

Section 17

Incest

The Torah contains four lists of relatives with whom sexual relations are incestuous. These lists are found in Leviticus 18, Leviticus 20, Deuteronomy 23:1, and Deuteronomy 27. Of these four, the one found in Leviticus 18 is the most expansive, subsuming the other three. Therefore our analysis will focus primarily on the text of Leviticus 18.

Each Scriptural prohibition on incest explicitly forbids relations with only a single relative. For example, Leviticus 18:12 prohibits relations between a man and his aunt. By applying *hekeish*, however, the Karaite Sages understood the scope of each Scriptural prohibition to apply more broadly than its literal meaning. For example, the Sages determined relations between a woman and her uncle to be forbidden, based on the aforementioned-Scriptural-prohibition of relations between a man and his aunt. The Sages differed, however, on how exactly to apply *hekeish* to the Scriptural prohibitions.

The earlier Karaite Sages promoted the “catenary system of incest”.¹ The catenary system is known in Hebrew as the “*rikkuv*” theory. The Hebrew word “*rikkuv*” means “compounding”, and refers to the fact that the theory compounds one forbidden relationship upon another. In practice the catenary system forbade so many marriages that some historians believed it eventually endangered the survival of the Karaite community.

The 11th Century Karaite Sage Yosef Ha-Roeh was the first to refute the catenary system and suggest a different approach to the laws of incest. Later Sages overwhelmingly accepted Rav Yosef's views over those of the catenary system. Furthermore, Rav Yosef's student, Rav Yeshuah (ca. 1000), made several additions to Rav Yosef's system. Rav Yosef for his part rejected Rav Yeshuah's additional reforms². Eventually Rav Yeshuah's system achieved universal near universal acceptance amongst Karaites. It would remain dominant for many centuries until, at a Karaite congress in 1917, Rav Yeshuah's system was itself replaced by the modern day system.

Although *Adderet Eliyahu* reproduces Rav Yosef and Rav Yeshuah's refutation of the catenary system of incest, no such summary is included herein. Rather, *Mikdash Me'at* focuses mainly on Rav Yosef's system and Rav Yeshuah's additions to that system. We conclude with a brief discussion of the modern day system.

Due to the complexity of the subject matter, I have divided this section into four parts:

¹ See *Karaite Anthology*, p. 125.

² Their disagreement appears have persisted amidst later generations of Sages. In other words, while all Sages accepted Rav Yosef's position, only some accepted Rav Yeshuah's additions to Rav Yosef's position. For example, Rav Aharon the Elder (13th century) apparently preferred Rav Yosef's view over that of Rav Yeshuah (*Adderet Eliyahu Seder Arayot* introduction Daf 82B). Furthermore, *Adderet Eliyahu's* laws of marriage do not treat Rav Yeshuah's system as a given, they allow for the possibility of Rav Yosef being correct (see *Adderet Eliyahu seder nashim* ch. 4 Daf 91B) – suggesting that even in *Adderet Eliyahu's* day there was some doubt about Rav Yeshuah's additions to Rav Yosef's system.

Part I covers general matters regarding the laws of incest. These general discussions are not exclusive to Rav Yosef's or Rav Yeshuah's systems.

Part II describes the theory underlying both Rav Yosef's and Rav Yeshuah's systems of incest. Put otherwise, Part II establishes the exegetical principles by which either of these sages determined a practical list of forbidden relations. For instance, consider the verse "you shall not take a woman and her daughter" (Leviticus 18:17). An application of the exegetical principles established in Part II yields the rule that one may not engage in relations with two close relatives (*i.e.*, relatives in one's nuclear family). For instance, a woman may not marry two brothers. Likewise, a woman may not marry a man and his son. Note, however, that a different set of exegetical principles might have extended the Scriptural prohibitions differently. For instance, one might have determined that "you shall not take a woman and her daughter" forbids a woman marrying a man and his son but permits a woman marrying two brothers.

Part III applies the exegetical principles established in part II to the Torah's lists of forbidden relations. Part III thus derives practical rules describing which relations are forbidden.

Part IV discusses the laws of incest as they are applied by the Egyptian Karaite community in modern times. In 1917, an international conference of Karaite sages took place in Eupatoria. At this congress, a new understanding of the laws of incest was suggested. It is this system that is presently used by the Egyptian Karaite community. In Part IV, I will also discuss other hypothetical systems that have never been widely implemented by Karaite Jews.

The topics I will cover in this section are:

Part I (General Matters and Exegetical Principles):

1. Overview
2. What Constitutes Relations
3. On the verse "you shall not take a woman in addition to her sister"
4. Children of Incest as *Mamzerim*

Part II (Exegetical Principles):

5. Overview
6. Why Apply *Hekeish* To the Scriptural Lists of Relations
7. The Close Relative (*She'er*) and its redefinition as a Torah Term
8. Other Applications of Torah Terms

Part III (Rules of Forbidden Relations):

9. The Spouse Rule (§17.9)
10. The Ancestor Rule (§17.10)
11. Prohibition on Relations with One's *She'er* (§17.11)
12. Prohibition on Relations with the *She'er* of One's *She'er* (§17.12)
13. Prohibition on Relations with a Pair of *She'erim* (§17.13)
14. Prohibition on Relations with a person and the *She'er* of his *She'er* (§17.14)
15. Prohibition on Relations between two pairs of *She'erim* (§17.15)

16. Prohibition on Relations between a pair of *She'erim* and a grandparent-grandchild pair (§17.16)**Part IV (Modern Day System):**

17. The 1917 Eupatoria Conference

18. Alternative Systems

“The sages of Israel were split regarding the matter of incest into two great Teachings, one Teaching is [that of] the Rabbanites who said there is no Hekeish with regards to incest...The second teaching is [that of] the Karaites who upheld Hekeish in the matter of incest and said that the text itself notifies us of the need for Hekeish with regards to Incest in several places” -Adderet Eliyahu Seder Arayot Ch 4. Daf 84B-85A

Part I: General Matters and Exegetical Principles**§17.1 Overview**

Part I covers general matters pertaining to the laws of incest. The focus of this part will be Leviticus 18 as it is the most extensive of the Torah's four lists of forbidden relations. Leviticus 18 incorporates all of the relations forbidden in the other lists.

§17.2 What Constitutes “Relations”*§17.2a Sexual Acts Constituting Incestuous Relations*

The Torah prohibits “uncovering the nakedness” of certain relatives. For example, the Torah states “the nakedness of your father or the nakedness of your mother you shall not uncover” (Leviticus 18:7). The expression “uncover the nakedness” refers exclusively to intercourse. By contrast, the command “none of you shall **approach** any near of kin to uncover nakedness” (Leviticus 18:6), includes a larger variety of sexual acts. Namely, acts that tend to precede intercourse or otherwise indicate interest in intercourse constitute “approaching” near of kin to uncover nakedness. These acts are forbidden to all persons with whom intercourse is considered incestuous, regardless of whether the prohibition on intercourse with these persons is derived directly through Scripture or through *hekeish*.

§17.2b Spouses, Ex-Spouses, Other Sexual Partners, and Incest

Marital unions are essential to the laws of incest. The Torah prohibits relations with certain individuals related to us by marriage, even if these individuals are not related to us by blood. For example, one may not engage in relations with one's sister-in-law (Leviticus 18:16).

Any union dissolved by divorce or death remains relevant with regards to incest. For example, one may not engage in relations with one's sister-in-law, regardless of whether she is still married to one's brother. This is clear because if one's sisters-in-law were forbidden only while married to one's brother, then the Torah's prohibition on adultery (Exodus 20:12) would suffice to prohibit relations with one's sister-in-law. Further, for the purposes of the prohibitions on incest, any sexual partner is considered to

have the same legal status as a spouse. For example, any woman whom one's brother has slept with is forbidden in addition to one's sister-in-law. Conversely, engagement is sufficient to consider a woman a spouse for the purposes of incest even without consummation.

Notes on §17.2b:

One is forbidden from performing any sexual acts including but not limited to intercourse with close familial relations (§17.2a). Furthermore, partners who have engaged in intercourse are considered equivalent to married partners for the purpose of the prohibition on incest (§17.2b). However, *Adderet Eliyahu* does not explicitly discuss whether sexual partners are considered equivalent to married partners if they have engaged in sexual acts other than intercourse.

It seems to me that "sexual partners" are considered equivalent to married partners for the purposes of incest only if they have engaged in actual intercourse. This is because the verses discussing spousal relations define spousal relations in terms of "nakedness", which refers to actual intercourse (§17.2b). For example, consider the following verse: "you shall not uncover the nakedness of your brother's wife, it is your brother's nakedness" (Leviticus 18:16). The verse implies that engaging in intercourse with one's brother's wife is like engaging in intercourse with him, specifically because she has previously had intercourse with one's brother ("uncovered his nakedness"). Thus, any woman who has had intercourse with one's brother can be assumed to be like his wife for the purposes of incest. Lesser sexual acts are not referred to as "uncovering nakedness", however, so they do not suffice to form a "spousal" bond for the purposes of incest.

While lesser sexual acts do not suffice to form a spousal "bond", once a spousal or familial bond exists between two people lesser acts are included in the prohibition on incest. As we have seen, performing lesser sexual acts with a forbidden relative is sufficient to violate the prohibition of incest because in this case the Torah states "none of you shall **approach** any near of kin to uncover nakedness" (Leviticus 18:6). Thus any act that generally precedes or accompanies intercourse is forbidden (§17.2a) once someone is considered a relative either through shared ancestry or through "spousal bonds" produced by marriage or intercourse.

§17.3 On the Verse "you shall not take a woman to her sister"

The Torah states "you shall not take a woman and her sister to rival her, to uncover her nakedness beside the other in her lifetime" (Leviticus 18:18). The majority of the Sages held that this prohibition was unrelated to the laws of incest. They believed the term "sister" in this verse did not refer to the family relation. Rather, they believed it meant "counter-part". In other words, the Sages held that the verse prohibits taking any woman, sister or otherwise, in addition to one's first wife should said woman be a "rival" to the first wife. This verse thus plays no role in determining the laws of incest. The halakhic implications of this verse are explained in §18.4c.

Notes on §17.3:

There is strong Scriptural support for the Sages' claim that the term "sister" can mean "counterpart". Rav Shlomo ben Aharon argues that The Torah even uses the term "sister" to reference inanimate objects³. For example, the Torah states regarding the construction of the Mishkan: "five curtains shall be coupled together one to its

³ Levush Malkhut CH. 14

counterpart” (Exodus 26:3). The phrase translated as “one to its counterpart” reads literally as “a woman to her sister”. This is the exact phrasing as used in the verse “you shall not take a woman to her sister”.

§17.4 Mamzerim

A child of an incestuous union is considered a *mamzer*, usually translated as “bastard” (Deuteronomy 23:3). A *mamzer* or *mamzeret* is restricted in terms of who he or she may marry. We explain the laws of mamzerim in §18.4f.

Part II: Exegetical Principles

§17.5 Overview

Part II establishes the exegetical principles used to develop Rav Yosef’s and Rav Yeshuah’s systems of incest. Both systems rely extensively on *hekeish*. A clear set of exegetical principles is needed to determine how broadly one may draw analogies made by *hekeish*. To better understand this point, the reader should refer to the discussion given towards the end of the general introduction to Section 17.

§17.6 Why Apply Hekeish to Leviticus 18

The laws of incest rely more heavily on *hekeish* than any other class of laws. Furthermore, the Rabbanites do not extend the prohibitions on incest found in Leviticus 18 through analogy. Thus, the Sages felt it necessary to justify their extensive use of *hekeish* on Leviticus 18. To this end, they made three primary arguments.

First, the Sages argued that *hekeish* is necessary and applicable throughout the entire Torah⁴. Thus, in the debate as to whether *hekeish* should apply to the laws of incest, the burden of proof falls on those who hold that *hekeish* should not apply to Leviticus 18.

Second, the Sages noted that without *hekeish* relations with one’s daughter would be permitted. Indeed, scripture does not explicitly forbid relations with one’s daughter. Scripture does, however, forbid relations with one’s granddaughter. The Sages argued that because relations with one’s granddaughter are forbidden, all the more so relations with one’s daughter should be forbidden. Their argument is a kind of *hekeish*, namely a *kal-vachomer* (*a fortiori*) argument (§1.5).

Third, the Sages argued that the Torah itself confirms the use of *hekeish* in a specific case of incest. Namely, relations with one’s biological aunt on one’s father’s side are forbidden in Leviticus 18:12. From this verse the Sages derive the prohibition on one’s biological aunt on one’s mother’s side. This very prohibition is then confirmed by Scripture in the following verse (Leviticus 18:13). The Sages argue that this is an example *hekeish* made by the Torah that hints at the need to use *hekeish* throughout Leviticus 18.

§17.7 The Close Relative (“*she’er*”) as the Basis of Hekeish

⁴ For arguments as to why see “Notes on §1.5” and “Notes on §6.2”.

§17.7a Defining She'er

Leviticus 18's list of forbidden relations begins with the statement "no individual shall approach any *she'er* of his flesh to uncover nakedness" (Leviticus 18:6). The term "*she'er*", loosely translates as "family relation". *She'er* is partially a standard term and partially a torah term (§3.1). In other words, "*she'er*" had a commonly known definition before the giving on the Torah but its definition was then expanded upon by the Torah. *She'er* defined as a Standard Term refers to immediate family: one's parents, siblings, half-siblings, and children. In Leviticus 18, however, Scripture redefines *she'er* as a Torah term meaning "any relative with whom sex is considered incestuous either through the *peshat* or through *hekeish*". The sages arrive at this definition because the Torah introduces the prohibitions on incest with the phrase "no individual shall approach any *she'er* of his flesh to uncover nakedness". Thus, they reasoned that Scripture is here defining the Torah Term *she'er* to include all incest prohibitions in the verses that follow. Importantly, this redefinition includes those relations determined to be incestuous through *hekeish*.

Notes on §17.7a:

She'er's Third Definition ("Relative")

According to the Sages the Standard Term *she'er* refers to one's parents, children, siblings, and half-siblings. Furthermore, as a Torah-term *she'er* is defined as those relatives with whom relations are considered incestuous. There is also a third definition of *she'er*, however. *She'er* can simply mean "relative" in the general sense. For example, the Torah commands: "you shall give his inheritance to the next closest *she'er* of his family" (Numbers 27:11). *Gan Eden* explains that this definition is an "expansion" of the primary standard-term definition⁵. Standard-terms are often informally expanded to refer to concepts beyond their primary definition (§3.1). Notwithstanding, the Sages' more limited definition of *she'er* as nuclear family is still valid because *she'er* does not always mean "relative" in the general sense. For example, one's biological aunt is referred to as one's "father's *she'er*" or one's "mother's *she'er*" but not as one's own "*she'er*" (Leviticus 18:12-13).

Deriving She'er's Standard Term Definition

How did the Sages conclude that the standard-term *she'er* refers to one's nuclear family? The answer is that they relied on a linguistic tradition. This is the primary method of defining Standard Terms; one learns the meaning of the Torah through one's knowledge of Hebrew, one does not learn Hebrew from the Torah ("Notes on §2.1"). Nevertheless, we can support the Sages' definition of the Standard Term *she'er* by showing its consistency with Scriptural usage of the term. Most tellingly, the Torah states "you shall not uncover the nakedness of your father's sister, she is your fathers *she'er*" (Leviticus 18:12). From the description of one's father's sister as "one's father's *she'er*", it is clear that a sibling is considered *she'er*; Further, it is unlikely that one's *she'er* would include one's siblings but not one's parents and children. Indeed, as discussed above, the term *she'er* is loosely associated with the concept of "relatives". Therefore parents and children, being one's closest relatives⁶, can be expected to be included in the term *she'er*, given that *she'er* also includes one's siblings.

⁵ Gan Eden Inyan Yerusha Dinei Yerusha Ch 5 (towards end of chapter)

⁶ The assumption that the parent-child relation is deemed to be the closest familial relation is supported by the laws of the Kohen Gadol. The Torah stipulates that a Kohen Gadol may not become impure for any dead body, emphasizing in particular "his father and his mother" (Leviticus 21:11), suggesting that his parents are the ones he would otherwise be most likely to become impure for.

Scripture also supports the Sages' classification of one's half-siblings as one's *she'er* – again in accordance with the sages' definition. As already established, sisters are considered *she'er*. Scripturally, however, the standard-term “sister” includes both sisters and half-sisters. For example, scripture mentions “the nakedness of your sister whether the daughter of your father or the daughter of your mother, whether begotten in your father's home or begotten outside his home...” (Leviticus 18:9). Thus, our proof above that the term sister is included in the standard term *she'er* is sufficient to show that half-sisters are also included in this term.

§17.7b *She'er as the basis of Hekeish*

The Sages held that any application of *hekeish* to Leviticus 18 should be based on the standard-term *she'er* (defined in §17.7a). For example, applying *hekeish* to the prohibition on having relations with a woman and her daughter yields the rule that one may not have relations with any pair of *she'erim* (§17.13). The same Scriptural prohibition cannot be interpreted more leniently. For example, one may not conclude from this verse that only parent-children pairs are forbidden but that sibling-sibling pairs are permitted. Such a rule would not be based on the standard-term *she'er*. Neither can the prohibition be interpreted more stringently. For instance, one may not conclude from the verse that relations with any pair of blood relatives are forbidden. Rather, any rule derived through *hekeish* must use the Standard Term *she'er* as the rule's fundamental building block. Thus, the sages concluded that the prohibition on relations with a woman and her daughter is an example of the general prohibition on having relations with any two *she'erim*.

The preceding paragraph explained how the Sages determined exactly how broadly one should apply *hekeish* to the laws of incest. The Sages made two arguments to support their view. First, they noted that the Torah itself sometimes uses *she'er* relations as the building block for its rules. For example, the Torah states “you shall not uncover the nakedness of your mother's sister **because she is your mothers *she'er***” (Leviticus 18:13). Working off this example, the Sages similarly understand the *she'er* relation to be the “reason” for which the Torah lists other prohibitions.

Another rationale for using *she'er* relations as the building block of all incest rules is Leviticus 18:6's introductory verse: “No man shall approach the *she'er* of his flesh”. As mentioned above, the Sages understood all the forbidden relations that followed to be part of the Torah's redefinition of the term *she'er* as a Torah-Term. They also understood any *hekeish* made on these verses to be included in this redefinition. The Sages expected, however, that the Torah-Term *she'er* should be based on the original, Standard Term *she'er*. They thus concluded that all *hekeish* made on these verses should be based on the standard-term concept of *she'er*.

§17.7c *Torah-Terms based on Hekeish*

As mentioned above, the Sages believed that the Torah-Term *she'er* includes any forbidden relations derived by *hekeish*. At first glance this appears problematic because one may not apply *hekeish* to a Torah term or otherwise extend the meaning of a Torah term (§3.1, §6.2b). The Sages argued, however, that in this scenario they were not applying *hekeish* to the Torah-Term *she'er*, but rather to the underlying standard-term *she'er*.

In fact, the Sages held that when context indicates that the Torah is redefining a term, one may use *hekeish* on the underlying Standard Term. For example, the Torah-term Shabbat is used to refer to the sabbatical year: “but the seventh year shall be a *Shabbat shabbaton* for the land” (Leviticus 25:4). It is clear from context that the most common definition of the Torah-Term Shabbat, i.e., the 7th day of the week, is not what is being used in this verse. Rather, the Torah expects that we use context and our knowledge of the underlying Standard Term (“*shavat*”) to derive a new definition. The same is being performed in the case of *she'er*. Because the context of the term *she'er* in the verse “no man shall approach the *she'er* of his flesh” prevents the term from being understood as its most common definition, it is clear that a new usage is being constructed based on the underlying Standard Term and the surrounding context.

Notes on §17.7c:

The Rabbanite Argument that Shabbat is like Yom Tov

In debating with the Karaites regarding when to celebrate *Chag Shavu'ot*, the Rabbanites argued that if *shemita* is called “Shabbat” then all the more so may *yom tov* be called “Shabbat” (§6.2b). *Adderet Eliyahu* rejects the Rabbanite argument because Shabbat is a Torah term and cannot be extended past its primary meaning (§6.2b). How is *Adderet Eliyahu's* response to the Rabbanites consistent with its statement that Torah terms may be constructed by performing Hekeish on the underlying Standard Term? For example, how is the case of defining Shabbat to mean “yom tov” different from a case promoted by *Adderet Eliyahu* itself: extending “Shabbat” based on the concept of cessation to mean “shemita”?

The Rabbanites argue that *yom tov* is more like *Shabbat* than is *shemita*, therefore because *shemita* is called *Shabbat*, *yom tov* must also be called Shabbat. Their reasoning compares the Torah-Terms terms *shemita*, *yom tov* (actually referred to as “*shabbaton*” in Scripture), and *Shabbat*. Thus, in the Rabbanite approach, the Rabbanites apply a kal vachomer argument to the Torah terms themselves (if *shemita* can be called Shabbat, all the more so *yom tov* can be called Shabbat). By contrast, in the Karaite view, the understanding that “*Shabbat*” incorporates “*shemita*” is based only on the Standard Term “*lishbot*” and the context of the verses using *Shabbat* to mean *shemita*.

Hekeish to Define Torah Terms

Adderet Eliyahu states that *hekeish* may be used to define a Torah Term when said *hekeish* is based on the Torah Term's underlying Standard Term. I first argue that this “underlying Standard Term” theory lacks evidence. I then propose an alternative theory that still allows for the derivation of the incest laws.

Lack of Support for the Theory stated in Adderet Eliyahu

I believe that *Adderet Eliyahu* brings insufficient evidence to support the “underlying Standard Term” theory. Its only example is the usage of the Torah term “*Shabbat*” as a reference to the *shemita* year. *Adderet Eliyahu* claims that, as with *she'er*, in the case of *shemita*, the Torah redefines a predefined term (Shabbat) based on an underlying Standard Term (*lishbot*) and the surrounding context.

In my opinion, however, these two cases are dissimilar. Although the Torah likely chooses the term “*Shabbat*” because it alludes to an underlying Standard Term (i.e., *lishbot*), that Standard Term is not essential to the definition of *shemita*. No conclusion is drawn from the fact that *shemita* may also be called *Shabbat*. The fact that we should cease working the land is known directly from the text. Whereas *shemita* is defined by the explicit

instructions given by the text, the Torah term *she'er* is defined by *hekeish* on the underlying standard-term. Thus, *she'er* is the only Torah Term that is defined through *hekeish* on its underlying Standard Term.

An Alternative Theory

Nevertheless, I think an alternative theory provides support for using *hekeish* to define Torah Terms. I will argue that a Torah Term is defined by the verses stating its definition and any *hekeish* performed on those verses used in its definition.

Hekeish is often used to rigorously define the intent of the text (Notes on §1.5). Thus, when Biblical text is used to define a Torah Term, I contend that the *hekeish* based on that text is also intended as part of said Torah Term's definition. However, any *hekeish* based outside the textual definition (or based on another Torah term) is invalid for defining the Torah Term in question. Let us consider examples of how this theory might be applied.

My theory excludes using *hekeish* to define Shabbat as *yom tov*, because such a use of *hekeish* is not applied to the textual definition of *Shabbat*. Rather, *hekeish* in this instance draws similarities between the concepts of *Shabbat* and *yom tov*. Alternatively stated, the exegete has no verse in the definition of the term *Shabbat* to which he can point and say, "this verse implicitly includes the concept of Yom Tov". By contrast, there are such verses that enable the exegete to use *hekeish* to define the Torah Term *she'er*. For example, one may point to the verse forbidding a man from having relations with his aunt and conclude that this verse similarly implies that a woman may not sleep with her uncle.

Importantly, although my proposed theory prohibits using *hekeish* outside the verses actually defining a Torah term, such *hekeish* may be used to extend laws applying to Torah Terms. For example, one may conclude that just as sleeping with one's father's wife is a capital crime (Leviticus 20:11), so too is sleeping with any Torah Term *she'er* is a capital crime. This is because the term *she'er* is not being redefined; laws that use the term *she'er* are simply being derived through *hekeish*.

Double Hekeish

Rav Yosef held that for the purposes of incest one may not perform a *hekeish* on a *hekeish*. This principle is important in arguing against the runaway *hekeish* used by the Sages who promoted the catenary theory of incest. It also plays an important role in some of the disagreements between Rav Yosef HaRoeh and Rav Yeshuah (§17.9b, §17.10).

What is not immediately clear, however, is why a "2nd degree" *hekeish* is forbidden. I theorize that this rule follows from the fact that any "1st degree" *hekeish* applied to Leviticus 18 is automatically incorporated in the definition of the Torah-term *she'er*. Because one may not perform *hekeish* on a Torah-term (§6.2b), any "2nd degree *hekeish*" in this context is forbidden. Under this explanation, a 2nd degree *hekeish* in other contexts may be permitted, such as in cases where the 2nd degree *hekeish* is performed on Standard Terms.

Part III: Rules of Forbidden Relations

§17.8 Overview

Eight rules determine which relations are forbidden. Each of these rules is derived using the exegetical principles derived in Part II. More specifically, these rules are:

1. The Spouse Rule (§17.9)
2. The Ancestor Rule (§17.10)

3. Prohibition on Relations with One's *She'er* (§17.11)
4. Prohibition on Relations with the *She'er* of One's *She'er* (§17.12)
5. Prohibition on Relations with a Pair of *She'erim* (§17.13)
6. Prohibition on Relations with a person and the *She'er* of his *She'er* (§17.14)
7. Prohibition on Relations between two pairs of *She'erim* (§17.15)
8. Prohibition on Relations between a pair of *She'erim* and a grandparent-grandchild pair (§17.16)

The reader should note that Rules II and VIII, as well as part of Rule I are accepted by Rav Yeshuah but not by Rav Yosef. Also, the reader should recognize that the first two rules function as meta-rules that govern the application of the other six. In other words, whereas the last six rules are independent of each other and yield halakhic conclusions in their own right, the first two must be combined with one of the last six to reach a conclusion. Finally, the reader should note that the last six rules share the property of being derived through *she'er* based *hekeish* (§17.7b). Thus, only these last six rules are classically listed as the six rules of incest. Nevertheless, I organize all eight rules as one group. This distinction is purely aesthetic, as all eight rules are explicitly stated in *Adderet Eliyahu* even if not enumerated as such.

Finally, know that I will refer extensively to family relations through marriage. Recall, however, that present or past marriage, engagement, and sexual relations with another individual are all sufficient for one to be considered “married” to that individual for the purposes of the prohibition on incest (§17.2b). Thus, when I speak of a “spouse” in this section I am also including any present or past fiancée or sexual partner. Likewise, when I speak of an “uncle by marriage” I am including in this definition any present or past fiancée or sexual partner of one’s aunt.

Adderet Eliyahu includes examples to clarify the rules of forbidden relations. I have created my own examples to explain the material as I see fit. These are included in the summary portions, not the commentary portions of this text because they follow directly from *Adderet Eliyahu's* conclusions.

§17.9 Rule I: The Spouse Rule

§17.9a Overview of The spouse Rule

In determining the laws of incest, we must determine what to do in situations where a law would forbid relations between two individuals of the same sex. As background, the Torah prohibits men from having relations with each other (Leviticus 18:22). Thus, the Sages determined that whenever the rules of incest would prohibit relations between two men, the rules should be interpreted as prohibiting relations between a man and the spouse of the man who would be prohibited under the laws of incest.

The Spouse Rule is derived, in part, from Leviticus 18:14 and Leviticus 18:16. In Leviticus 18:14, we are commanded not to uncover the nakedness of our father’s brother. The Torah then explains that this prohibition applies in practice to our father’s brother’s wife: “you shall not uncover the nakedness of your father’s brother, you shall not approach his wife.” Similarly, Leviticus 18:16 informs us that the nakedness of our brother’s wife, is considered the nakedness of our brother: “you shalt not uncover the nakedness of you brother’s wife: it is you brother’s nakedness.” In each of these verses, the Torah makes a direct connection between the nakedness of one person, and that person’s spouse. Accordingly, wherever the laws of incest would prohibit a union between two persons of the same sex, the sages held that we should apply the Spouse Rule, as described below.

The Spouse Rule consists of two parts:

1. Whenever Male A would be forbidden to Male B by any of the rules of incest, the prohibition is transferred to Male A's spouse(s). That is, Male A's spouse(s) are forbidden to Male B.

For example, a man would be forbidden to his brother by Rule I (the prohibition on relations with one's *she'er*). However, because both are male, the man is actually forbidden to his brother's wife.

2. Whenever "Female A" would be forbidden to "Female B" by any of the rules of incest, the prohibition is transferred to female A's spouse(s). That is, Female A's spouse(s) are forbidden to Female B.

For example, a woman would be forbidden to her sister by Rule I (the prohibition on relations with one's *she'er*). However, because both are female, the woman is actually forbidden to her brother's wife.

Both Rav Yosef and his student Rav Yeshuah accept the first part of the Spouse Rule. The second part is accepted by Rav Yeshuah; but, for reasons set forth below, not by Rav Yosef.

§17.9a The Spouse Rule Part I

The Spouse Rule's first clause states:

1. Whenever Male A would be forbidden to Male B by any of the rules of incest, the prohibition is transferred to Male A's spouse(s). That is, Male A's spouse(s) are forbidden to Male B.

There are many verses from which this rule may be derived. For instance, consistent with the spouse rule, the prohibition on "uncovering the nakedness" of one's brother is applied as a prohibition on relations with one's brother's wife: "you shall not uncover the nakedness of your brother's wife, it is your brother's nakedness" (Leviticus 18:16).

Importantly, this rule does **not** imply that a man and his wife are the same person. Thus, this rule does not state that a man's relatives are legally equivalent to his wife's relatives⁷. Furthermore, the prohibition on Female A to Male B does **not** transfer to Female A's spouse(s). For example, this rule does not extend the prohibition on relations with one's sister to include all one's sisters' husbands' wives.

§17.9b The Spouse Rule Part II

Rav Yeshuah adds a second clause to Rav Yosef's the spouse rule:

2. Whenever Female A would be forbidden to Female B by any of the rules of incest, the prohibition is transferred to female A's spouse(s). That is, female A's spouse(s) are forbidden to female B.

For example, a woman being prohibited to her sister is applied as a prohibition on her sister's husband.

⁷ The Catenary theory of incest held this to be true. See *Karaite Anthology*, p. 125).

Rav Yosef rejected part II of the spouse rule. He argued that Part I was itself derived by performing *hekeish* on example applications given in Scripture (eg, part I is derived impart from the scriptural prohibition on one brother's wife as we have explained above). Part II, derived by applying *hekeish* to Part I, would thus constitute a forbidden 2nd degree *hekeish* (see "Notes on §17.7c").

Rav Yeshuah, however, maintained that the *peshat* of Leviticus 18 includes both the male and female prohibitions. Scripture speaks exclusively of males uncovering female nakedness, however, because speaking in the male voice is a Hebrew writing convention. To support this point, he noted that although the text speaks of males uncovering female nakedness, the Torah punishes both male and female offenders equally (i.e., Leviticus 20:12). Because the *peshat* implicitly includes females, according to Rav Yeshuah, Part II of the spouse rule is derived through *hekeish* on the *peshat*, not *hekeish* on *hekeish*.

§17.10 Rule II: The Ancestor-Descendant Rule

If the Torah prohibits a man from marrying a certain woman, may the man marry that woman's ancestor? What about her descendent? Such questions are addressed in the Ancestor-Descendant Rule. The ancestor-descendant rule was proposed by Rav Yeshuah but not accepted by Rav Yosef. The rule states that:

1. Any Person B forbidden to Person A is also forbidden to person A's ancestors.
2. Any Person B forbidden to Person A is also forbidden to person A's descendants; but this particular prohibition (2) does not apply if any of the following hold
 - a. Person B is the spouse or the *she'er* of a sibling or half-sibling of Person A;
 - b. Person B is a more distant relative of a sibling or half-sibling of Person A;

Clauses 1 and 2 are derived from the verse: "the nakedness of your mother you shall not uncover, she is your mother" (Leviticus 18:7). Rav Yeshuah believed the statement "she is your mother" should actually be read "she is your ancestor". Rav Yeshuah, accordingly, argued that ancestors and likewise descendants should be equally forbidden.

Let us consider some examples of clauses 1 and 2 of the Ancestor-Descendent Rule. One's mother is forbidden to oneself. As a result of clause 2, one's grandmother is also forbidden to oneself because she is forbidden to one's mother. A second example: one's sister is forbidden to oneself (see Leviticus 18:10). As a result of clause 1, one's own sister is forbidden to one's grandmother. As a result of clause 2, one's grandmother's sister is also forbidden to oneself because she is forbidden to one's grandmother.

Let us now explain the exceptions to clause 2, that is clauses 2a and 2b. Assume that Man A's niece is the *she'er* of his brother. Clause 2 does not serve to perpetuate the prohibition on Man A's niece to Man A's son. In other words, Man A's son may marry his own cousin. Indeed, Rav Yeshuah includes clause 2a and 2b only because the daughters of Tzelophchad married their cousins (Numbers 36:11). Because one's cousins are Scripturally permitted to oneself, Rav Yeshuah reasoned that all the more so

they should be permitted to one's descendants and thus the descendant rule does not apply in this scenario.

Rav Yosef did not accept the Ancestor-Descendent Rule. Rav Yosef argued against this rule because he held this to be an instance of forbidden 2nd degree *hekeish*. In Rav Yosef's view, the first *hekeish* is the claim that all ancestors are forbidden like one's parents. The second *hekeish* is the claim that all one's ancestors' relatives are like one's parents' relatives. In response, Rav Yeshuah argued that the rule is based on a legitimate one step *hekeish*: the claim that all ancestors are equivalent. According to Rav Yeshuah, what Rav Yosef claims as two *hekeishim* are simply two separate consequences of this one *hekeish*.

Notes on §17.10:

Rav Yeshuah reads the phrase "she is your mother" as "she is your ancestor". His reading is not entirely implausible for two reasons. First, the Hebrew term for "father" ("av") also means "ancestor" (e.g., Deuteronomy 26:5). Thus, one might expect the same from the term "mother". Second, a literal reading of "she is your mother", produces a redundant reading of a previous verse: "your mother's nakedness you shall not uncover, she is your mother" (Leviticus 18:7).

Nevertheless, I doubt the Ancestor-Descendant Rule's validity. First, aside from, Rav Yeshuah's view of Leviticus 18:7, I am unaware of any instances of "mother" being used to mean "ancestor" in the same way that "father" means ancestor. Second, even if one accepts the Ancestor-Descendant Rule's first claim that relations with one's mother are forbidden because she is one's ancestor and that by extension all other ancestors are forbidden, one need not accept the Rule's second claim that the relatives of these other ancestors are equally forbidden. For example, even if one accepts that one's grandmother is forbidden like one's mother, one need not conclude that one's grandmother's sister is forbidden like one's mother's sister.

An Additional Clause

I believe that another clause is implied in the Ancestor-Descendant Rule, although to the best of my knowledge it is never explicitly stated by the Sages⁸. Namely, clause 1 above should read:

- i. Any Person B forbidden to Person A is also forbidden to person A's ancestors; however, this rule shall not apply if
 - a. Person B has already had relations with Person A's ancestors

I believe 1a) to be implied based on two prototype cases. First, without clause 1a) one's mother would be forbidden to one's father. The obviousness of this example is crucial to my argument that clause 1a) is intended by *Adderet Eliyahu*⁹ but not explicitly mentioned. In other words, *Adderet Eliyahu* neglects to mention this clause precisely because it is so obvious.

The second prototype case concerns two cousins marrying each other, which is Scripturally known to be permitted (Numbers 36:11). Let Man A's uncle "Uncle A" be married to "Mother B" and let the daughter of Uncle

⁸ In addition to *Adderet Eliyahu* I checked *Gan Eden*, *Keter Torah*, and *Sefer Hamivhar*.

A and Mother B be Woman B. Thus, Woman B and Man A are cousins. If Woman B were to marry Man A, Uncle A would become forbidden to Mother B by the Ancestor-Descendant Rule. By the Ancestor Rule, Mother B would then become forbidden to Uncle A. This relation has already taken place, however, prohibiting the marriage of two cousins. According clause 1a), however, the Ancestor Rule does not apply to cases where a relation has already taken place, resolving the issue.

One might argue that the statement “Uncle A **would** become forbidden to Mother B” used to forbid the marriage of two cousins if disregarding clause 1a) is problematic. Indeed, this relation is forbidden only because it would forbid another relation that has already occurred legitimately. In other words, One might argue that, perhaps, none of the rules, not just clause 1) of the Ancestor Rule, are meant apply to such cases. While this would be a way to resolve certain problems, it is not consistent with the explication of the rules by *Adderet Eliyahu*; Rav Bshyatzi himself gives an example case of such a relation being forbidden (Example Case II in *§17.14b*)¹⁰.

§17.11 Rule III: The Prohibition on Relations with One's *She'er*

§17.11a The Rule

A person may not have relations with any of his *she'er*. This rule can be derived from multiple different verses. One such verse is the prohibition on relations with one's sister (Leviticus 18:9). This prohibition is also known through *sevel hayerusha*.

§17.11b Example Cases

Case I: A man may not have relations with his brother's wife. This is known by applying the present rule and the Spouse Rule (§17.9).

Case II: A man may not have relations with his great-grandmother. This is known by applying the present rule and the ancestor rule (§17.10).

§17.12 Rule IV: The Prohibition on Relations with the *She'er* of One's *She'er*

§17.12a The Rule

A person may not have relations with the *she'er* of his *she'er*. This rule can be derived from the prohibition on relations with one's grandchildren (Leviticus 18:10). One's child is one's *she'er*. One's child's child is then the *she'er* of one's *she'er*. The rule prohibiting the *she'er* of one's *she'er* is thus derived.

§17.12b Example cases

Case I: Woman A may not have relations with her biological uncle. Her uncle is the *she'er* of her *she'er* (the brother of her father).

Case II: Woman A may not have relations with her uncle by marriage (the spouse of her biological aunt). Woman A's aunt is the *she'er* of Woman A's *she'er* (the sister of her father). However, because both

¹⁰ I have taken Example Case II in *§17.14b* directly from *Adderet Eliyahu Seder Arayot Ikar Shelishi Daf 143B*

Woman A and her aunt are of the same sex, the spouse rule takes effect and the aunt's spouses are forbidden to Woman A. Woman A's uncle by marriage is thus forbidden to Woman A.

§17.13 Rule V: The Prohibition on Relations with a Pair of *She'erim*

§17.13a The Rule

A person may not have relations with a pair of *she'erim*. This rule is derived from the verse: "you shall not uncover the nakedness of a woman and her daughter" (Leviticus 18:17). The "woman and her daughter" form a pair of *she'erim*.

§17.13b Example Cases

Case I: Man A may not have relations with Woman B and her brother's spouse. Woman B and her brother form a pair of *she'erim*. Thus, if man A had relations with one member of this pair (Woman B) he may not have relations with the second member (Woman B's brother). By the Spouse Rule (§17.9), the prohibition on Woman B's brother to Man A applies as a prohibition on her brother's spouse.

Case II: A co-wife is a woman who is or was married to the same man as another woman. The prohibition on *two she'erim* prevents a man from having relations with one's mother's co-wife. Let Man A and his mother Mother A form a pair of *she'erim*. If Man A has relations with Mother A's co-wife, Mother A becomes forbidden to the co-wife by the Prohibition on two *she'erim*. By the spouse rule (§17.9), the mother being prohibited to the co-wife is applied as a prohibition on the mother's spouse(s). This prohibition includes the co-wife's and mother's shared husband and the prohibition is thus violated.

Case III: Man A and his grandfather may not each marry one of two sisters, Woman B and Woman B*. Upon Man A marrying Woman B, Woman B* becomes forbidden to Man A. By the ancestor rule, woman B* becomes forbidden to Man A's grandfather.

§17.14 Rule VI: The Prohibition on relations with a person and the *she'er* of his *She'er*

§17.14a The Rule

Person A may not have relations with Person B and the *she'er* of Person B's *she'er*. This prohibition is derived from the prohibition on relations with a woman and her granddaughter (Leviticus 18:17).

§17.14b Example Cases

Case I: Man A may not have relations with woman B and her biological aunt. Woman B's Aunt is the *she'er* of Woman B's *she'er* (the sister of her parent). Thus, Woman B and her aunt are forbidden to have relations with the same person.

Case II: Man A may not have relations with Woman B and her aunt by marriage. Upon having relations with Woman B, woman B's biological uncle is forbidden to Man A. By the Spouse Rule, this prohibition is applied to Woman B's aunt by marriage.

§17.15 Rule VII: The Prohibition on Relations between two pairs of *she'erim*

§17.15a The Rule

One pair of *she'erim* may not have relations with another pair of *she'erim*. More formally stated:

Let Person A and Person A be a pair of she'erim. Let Person B and Person B* be another pair of she'erim. Then if Person A has relations with Person B, Person A* may not have relations with Person B*.*

For example, two brothers may not each marry one of two sisters. This rule is derived from the Scriptural prohibition on the daughter of one's father's wife (§17.15c) - that is, one's step-sister. One's step-sister and her mother form a pair of *she'erim*. Likewise, oneself and one's father comprise a pair of *she'erim*. Once one's father has married one's stepmother, one's stepsister becomes forbidden to oneself.

§17.15b Example cases

Case I: A man and his father may not each marry two sisters. A man and his father form a pair of *she'erim*; likewise, a woman and her sister form another pair of *she'erim*. Thus, a man and his father cannot marry a woman and her sister, because it would violate the prohibition against two pairs of *she'erim* having relations.

Case II: Man A and his grandfather may not each marry one of two sisters, woman A and woman B. Let us say that Man A first marries Woman A. Then Woman B becomes prohibited to Man A's father. By the ancestor rule, Woman B is thus also prohibited to one's grandfather.

§17.15c The Scriptural Prohibition on one's step-sister

The derivation of Rule VII, *i.e.*, the prohibition on relations between two pairs of *she'erim* (§17.15a), relies on the prohibition on relations with one's step-sister. The Sages held that this prohibition is found directly in Scripture. Understanding why requires an in depth analysis of the verse: "the nakedness of your father's wife's daughter you shall not uncover, she is begotten of your father, she is your sister" (Leviticus 18:11).

The Sages rejected the literal reading of this verse. Literally, the phrase "begotten of your father" ("*moledet avicha*") indicates that the woman in question is one's father's daughter. Thus, if the woman referred to as "one's father's wife's" is one's mother then her daughter would simply be one's sister. Alternatively, if "one's father's wife" is not one's mother, then the daughter would be one's half-sister. The verse's literal reading is thus prohibiting one's sister and/or half-sister. This being the verse's literal

reading is further supported by the fact that the verse states “she is your sister” and that the standard-term “sister” literally includes full-sisters as well as half-sisters (“Notes on §17.7a”).

However, as noted above, the Sages rejected this literal reading. They argued that one’s *half*-sister had already been forbidden by an earlier verse: “the nakedness of your sister, your father’s daughter or your mother’s daughter, begotten of your father’s house or begotten outside, you shall not uncover their nakedness” (Leviticus 18:9). Furthermore, they argued that this earlier verse likewise forbade one’s *full* sister firstly because the term “sister” used in the verse includes full sisters. Secondly, Scripture would not first forbid half-sisters in Leviticus 18:9 and only afterwards full sisters (Leviticus 18:11). Then, according to Leviticus 18:11’s literal reading, Leviticus 18:11 forbids the half-sister and full-sister a second time. The Sages argued that the prohibition would not be repeated twice in short proximity and in the same context. They thus concluded that Leviticus 18:11 is referring to one’s father’s wife’s daughter, who is **not** one’s father’s daughter. In other words, Leviticus 18:11 refers to one’s step-sister.

This interpretation, however, raises an additional question. The Sages’ contention that Leviticus 18:11 prohibits one’s step-sister seemingly contradicts the latter half of the verse: “the nakedness of your father’s wife’s daughter you shall not uncover, **she is begotten of your father, she is your sister**” (Leviticus 18:11). If the Sages were correct that the verse refers to one’s step-sister (through one’s mother), why does the verse state that the woman in question was “begotten of your father” and that “she is your sister” (step-sisters are not included in the standard term definition of “sister”)?

The Sages answered that the phrase “she is begotten of your father, she is your sister” is hyperbole. In other words, the verse is stating: “do not have relations with your step-sister, that would be like having relations with your actual sister from your father’s house”¹¹. A similar example of hyperbole is found in the prohibition on one’s aunt by marriage. The standard-term aunt (“doda”) refers only to biological aunts. Yet, the prohibition on one’s aunt by marriage reads: “you shall not uncover the nakedness of your father’s brother, you shall not approach his wife. She is your aunt (“doda”)” (Leviticus 18:14).

§17.16 Rule VIII: The Prohibition on Relations Between a Pair of *She’erim* and a Grandparent-Grandchild pair

§17.16a The Rule

Rav Yeshuah held that a grandparent-grandchild pair may not have relations with a pair of *she’erim*. Rav Yosef rejected this rule, however. More formally this rule can be worded as:

Let G and C be a grandparent and grandchild pair. Let A and A be a pair of she’erim. If G has relations with A then C may not have relations with A*.*

¹¹ The contention that the phrase “she is begotten of your father, she is your sister” is hyperbole is further supported by the construction of Leviticus 18:11. The verse first gives a command “the nakedness of your father’s wife’s daughter you shall not uncover”. Then gives a reason for this command “[it is as if] she is begotten of your father! she is [like] your sister!”. Thus, the phrase “she is begotten of your father she is your sister” is not actually describing the relation in question. If this were the case the verse would have read instead: “the nakedness of your father’s wife’s daughter, begotten of your father, your sister, you shall not uncover”.

The rule above is derived from the Scriptural prohibition on one's father's step-sibling (§17.16c), whom we call Person A. Let Mother A be Person A's parent. One's grandfather is married to Mother A. Furthermore, Person A and Mother A are a pair of *she'erim*. The Torah informs us that one cannot marry person A (ie: one's father's step-sibling, see §17.16c). Using *she'er* based hekeish alone, we would thus conclude that a pair of *she'erim* are forbidden to a person and the *she'er* of his *she'er*. However, Rule VIII gives a more limited conclusion: the rule specifies that it does not suffice for this first pair to consist of a person and any *she'er* of his *she'er*. Rather, the pair must consist of a person and his grandparent. Why is this so? Rav Yeshua recognized that such an interpretation would prohibit cousins, who are scripturally permitted (Numbers 36:11). A woman and her uncle are a person and *she'er* of *she'er* pair. That woman's cousin and his mother are a pair of *she'erim*. Yet, according to scripture a woman may marry her cousin.

§17.16b Example Cases

Case I: A man and his grandfather may not each marry one of two sisters, woman A and woman B. A man and his grandfather form a "grandparent-grandchild" pair. Furthermore, Woman A and woman B form a *she'er* pair.

§17.16c The Prohibition on one's father's step brother

The derivation of Rule VIII (§17.16a) relies on the prohibition of relations with one's father's step-brother. Rav Yeshuah held that this prohibition is found directly in Scripture. Namely, he held that the term brother in the verse: "you shall not uncover the nakedness of your father's brother you shall not approach his wife" (Leviticus 18:14), is a Torah term that includes the notion of "step-brother".

Rav Yeshuah's reading of the term "brother" was based on the Torah's usage of the word "sister" in Leviticus 18:11. As previously noted, Rav Yosef had understood one's step-sister to be referred to as one's "sister" as a form of hyperbole (§17.15c). Namely, this was seen in the verse: "the nakedness of your father's wife's daughter you shall not uncover, she is begotten of your father she is your sister" Rav Yeshuah, however, held that this verse was not only engaging in hyperbole but also defining "sister" as a Torah term that encompasses "step-sisters" in its definition. Rav Yeshuah argued that likewise the term "brother" can refer to one's "step-brother".

Rav Yeshuah further argued that in some of the other verses following the redefinition of the term "sister", the Torah qualifies that it is only talking about the type "sister" that is also one's *she'er*:

1. "You shall not uncover the nakedness of your father's sister she is your father's *she'er*" (Leviticus 18:12)
2. "You shall not uncover the nakedness of your mother's sister because she is your mother's *she'er*" (Leviticus 18:12)

Rav Yeshua took this to imply that when the Torah uses the term "sister" or "brother" but does not specify that the sibling in question is one's *she'er*, then it must be referring to one's siblings and one's

step-siblings who are not one's *she'er* but who, according to Rav Yeshua, are included in the Torah term "brother" and "sister". Because the prohibition on one's father's brother makes no mention of one father's brother being one father's *she'er*, Rav Yeshuah concludes that the term brother in this context includes one's father's step-brother.

Notes on §17.16:

The Torah-Term "Brother"

Rav Yeshuah derives the Torah-term "brother" by likening it to the Torah-term "sister". This derivation is problematic because one may not make *hekeish* on a Torah term (§6.2b). Furthermore, unlike in the case of *she'er*, Rav Yeshua's *hekeish* is not based on the underlying standard-term.

Redundancy of Rule VIII

Logically speaking, Rule VIII follows from applying the ancestor rule along with rule V, rule VI or rule VII. To better understand this point, the reader is encouraged to compare Case III, in §17.13b, Case II in §17.14b, and Case I in §17.15b.

Part IV: The Modern Day System

§17.17 The Eupatoria Conference

As previously mentioned, Rav Yosef and Rav Yeshua first suggested the prohibitions on incest described in the preceding subsections. Their understanding of the Torah's prohibitions on incest came to replace the earlier and more stringent Karaite "rikkuv" theory. In time, Rav Yosef and Rav Yeshua's system would eventually be replaced as well. At a 1917 conference in Eupatoria, a world congress of Karaite sages suggested a new understanding of the laws of Incest. This new system was adopted by Karaites across the globe including the Egyptian Karaite community. It is still used by Karaite courts in Israel. The Egyptian Karaite scholar Murad Farag states that the following reforms were made¹²:

1. A man could now marry his wife's sister after the death of his wife (ie: Rule V does not apply)
2. Two Sisters were now permitted to marry two brothers (ie: Rule VII does not apply)
3. A brother and a sister were now permitted to marry a brother and a sister (ie: Rule VII does not apply)

I have been unable to find any information as to how the sages at the conference justified the above changes. Furthermore, I cannot conceive of any consistent system of *hekeish* that would justify these changes without also changing the laws of incest in other ways.

§17.18 Alternative Theories

I will briefly outline two alternative understandings of the prohibition on incest. Although neither was ever promoted by any Karaite sage, I investigate these hypothetical systems because I have not found any justification for the system of incest adopted by Karaite courts since 1914 (§17.17). Thus, while I do not categorically reject the

¹² *Ma'amad Halshi Clauses* 101,104-106

present system nor the system postulated by Rav Yosef or Rav Yeshua, I believe that it is worthwhile to consider more possibilities with regards to the laws of incest.

First, instead of adopting *she'er*-based *hekeish* in the fashion of Rav Yosef, I consider adopting “gender-symmetric” *hekeish*. Under this view, gender is considered irrelevant to the closeness of a relationship (eg: one’s biological aunt is considered just as closely related to oneself as one’s biological uncle). This assumption is also used in *she'er* based *hekeish*. Gender-symmetric *hekeish* differs, however, because parent-child bonds are considered different than sibling-sibling bonds. For example, gender-symmetric *hekeish* would extend the prohibition on step-sister’s to include a prohibition on step-brother’s. In contrast to the *she'er* based system, however, it would not go so far as to prohibit relations between any two pairs of *she'erim*.

Using only gender-symmetric *hekeish*, we are left with the following rules of incest:

1. Rule I: The spouse rule (derived as before)
2. Rule II: The ancestor-descendant rule (derived as before)
3. Rule III: The prohibition on one’s *she'er* (derived as before)
4. Rule IV: The prohibition on the *she'er* of one’s *she'er* (derived through gender-symmetric *hekeish* on Leviticus 18:10 and Leviticus 18:12-14)
5. A Prohibition on relations with a parent and their child (eg: a woman sleeping with a father and his son. Derived through gender-symmetric *hekeish* applied to Leviticus 18:17)
6. A prohibition on one person having relations with two siblings.
 - a. This prohibition is derived as a corollary of Rule III. For example, two sisters cannot marry the same man because a sister cannot marry her sister’s husband under Rule III and the spouse rule¹³.
7. A Prohibition on relations with a grandparent and their grandchild (eg: a woman sleeping with a man and his grandson. Derived through gender-symmetric *hekeish* applied to Leviticus 18:17)
8. A prohibition on relations with a person and their aunt or uncle. For example, one may not marry a woman and her aunt.
 - a. This prohibition is derived as a corollary of Rule IV. For example, a woman cannot marry her niece’s husband under Rule IV and the spouse rule.
9. A prohibition on step-siblings (derived through gender-symmetric *hekeish* on Leviticus 18:11)

While I believe the gender-symmetric derivation of the laws of incest to be reasonable, it nevertheless faces a challenging question. Just as Rav Yosef justified *she'er* based *hekeish* through textual arguments, it is necessary to justify gender-based *hekeish* whether textually or rationally.

The best such support I can offer is that the laws of incest are clearly based on a concern with the “closeness” of relation between the parties who will be married¹⁴. Furthermore, there is some evidence that the Torah considers

¹³ Rules 5 and 6 in this list, taken together, may appear to be equivalent to the prohibition on a person marrying two *she'erim* (Rule V). This is not so, however. As an example of where the two sets of rules differ consider the case where a man wishes to marry his sister’s co-wife. Under Rav Yosef’s Rule V, this scenario is forbidden according to the following steps:
 i) the co-wife marrying the man would result in his sister being forbidden to the co-wife.
 ii) By the spouse rule, this prohibition applies to the sister’s spouse.
 iii) However, the sister’s spouse is the co-wife’s former husband (to whom both she and the sister were once married). Because the new marriage would forbid one that has already taken place, the new marriage is forbidden.
 By contrast, if working with gender-symmetric *hekeish* the new marriage is permitted. This is because step i) does not hold. The prohibition on marrying two siblings in the case of gender-symmetric *hekeish* only applies as an application of the spouse rule. In this case the spouse rule does not apply because the co-wife and the man are of opposite genders.

¹⁴ Understanding why this “closeness” matters would greatly help in determining how far to apply *hekeish* in the case of incest. However, the answer to this question escapes me. Certainly, concerns of reducing fighting within families as well as of

the parent-child bond to be closer than a sibling-sibling bond, suggesting that Hekeish should not be based on *she'er*, but rather should discriminate between parent-child bonds and sibling-sibling bonds. What biblical evidence do we have that the parent-child bond is closer than the sibling-sibling bond? First, inheritance goes to one's children and then one's parents before it goes to one's siblings (§20.7). Likewise, when the Torah prohibits the Kohen Gadol from mourning the dead, it specifically singles out his mother and his father: "he shall not go near any dead body, for his father and for his mother he will not become impure" (Leviticus 21:11). Presumably Scripture emphasizes Kohen Gadol's parents because they are his closest kin and therefore he would be most tempted to become impure for his parents. Furthermore, Scripture considers assaulting one's parents to be a crime more severe than regular assault (Exodus 21:15), but makes no special mention of attacking one's siblings. Thus we see that a parent-child bond is often considered closer than a sibling-sibling bond. We see, however, that mother and father are treated equally by the prohibition on attacking one's parents. They are likewise treated equally in the commandments to honor and fear one's parents (Exodus 20:12, Leviticus 19:3). Finally, some sages held that mothers and fathers inherit equally from their children or that sons and daughters inherit equally from their parents, further supporting that gender based hekeish is a reasonable assumption

Nonetheless, there is also evidence suggesting that family members of the same genders are not considered to be of equal "closeness". While some sages held that sons and daughters have equal priority in inheritance, others believed a son to have priority in inheritance over a daughter (§20.7). Likewise a kohen may always become impure for his brother, but may only become impure for his sister if she is unmarried. Finally, one's tribal status is transmitted through one's father¹⁵ and genealogies in the Torah generally list only male ancestors. Therefore, it may be premature to apply gender-symmetric hekeish to the prohibitions on incest.

Seeing that there may be no way of determining whether men and women, or siblings and parents are considered equally "close", it may be reasonable to assume that the Torah does not intend us to make hekeish based on any assumptions regarding the closeness of these relatives. Other forms of *hekeish*, however, could still be kept. The following are a possible set of rules under such a system of "minimal hekeish":

1. All the literal prohibitions found in the Torah.
2. The spouse rule.
3. The ancestor descendent rule.
4. A prohibition on one's daughter derived through *kal-vachomer* on one's granddaughter.

Our inquiry into the above systems of interest, whether historically implemented (Rav Yosef's, Rav Yeshua's, and the Eupatoria system), or purely hypothetical (gender-based hekeish, or the minimal hekeish), is intended to deepen the readers understanding of the laws of incest. I am not, however, promoting any single decisive system of incest prohibitions. I believe further research is required before arriving at such a conclusion.

preserving genetic diversity might be good guesses as to why we should avoid incest, but I have found no reason why such concerns imply the particular laws of incest found in the Torah.

¹⁵ One example in which it is clear that tribal status is patrilineal is the story of the daughters of Tzelophehad. The daughters of Tzelophehad married relatives within their tribe so that their father's land inheritance would forever stay within the tribe (Numbers 36:6-7). This demonstrates that tribal status is passed through the male line, since otherwise Tzelophehad's daughters could have married outside their father's tribe.