trader and Manufacturer, Cairo Geniza Documents* [in Hebrew]. Jerusalem: Ben-Zvi Institute and The David Moses and Amalia Rosen Foundation, 2010.
- Goitein, S. D. and Mordechai Akiva Friedman with the assistance of Amir Ashur. *India Book IV/B: Ḥalfon the Traveling Merchant Scholar, Cairo Geniza Documents* [in Hebrew]. Jerusalem: Ben-Zvi Institute & The David Moses and Amalia Rosen Foundation, 2013.
- Hoffman, Adina, and Peter Cole. *Sacred Trash: The Lost and Found World of the Cairo Geniza*. New York: Schocken Books, 2011.
- Jefferson, R. J. W. and E. C. D. Hunter. *Published Material from the Cambridge Genizah Collections: A Bibliography 1980–1997*. Cambridge University Library Genizah Series 13. Cambridge: Press Syndicate of the University of Cambridge, 2004.
- Lambourn, Elizabeth. “Borrowed Words in an Ocean of Objects: Geniza Sources and New Cultural Histories of the Indian Ocean.” In *Irreverent History: Essays for M.G.S. Narayanan*, edited by Kesavan Veluthat and Donald R. Davis, Jr., 363–414. Delhi: Primus Books, 2014.
- Lewis, N., R. Katsoff, and J. C. Greenfield. “Papyrus Yadin 18.” *Israel Exploration Journal* 37 (1987): 229–50.

- Marmer, David. "Patrilocal Residence and Jewish Court Documents in Medieval Cairo." In *Judaism and Islam: Boundaries, Communication and Interaction*, edited by B. J. Harry, J. Hayes, F. Astren, 67–82. Leiden: E.J. Brill Publishers, 2000.
- Neubauer, A. *Catalogue of the Hebrew Manuscripts in the Bodleian Library*. Oxford: Clarendon Press, 1886.
- Reif, S. C., ed. *Published Material from the Cambridge Genizah Collections: A Bibliography 1896–1980*. Cambridge University Library Genizah Series 6. Cambridge: Cambridge University Press, 1988.
- Schremer, A. *Male and Female He Created Them: Jewish Marriage in the Late Second Temple, Mishnah, and Talmud Period*. Jerusalem: Zalman Shazar Center, 2003.
- Wagner, Esther-Miriam. *Linguistic Variety of Judaeo-Arabic in Letters from the Cairo Genizah*. Leiden: Brill, 2010.

Amir Ashur (amirash@bgu.ac.il) received his PhD in 2006 from Tel Aviv University. His research focuses on the letters and legal documents of the Cairo Geniza. He is a senior Research Fellow at the Center for the Study of Conversion and Inter-Religious Encounters, Ben Gurion University. He is also a visiting scholar at the Taylor-Schechter Geniza Research Unit at the University of Cambridge.

Abstract This paper argues that new socio-economic developments caused by the India trade in the first half of the twelfth century contributed to the emergence of a new Jewish pre-nuptial agreement: the engagement deed. Once this new deed was introduced, it became a vehicle designed to protect the future bride in other aspects of her married life, thereby affording her further freedoms.

Keywords Cairo Geniza, marriage, India trade, women, Jewish law, engagement contracts