

The Responsum of Rabbi Yaakov Emden

from Sheylot Ye'avetz, vol. 2, no. 15

You ask about the issue of *pilegesh* (i.e., a non-marital sexual relationship)—to which I alluded in an earlier responsum—to clarify for you if this [kind of relationship] is a definite prohibition, as it is considered by *Rambam* (twelfth-century Maimonides—Rabbi Moshe ben Maimon). And you requested also to know more clearly exactly how and what is [a situation of] *pilegesh*.

RESPONSE: I will address your last question first. Our version [of the discussion in the Talmud] is thus: “What are wives and what are *pilagshim*? Rabbi Yehudah said in the name of Rav, ‘Wives [are acquired] through religious marital rites and a *ketubah* (marriage contract), and *pilagshim* without marriage

and *ketubah*'" (Babylonian Talmud, *Sanhedrin*, 21a). It is also mentioned there that the sages decreed a ban on *yichud* (an unchaperoned encounter) with an unmarried woman [instituted on account of the tragic rape of Tamar, one of King David's daughters, by her stepbrother Amnon, during an unchaperoned encounter (II Sam. 13)]. I have previously written on this matter that this ban certainly does not at all apply to [the context of] *pilegesh*. For, besides the fact that we find in Scriptures [mention of *pilegesh* relationships] even after the incident concerning Tamar, how kings and great men took concubines for themselves [and were thus involved in nonmarital relationships]—we [also] find in the Talmud, in the first chapter of the tractate of *Yoma*, an account of a sage who [upon reaching a village during his sojourns] would declare [to the local single women]: "Who, amongst you, wishes to be with me for the day?" And the Talmud comments there that "he would look for someone to be with him privately" (Babylonian Talmud, *Yoma* 18b).

And although a *pilegesh* constitutes a nonmarital status in religious law, as she is without marriage, she is nonetheless forbidden to be with another man as long as she is in a private relationship with this one because of the prohibition against prostitution, which is biblical. And also to determine the parentage of each child [should she become pregnant], which is the reason she needs to wait a period of three months if she leaves the first man and chooses to marry or to live

exclusively with a second. Therefore, they did definitely not decree a ban against unchaperoned involvement with an unmarried woman, except in instances when she was not in an exclusive relationship with him, so that the daughters of Israel shall not become licentious as the prostitutes and because of the incident of Amnon and Tamar. Which is not here applicable [because there is an exclusive relationship]. And we need also to conclude therefore that [sexual relations with a woman in the relationship context of] *pilegesh* would not incur the implications of premarital sexual intercourse between a ritually engaged couple, which is considered licentious because when such a couple does marry, it will be by the conditions established by the rabbis, and it is they who considered such an act as licentious if it was not performed in accordance with their established rites for marriage, [as is implied in the Talmud]: "one who marries, does so by the conditions set forth by the rabbis" (Babylonian Talmud, *Gittin* 33a). Likewise, to an instance of a *pilegesh* [relationship] there would not apply the law of "a bride without a blessing (i.e., the marriage ritual) is forbidden to her groom as a menstruating woman," which is also why they instituted in the marital blessings the blessing "and who forbade to us those [ritually] engaged to us" (Note: In ancient times, and even today among the ultra-Orthodox, becoming engaged to marry entailed a prenuptial ritual ceremony that bound the couple to one another, short of consummation, as man and wife, re-

plete with all related legal implications, including marital fidelity and, consequently, adultery, and requiring a divorce-like ceremonial in event of termination)—all this for the same reason [of “one who marries, does so by the conditions set forth by the rabbis”].

And all of this is not applicable but for one who takes a complete wife, through whom he benefits legally in four ways, and she through him in ten ways. And therefore does he need to engage her in accordance with the ordinances established by the sages [because each is bound to the other with certain legal responsibilities, certain expectations of obligations to and from one another] with ritual marital ceremonial. Unlike as with a *pilegesh*, who—as the term connotes—is but *p’lag ishah*, half wife, for whom such ordinances were not decreed because she lives with him without marriage or *ketubah* but is in an exclusive relationship with him for a certain time and for certain benefits, all of which are determined between the two of them. This is the way the matter appears to me. But nevertheless her legal status is as that of a single woman in all circumstances, and all this when they live together in an exclusive relationship. . . .

However, the *Ramma* (sixteenth-century Rabbi Moshe Isserles) writes in his work that the *pilegesh* [form of relationship] was *permitted only for a king, but not for a commoner*. And it is not known from what kind of source is this new concept known. For

it appears that it is contrary to what is revealed in the Scriptures, [where *pilegesh* relationships are associated also with men who were not kings]. Nor have we found any precedence for his view in the Talmud or in rabbinic writings. And it seems to me that he relies on the mention in the Talmud of prominent men being considered as kings in terms of their being known by the masses, whereas a layman would not be known by the masses, and that those mentioned in Scriptures as being with a *pilegesh* were men of prominent stature, and who were thus known to the public. And [,further, the *Ramma* probably also based his ruling on the opinion that] they would enter into seclusion with her but that they did not have sexual intercourse with her. And even if this is indeed so, that according to the rabbis [of the Talmud] it is forbidden [unless he is a public figure], we would have no proof from these instances, [for they speak of engaging in transient relationships, such as during travels away from places of residence, situations in which sexual liaisons could result in offspring of different geographical locations who might one day marry one another, unaware that they share the same father, which is why such relationships might only have been permitted to public figures]. And it is because of the ban of Rabbi Eliezer [that “one should not marry a woman in one place and marry another in a second place lest the world be filled with immorality, for then shall a brother marry a sister”] that they ruled so, which is not relevant to a situation

where there is an exclusive *pilegesh* relationship in his place of residence, in which case the relationship would certainly be public knowledge in all regard. And thus there would be no issue of “lest a brother marry his sister, and a father his daughter.”

Moreover, I have found, in the course of my bibliographic search, the responsa of *Ramban* (Rabbi Moshe ben Nakhmon), where he challenges the ruling of *Rambam* (Maimonides) on this subject and where he replies to his inquirer as follows, and these are his words: “I do not know why there is any question about [the permissibility of a *pilegesh* relationship], for she is certainly permissible because she is in an exclusive relationship with him. Casual sex, after all, was not forbidden but by the teaching of Rabbi Eliezer [that a man should not have a relationship with different women in separate locations, etc.] But if he brings her into his home and she is exclusively with him, and thus her children would be known to him and are called by his name, she is permitted, for King David [engaged in such relationships] and we do not find anywhere, not in Scripture and not in the Talmud, any distinction between a king and a commoner regarding this matter. And we indeed find that the great men of Israel [engaged in such relationships]. And if you will argue that the Judges were considered as kings, then you thereby support by your own words the permissibility [of such relationships] to the spiritual masters. . . .”

Now, even though *Ramban* supports my contention and I have shared his conclusions on the issue, it will not satisfy us that he brought proof from the fact that King David engaged in such relationships, for from King David and from the ancient Judges of Israel we have no proof because they were around prior to the ban against unchaperoned encounters with single women, which was not enacted until after the incident of Amnon and Tamar, and *pilegesh* relationships continued nevertheless afterward. And because it was always permissible, it remained permissible and was not included in the ban. Rather, [*Ramban*] should have brought his proof from the grandson of King Rehoboam, [who reigned several generations after King David and thus after the incident of Amnon and Tamar, when the ban was already in force]. And still this sort of proof would be up for question by those who remain skeptical [about the permissibility of *pilegesh*], for just because these post-Davidic kings did so does not mean they necessarily did the right thing. And that which *Ramban* writes—“you thereby support by your own words the permissibility for the spiritual masters”—puzzles me, for how can such a great rabbi have overlooked the talmudic ruling that it is unquestionably permissible for a prominent sage due to his exposure to the public?

Nevertheless, I rejoice in the fact that further reading of [*Ramban's*] teaching on the matter bears

out a conclusion synonymous with my own: that it is completely permissible. He continues as follows: "And lest you claim that it may be permissible by biblical law but prohibited by rabbinic law, where in the Talmud was such a decree recorded? And in what period did this law change [from being permissible to becoming forbidden]?" And it is important to note that what he writes thereafter—that "if he wished to be [in a *pilegesh* relationship] so that she is not bound to him and is therefore not forbidden to other men, then he has that option"—should not be misconstrued to mean that she may be with other men while she is already in a relationship with someone. God forbid to attribute such a notion to the [Ramban]. For she is certainly forbidden to any other man so long as she is already in a special relationship with someone. And if she renders herself accessible to anyone, then she certainly becomes like a prostitute, [which is forbidden]. Rather, [Ramban's] intent, when he wrote about her not being forbidden to other men, was that if she were to leave him, she would not require a *gett* (ritual divorce), [unlike] a married woman, who is free to be with another man only if she acquires a *gett* and who, if she failed to get divorced first, remains married as before, even though she has left her husband. Whereas, concerning [a woman in a *pilegesh* relationship], the moment she ceases cohabitation with the one she was with, the prohibition [against her being with another] is lifted and she may marry or live with another man by word alone

(i.e., without any document declaring her marital status). And by the mere act of her leaving his house and no longer sleeping with him, she automatically resumes her status as a single woman after waiting the three-month period [for determining parentage in case she is pregnant]. So in virtually all matters of the ruling on this issue have I concurred with the masterful *Ramban*, except in the matter of reconciling this ruling on the issue with that of *Rambam*. And that which *Ramban* writes—that even according to *Rambam* there would be no clear prohibition against a *pilegesh* relationship for a commoner, that even in his Laws of Kings he does not state that it is permissible only to a king—puzzles me greatly because he clearly spells out the permission for a king and the prohibition for a commoner. Perhaps *Ramban* was in possession of a version of *Rambam* different from ours.

Nonetheless, this ruling, which *Rambam* introduced anew from his own mind, [that the *pilegesh* relationship is allowed only to a king] must have come to him through some kind of prophecy, it seems, because if it is indeed as he says, where do we find anything like it, that something that was generally prohibited was, however, permitted to a king? Besides the fact that *pilegesh* was never forbidden in the first place but, on the contrary, was permitted in the Scriptures. On the other hand, we find that, quite to the contrary, the law was far more stringent for a king than for a commoner, and specifically in regards

to the related issue of marriage, in which kings were forbidden to have more than eighteen wives, whereas anyone else was allowed to have as many as they could properly care for. Nor were kings allowed to have excess of horses, or of gold and silver, etc. (Deut. 17:16–17), whereas no such limitations were placed on commoners. In my commentary on *Rambam* (*Mishnah Torah, Hilchot Ishut*, pt. I), I wrestled with the issue on [Ramban's] behalf and set it straight for him. And these are the words of *Rambam* there: "Therefore, one who has casual sex with a woman—that is, without marriage—deserves to be flogged, for he has had intercourse as with a prostitute." And on this statement, [Ramban] challenges him and argues: "A prostitute is only someone who renders herself accessible to all men, etc." And about that I wrote how I did not feel that there was any dispute, for *Rambam* also held that a prostitute is only a woman who renders herself accessible to all (*Mishnah Torah, Hilchot Na'arah B'tulah*, end of chap. 2). But there are other questions he asks about the implications of *Rambam's* statement [such as: If a woman who engages in casual sex is indeed considered as a prostitute,] why would a man be required to pay a fine to a father for seducing his [minor] daughter? But this, too, presents no difficulty because of what we have established: that a prostitute is she who has set herself up to be accessible and ready for sex with any man who happens by—exactly what *Rambam* clarifies at the end of the second chapter

of the Laws of the Young Virgin. The Torah's institution of fines rather than flogging for the seduction of a young maiden thus applies to a situation where the resulting sex act occurred in the moment, just that once, and without the knowledge of her father, and where the girl was not set up for it, which would be highly unusual and is rarely to be found. However, if a father did set up his virgin daughter to have sex with anyone, he causes the land to be filled with evil. And one who does set up his daughter to that, she becomes a prostitute and both parties to the sex act are liable for flogging. And it is clear in this law that such would not apply to one who was seduced, where she was thus not open and ready for the act but had to be talked into it.

But concerning the issue of *pilegish*, there is conflict in opinion, for there *Rambam* prohibits it for a commoner and *Rabad* (twelfth-century Rabbi Abraham Ibn Daud) permits it to all in the context of an exclusive relationship. [And perhaps *Rambam* permitted it to a king alone because among commoners she might become as a sex object, moving from living with one to living with another and for sex alone, whereas a king's concubine becomes forbidden to anyone else and remains in an exclusive relationship with the king at all times, and is prohibited to anyone else under pain of death even after the king has died or if the king sends her away, and she is even then permitted only to the king's successor. And it is thus that *Rambam* had no difficulty with the fact that

the Judges of Israel or prominent religious leaders engaged in *pilegesh* relationships because he considered them as kings, who would not abuse this sort of context of relationship, as commoners would be more prone to do. And as the Talmud teaches: "Sons of the sages are as the sons of the kings" (Babylonian Talmud, *Semakhot*, chap. 3). And that is perhaps the reasoning behind *Rambam's* ruling on *pilegesh*.]

Rabad, however, did reason thus but ruled that because *pilegesh* had been permitted, it had been permitted to all men because we do not find a prohibition against it delineated in the Torah. And he felt that in the context of exclusive relationship, she would be sufficiently protected from becoming licentious. And I found in the responsa of the *Radvaz* (fifteenth-century Rabbi Dovid Ibn Zimra) where he reasons on the issue of *pilegesh* as I have on behalf of the *Rambam's* ruling and distinguishes between incidental sex and sexual intercourse in the context of an exclusive relationship (*Rishonot*, no. 225). However, my way is very far from his way when he rules that incidental sex—even though the woman is not making herself accessible to all—renders her a prostitute, which is not my opinion at all. Also not of my opinion is his new decree that *Rambam's* restriction of *pilegesh* for a king only is because the sages ordained it so, lest she would be too embarrassed to immerse herself ritually (following menstruation) for a commoner, whereas she would not be embarrassed to do so for a king or leader. I do not agree with him on

that, and who would indeed pay heed to him on that matter, for there is no flavor or fragrance to this line of reasoning, nor evidence of any substance.

And regarding the argument of the decree against unchaperoned liaison with a single woman, this is certainly a fence to protect values of the Torah, for two reasons: either to prevent forbidden intimacy or—worse yet—because of the prohibition against sexual contact with a menstruating woman [or a woman who has not performed ritual immersion since her last period]. Because she is not in an exclusive relationship with him, she will not have immersed by the time they find themselves in spontaneous contact. And by then, the fires of her passion have already been aroused and there is no time for immersion. And if you will say that this does not render her a prostitute because it was a spur-of-the-moment, incidental act, which is not considered prostitution, the sages nonetheless might have feared that a single woman could find this spontaneity favorable and end up allowing herself to be seduced by one man after another and thus become a prostitute, which is forbidden by the Torah both for her and for anyone who has sex with her in that context. But this is inapplicable to the situation of *pilegesh* (a committed, nonmarital relationship), for she is exclusively in relationship with a man, and in such a context did the sages not ever ban the unchaperoned liaison with a single woman, just like they did not ban unchaperoned liaison with the woman one is married to; there

is no difference between this one and that one because both are permitted to him. And according to the simple meaning of the Torah law regarding these matters, the *pilegesh* has no more a reason to be embarrassed about immersing in the public *mikveh* (ritual pool) than the married woman. And we have no right to issue some new decree that it is embarrassing for a nonmarried woman to immerse in the public *mikveh* [and that a nonmarital relationship should therefore be forbidden]. For if you do so, you will also bring ill-repute upon the saintly ones of ancient times [who were engaged in such relationships], and not only upon those mentioned in the Scriptures—which account for a period during which the *pilegesh* relationship was commonplace and fully honored and acceptable—but also upon the rabbis recorded in the Talmud, who were known to engage in such relationships, such as the Talmud's mention of the rabbis who would engage women to be with them for a day during their visit to a village (Babylonian Talmud, *Yoma* 18b), and certainly it was without marriage rites or a *ketubah* (marriage contract), as it is said there, and there was no question about it.

Moreover, *Radbaz*, in his responsum on the issue, further writes: "And know that even *Ramban*, who permits *pilegesh* relationship, if he were to live in our times, he would forbid it because of the sexual licentiousness that prevails now. And thus did *Ramban* add to his responsum: 'And you, O rabbi, in your

place you ought to warn your people against the *pilegesh* relationship because if they knew that it was permitted, they would engage licentiously in sexual activity and would end up having sex with women who are yet in their menstrual states. . . ."

And this is the additional text that *Radbaz* published on his own and attributed to the responsum of Nakhmonides in order to forbid the *pilegesh* relationship and to construct a fence around it, something that was unheard of until then. In fact, he went contrary to his own reasoning because to allow alternative options of sexual relationships that are not in violation of Torah principles, would—on the contrary—reduce, not increase, sexual immorality. For there is no comparison between the choices of one who has bread in his basket and one who hasn't (i.e., people who have options available to them will be less likely to take their passions beyond moral expression). Indeed, we find that the sages often permitted that which was ordinarily forbidden by them in circumstances that did not violate Torah principle. Not only that, but in some situations they declared that it is better even for a colleague to trespass a secondary prohibition than to otherwise end up trespassing a major one. . . . And here we are dealing with an issue about which there is no prohibition—[not by the rabbis,] not even by the Torah. And it is an issue that even if it arose upon the mind, as it arose in the mind of Maimonides, that there is some reason to suspect that it might be forbidden, nonetheless, in our time

it would be appropriate to permit it because of the much greater evil that would result from withholding such permission. . . . As the *Radbaz* himself admits, people are trespassing boundaries in sexual morality, and this is certainly so also in our time and in all places because the door of permissibility has been shut in front of their faces. Because if the people knew that the *pilegesh* relationship was allowed, they would definitely not be stumbling over serious trespasses of sexual morality. It therefore seems to me that we ought to be teaching in public that a person is allowed to be in a *pilegesh* relationship, in order to rescue them from serious violations that are occurring daily. And definitely will people desist from severe transgressions, such as sexual intimacy with a woman who is married or who is in her menstrual state, or with prostitutes, or with daughters of other religions. Nor will they come to waste seed. And why should we continue to impose this prohibition without cause, to place such stumbling blocks that are based upon and perpetuated by a stringent ruling that has absolutely no premise to support it? And "is it not enough what the Torah has forbidden, that we need to add further prohibitions?" (Jerusalem Talmud, *Nedarim* 9:1 [25a]). . . .

. . . Bottom line, all the early authorities agree on the issue that the *pilegesh* relationship is permitted. And though they might also have seen the negative opinion of Maimonides, it did not affect their rulings because they had no idea what his premise

was for forbidding it, completely contrary to the scriptural evidence permitting it. Also, all of the latter-day authorities in *halakhah* were silent about this subject, and their silence about it is tantamount to their admission and decision concerning its permissibility. And even according to those who prohibited it, their ruling is nothing but some brand-new decree invented from their hearts and without root or substance. It therefore appears to me that we ought to pay no mind to the conclusion of the *Radbaz*, who forbids the *pilegesh* relationship based on a responsum of the *Rash* (fourteenth-century Rabbeinu Asher) regarding a woman who was hired to tend to the house of a man who then engaged her in sexual relations. There, the *Rash* ruled that the rabbinic court may compel him to dismiss her from his home because it is known that she will be embarrassed to immerse. And *Radbaz* comments on this: "If *pilegesh* is permitted, why do we compel him to dismiss her from his home?" But the *Rash* is correct in his ruling because she is not in a relationship with this man but is in his hire for the expressed purpose of tending to his house, and he is taking sexual liberties with her. It is obvious, then, that she is not a *pilegesh* but is being treated like a prostitute, which is forbidden, and there is no way to determine seed from seed, [and it can lead to brother marrying sister because there is no clarity of parentage if she were to become pregnant]. And he will be violating the prohibition against sex with a menstruant woman because she is certainly

embarrassed to be seen immersing, as she is not known to be in any *pilegesh* relationship at the time and she is not in an exclusive relationship with him, nor does he desire her as a partner other than a means of satisfying his lust in a wrongful manner, like the sweetness of stolen water (Prov. 9:17). So we must here certainly rule that he is forced to send her away, which is not the case with a *pilegesh* who—from the very start—would be specifically and knowingly involved with him for the purpose of intimate relationship and therefore have no cause for embarrassment when she immerses following her period, just like a wife, because she is with him permissibly. . . . I am appalled at such a great rabbi like *Radbaz* that he would lump a housekeeper in the same category as *pilegesh*! Does it sound reasonable that when a man hires a woman to keep house for him that it is then also assumed that she will be his lover? Who ever heard of such a thing? Rather, *pilegesh* is a publicly known situation and she is in an indiscreet and exclusive relationship [with whomever she is with at the time], and there is no issue of adultery, as there would be with someone else's wife. . . . and her children maintain full claims to the lineage of the man who fathered them. . . . and we do not have to worry about illicit relations during the menstrual state because she has no reason to be embarrassed to immerse. . . . and so on. There is therefore not so much as a hint of any prohibition whatsoever against the *pilegesh* relationship in the responsum of the *Rash*. In fact, he

does not particularly reveal where his opinion leans on the subject, whether to the side of Maimonides or to that of his opponents. And it is more likely that we can join him to the side of those who permit it than to consider him silent on the matter altogether.

After I had written all that appears to me regarding this issue, I thought that I had fulfilled my obligations concerning all this, to establish the *halakhah* and decision that the *pilegesh* relationship is permitted. But then came to me the responsum of *Rivash* (fourteenth-century Rabbi Yitzchak ben Sheishet), and behold he stands against me with the appearance of a brazen warrior of wisdom, reinvigorating the force of stringency, to strongly forbid [*pilegesh*]. And I am forced to examine also his words before I can arrive at a conclusive chapter to this matter, to see what root is to be found [in his argument], unto which to add or from which to detract something about this subject. [Most of his arguments parallel those of others with whom we have already dealt above. But his main argument is that *pilegesh* is a single woman, and unchaperoned liaisons with single women were banned by the court of King David after the rape of David's daughter Tamar by her half-brother Amnon]. . . . But the *pilegesh* is not like the single woman with whom the ban against unchaperoned liaison applies. [*Pilegesh*] means *p'lag ishah* (partial wife), and she is like a single woman only in regards to her not requiring a *gett* (ritual divorce) and that one who has sex with her while she is in rela-

tionship with another is not committing adultery and thus not liable for capital punishment, albeit he is violating the prohibition against prostitution (Rabbi Emden's opinion—not necessarily everyone's definition of prostitution).

He also writes that because the ban against unchaperoned liaison with a single woman was established by the court of King David, there is therefore no mention of *pilegesh* relationships from King David's time and on except in Solomon's household. Thus his proof that the ban concerning single women applied to the *pilegesh* as well. However, it must have slipped by him that Rehoboam, [who lived several generations after David], had sixty *pilagshim*. . . . The *pilegesh* is not fully a single woman but half a wife, and because she is permitted to live with a man according to the Torah, it is then clear that when she ceases to live with him, she returns to the full status of the single woman she was before. This is like the married woman who, as she entered the marriage with a document, so she leaves the marriage with a document. So with the *pilegesh*: As she entered the relationship by living with him, so does she end the relationship by not living with him and by removing the exclusive nature of the relationship at the end of whatever time period that was mutually agreed upon by both parties, or because she wishes to leave him, or because she had sex with another man while still living with the first, or if he abused her or did not uphold whatever they agreed between each other.

In such circumstances she simply leaves him; as she came in by word, she leaves by word. And she does not have to uncover her head in the marketplace (i.e., publicize her single status), for that is forbidden for Jewish women, even single women, as Maimonides writes. (Note: Since Emden's day, single women have over time stopped covering their heads in the Orthodox community, and even many married women have done the same in the more modern Orthodox communities.) Rather, it is through the removal of the exclusive nature of their relationship alone that the bonds of *pilagshut* are severed. And there is no licentiousness in this, for we apply the principle "the way she came in is the way she goes out" also to a *pilegesh*. . . .

. . . My master Rabbi Chaim ruled that *pilegesh* is permissible but that such a relationship prevents a man from fulfilling the obligation of marriage. I do not agree with him on this point. Rather, I say that marriage is one thing and *pilagshut* is another, and both are options permitted by the Torah. So if a man wishes to marry a woman completely, to benefit through her in various ways, and she, too, wishes to merit the many benefits of marriage, and thereby he will be barred from [ever marrying] her close relatives and she from his, and anyone who has sex with her will be liable for the death penalty, then [—if this is what two people want—] the Torah mandated specifically that they perform the marital rite. And if a couple preferred to be in a *pilagshut* form of rela-

tionship because it suited them better, perhaps because the man already has a wife but needs someone who would help out with the family and be his lover as well because his wife is not always able to be with him sexually, such as during her period or when he is traveling, or perhaps because he is not married and does not wish to be bound by the weighty responsibilities of marriage; and the woman, too, prefers this form of relationship to marriage so that if the man mistreats her, she can simply leave the relationship instantly, without the hassles of acquiring a *gett* from him in accordance with all the intricate details this involves, and by simply leaving him she is free of him in so light a manner; or perhaps they do not wish to be barred from each other's close relations after they have separated—in any event, both parties might then prefer the *pilegesh* relationship to a marital one. For this reason did the Torah also present the Israelites with the *mitzvah* (sacred instruction) of the *pilegesh* relationship, which is initiated by word and ended by word. Thus do we derive from what the Torah has revealed to us in principle that it is completely permitted but it is not an obligation, but then neither is marriage an obligation, as we discussed earlier—only a precious form of *mitzvah*. But certainly the *pilegesh* relationship is a permissible option, and for those who need it, the Torah was lenient about it and did not require the marital rite. Nonetheless, exclusive living-together is required (Note: Rabbi Emden's own opinion, which he repeats

throughout this responsum without any sources or premises other than the fear that if the woman sleeps with another man while living with someone, we won't know who the father is if there is a child involved, and this, in turn, later can lead to siblings of different fathers marrying one another), and that the man not treat her lightly and allow other men to be intimate with her, for against such a thing did the Torah warn: "There shall not be a prostitute from among the daughters of Israel and the land shall not be filled with immorality" (Lev. 19:29 and Deut. 23:18) because the children born of random sexual liaisons with many partners will not know their parentage. It is clear, then, that if there is no cause for such concerns—as the children of the *pilegesh* are known to their father and claim full inheritance rights like the children of a married woman—such a form of relationship was permitted by the Torah to an Israelite as well as to a Noahide (non-Jew). And because this is not an obligatory *mitzvah* but a voluntary one, it was not articulated among the "Thou Shalts" of the Torah's instructions. And its laws are known and assumed upon humankind since the human was first placed upon the earth, and thus there is no commandment mandating that a man take unto himself a *pilegesh* as there is concerning a wife, which is a clearly stated *mitzvah*—albeit the kind that is obligatory only when it occurs, such as with the *mitzvah* of *tzitzit* (fringes) [that are knotted on a four-cornered garment, providing one has a four-cornered

garment to begin with, but one isn't obligated to go out and acquire one. Likewise, the Torah does not say that a man must marry, but "When a man takes a woman to wife . . ." (Deut. 22:14 and 24:1). A man is not required to marry, in other words, but if he decides to, the laws are such and such. And [because the *pilegash* form of relationship was an established, ancient form,] the Torah had to delineate the laws of being with a woman in such a way that was outside the realm of the then standard nonmarital *pilegash* way. And so marriage was a new law instituted by the Torah after it was given to the people, to direct them in how to do marriage versus *pilagshut*, a set of laws involving conditions for the Jewish couple desiring to be in a marriage with one another. And the option of *pilagshut* was left for us from among the customs of our ancestors and the early [pre-Sinai] holymen of our people.

And along this line, we rebut what the *Rivash* claimed, that to be in a *pilegash* relationship would mean that one would be delinquent in fulfilling the obligation to be married and that even if a man is in a relationship with one hundred women, he would still be obligated to be in marriage with each of them. . . . which is a totally erroneous argument . . . for it is not like donning a four-cornered garment without any *tzitzit* on it, but rather like wearing any number of garments that do not have four corners on them and thus not being obligated to tie *tzitzit* on them nor being thereby delinquent in fulfilling the *mitzvah*

of *tzitzit* (Num. 15:38). Even according to the opinion that *tzitzit* is obligatory in itself [and one who has no four-cornered garment is obliged to acquire one for the purpose of donning *tzitzit*], one needs to possess but a single garment with *tzitzit* to fulfill the *mitzvah*. Likewise regarding our subject matter, albeit even less so, for the Torah did not require outright that we marry, only that we "be fruitful and multiply" (Genesis 1:22 and 9:1) through legitimate means, and although this is a clear mandate in the Torah, it can be accomplished just as well in a *pilegash* relationship. But marriage with a woman is not an outright requirement in itself; rather, the Torah words it thus: "When a man takes a wife . . ." then he must fulfill specific responsibilities to her as is befitting [wives]. And I have not found so much as a hint in the Torah that for a man to be with a woman he must necessarily marry her. Only, if he desires to take to himself a woman who would belong to him completely as his wife, then he had to fulfill the requirements that the Torah instituted for the relationship context of marriage, and in that context he can fulfill the *mitzvah* of marriage, just as he would fulfill the *mitzvah* of wearing *tzitzit*, for which, too, he [performs a specific rite and] recites a special prayer [even though he is not obligated to perform this *mitzvah* unless he happens to own a four-cornered garment]. . . . And it is akin to any of the other *mitzvot* in the Torah that are not mandatory, whose fulfillment is required only if situations arise where

one is engaged in that particular *mitzvah*, not that one is obligated to create the situation in order to fulfill the *mitzvah*. So it is with the *mitzvah* of marriage.

. . . Further, *Rivash* argues that *pilegesh* is forbidden by Maimonides, who forbade sexual relations with a woman if the intention is not for marriage, but the *pilegesh* relationship is not necessarily nonmarital in the sense that it [is a committed relationship between two people and is therefore] included in the concept of marriage. And thus do we find quite often in the *t'nakh* (Scriptures) that the *pilegesh* was referred to as "wife," and in the Torah, too, for instance, where it is written: "And Abraham took a wife and her name was Keturah" (Gen. 25:1), yet we find in the Book of Chronicles: "And Keturah was the *pilegesh* of Abraham" (I Chron. 1:32). For the *pilegesh* is nevertheless part wife, though she is not as a married woman nor completely as a single woman but a bit of both . . .

. . . And about his argument that if a man lives with a woman in a nonmarital relationship it is considered like they are fully married because "A man does not intend his sexual intercourse to be casual" (Babylonian Talmud, *Gittin* 81b) [i.e., his intention must have been for the woman to become his wife], I have already responded to this above, let alone that it is clear from the Talmud that such intention needs to be openly articulated and that the woman must know that it is the man's intention that they be married through their sexual union, that it is with those

specifics that they become married, for she does not acquiesce for the sake of random sex but for the sake of marriage, and that agreement on both their parts makes the marriage. Certainly does his intercourse with her in such a circumstance become prostituted if his intentions turn out not to be for the sake of marrying her thereby. But what evidential relevance does this have with two people who engage regularly in sexual relations exclusively with one another and with mutual consent?—something that the Torah permitted without any reservation. . . . Rather, it seems that alongside every one of his arguments sits the rebuttal to it, and for every source he brings that forbids, there is one just as authoritative that permits. . . . It is appalling that *Rivash* invested so much time and effort in trying to prove something as forbidden when it has been permitted by the elders who preceded him across many generations. For even he himself admits that in Spain the practice of *pilegesh* is widespread, and indiscreetly so. And yet there is not a single one of the great rabbinic leaders through the generations who has found it worthy of any concern. On the contrary, it would seem more beneficial to codify [the permissibility of the *pilegesh* relationship] as *halakhah* (Jewish law) and to sound the announcement in a place of integrity, to declare a solid ruling for now and for future generations that the *pilegesh* relationship is completely permitted. And there is also nothing new about it, for all we will be doing is rendering permissible that which has al-

ready always been permissible. And even a prophet is not allowed to innovate a new commandment and add a prohibition to what the Torah has already proscribed, unless it is to protect the principles of the Torah herself. Indeed, we have witnessed how the early sages have been known to innovate decrees and stringencies, for we are instructed by the Torah to create observances that would preserve her precepts (Lev. 18:30 and Babylonian Talmud, *Mo'ed Katan* 5a). Nevertheless, we have never witnessed, nor have our ancestors told us, nor have our sages informed us that it ever arose in their minds to innovate a prohibition against the *pilegesh* relationship. Rather, we have known only the opposite.

Yet, it behooves us first to examine thoroughly the nature of the *pilegesh* relationship before we go about spreading its permissibility, in order that its practice be free of any possible violation that might result in the process. Firstly—even though it was never prohibited by a majority rule, but, on the contrary, its acceptance was widespread—we need to explore whether the Ban of Rabbeinu Gershom (eleventh century) [against bigamy] would be applicable insofar that a man who is already married to someone would then not be permitted to be in a *pilegesh* relationship with another woman. Secondly, we need to deal with the principle “Matters that are permissible, but the local custom is to consider them forbidden, you do not have the right to treat as permissible in front of them” (Jerusalem Talmud, *Pesachim*

4). And thirdly, perhaps we ought to forbid it . . . on the premise of those who forbade the permitted out of fear that the ignorant and the nonobservant would be thereby led to actual transgressions, such as sexual relations during the woman's menstrual state.

In regards to the first question, concerning the Ban of Rabbeinu Gershom, aside from the fact that his decree was not accepted in all lands, nor by all Jewish communities, for it never applied at all to the communities of the east or the west, only in the Germanic empire alone, and, moreover, it was influenced by the prevailing morals of the [Christians], who forbade a man from having more than one wife and even considered such a thing akin to adultery, and [so the Jewish ban against bigamy is a result of our having become assimilated among the non-Jewish nations, and] it is therefore more the reason to abrogate the decree [because it was influenced by a values system alien to our own]. But did they not also say [about the ban] that it was decreed only until the end of the 5000th (thus terminating in the Hebraic year of 5,000, or 1240 C.E.)? Moreover, [Rabbeinu Gershom's decree] must not be in violation of the commandment “You shall not add [to the laws of the Torah]” (Deut. 4:2 and 13:1), and a new decree leaves nothing to interpretation but what the text specifies, [and in the Ban of Rabbeinu Gershom, the text reads] only that it is forbidden for a man to engage a second wife while still married to the first. Thus, [based on the literal implication of the text],

the ban was not considered applicable . . . to a situation of *yivum* [the Torah-mandated automatic marriage of a man—whether already married—to the widow of his brother if his brother died childless (Deut. 25:5), in order to bring children into the world on behalf of his deceased brother].

With a *pilegish*, too, a man can fulfill the *mitzvah* of bringing children into the world in a situation where he cannot find a woman who will marry him. Or perhaps he is married already but to a woman who cannot bear children, and he is not able to divorce her either because of the strong bond between them or because her *ketubah* is worth more than he can afford (Note: In addition to being a ritual marriage contract, the *ketubah* also stipulates the amount of financial resources the husband pledges to his wife in the event that the marriage is terminated).

In regards to the second issue, the principle of “Matters that are permissible but the local custom is to consider them forbidden, you do not have the right to treat as permissible in front of them” applies only . . . to a practice of a prohibition around a matter that is nonetheless known to all as permissible but is observed as a prohibition only as a safeguard around something else that indeed is forbidden by the Torah. But neither qualification relates to the issue of *pilegish*, for it has already been explained that the *pilegish* relationship was never forbidden at all by any majority rule, nor was it ever known to have been accepted as a proscription. On the contrary, the

majority permitted it, and the words of the single one who forbade it, based on his reading of Maimonides' code, are nullified by the fact that his argument has no fuel to combust it.

And regarding the fact that our communities have refrained from the practice of the *pilegish* option of relationship, they have done so of their own volition and out of their assumption that it is prohibited. And the principle is that a custom based on erroneous assumption is not considered a custom (Babylonian Talmud, *Sofrim* 14). And we inform them that it is permissible if their custom is based on the assumption that it is forbidden. And the truth is that [the *pilegish* option of relationship] is permissible and no prohibition was ever enacted against it, even as a safeguard. It is only out of lack of knowledge that it is considered as forbidden, or perhaps the community rabbi has ruled against it, which, too, is a mistake. Bottom line, the prohibition is non-existent, not even as a safeguard. On the contrary, [the option of] *pilegish* itself is a safeguard around the Torah because it can keep one far from the commission of such wrongs as irresponsible sexuality and prostitution, and sexual liaisons with [women of spirit paths that run counter to those of Judaism], and sex [with one's wife] during the menstrual phase, and the wasting of seed [through masturbation] by men who are not married, and also by those who are married, during the period when their wives are not available to them.

[Moreover, the option of *pilagshut* is beneficial] also toward the fulfillment of the great positive *mitzvah* of bringing children into the world, [a *mitzvah*] that many times eludes even those who are married, on account of their ties to one woman alone. And thus no other people is more fitted for marriages with many women than the holy nation. Therefore did the Torah allow the Israelite man to be with many wives because he is forbidden from illicit sex (adultery and incest) and prostitution. Also, his wife, too, is forbidden to him over extended periods of time during her menstrual period or during other flows [from the womb] and after she has given birth [until her staining ceases]. And in order for him to persevere during such times, the Torah did not permit him more than one wife for naught. And also that he might increase the Jewish population. And the reasoning behind the law that [some of] the nations have instituted against polygamy is because without such a law, each country would become populated beyond what that country can accommodate for its existence. And it would be appropriate to remove the ban [of Rabbeinu Gershom] against marriage to more than one woman for a Jewish man on the basis of "And in their ways you shall not walk" (Lev. 18:3). But perhaps Rabbeinu Gershom felt compelled to institute his ban, even though it was counter to Torah law . . . because it had become life-threatening for Jews who lived among the uncircumcised [an indirect reference to the Christians] to be married to more

than one woman. And therefore I am not in agreement with what Rabbeinu Nissim (fourteenth century) wrote in a responsum, that members of communities affected by the Ban of Rabbeinu Gershom were duty-bound to observe that ban regardless of whether they remained in those communities, implying that a Jewish man from the empire of Germany who relocated elsewhere was still bound by the ban. But in truth it is not so because Rabbeinu Gershom did not come to create this decree but on account of the danger posed by the uncircumcised. Whereas in a place where the Gentiles are not concerned about whether a man has more than one wife, Rabbeinu Gershom would certainly not have instituted his ban, adding thereby to Torah law without an appropriate premise such as a safeguard to the Torah herself. On the contrary, [rather than a safeguard, such a decree would be] a detriment, contributing to the neglect of bringing children into the world and to the minimization of the sacred seed (i.e., the Jewish populace), God forbid! Therefore, there is no doubt that Rabbeinu Gershom arrived at this decree out of a compelling need and the requirement of the hour . . . which is inapplicable in a place where there is no danger from the [non-Jewish] peoples there. And this is simple and obvious.

And with regard to the third concern, [that at times the sages declared] the permissible forbidden to those who are unlearned in the ways of Torah . . . but that was in situations where there were no rab-

bis to guide the unlearned and see to it that they did things right. Whereas our situation is that, though there are indeed unlearned people in our generation, nevertheless disciples of Torah dwell among them in all these places, and the Talmud and the codes of Jewish law have become widely accessible and everyone follows [their counsel and instructions]. And thus there is no cause for concern whatsoever, as I have elaborated regarding a similar matter (in *Mor U'ktziah, Orach Chayyim*, no. 453).

Moreover, the rabbi did not seem concerned about the stringent practice of women who wait forty days before performing ritual immersion after birthing a boy and eighty days after birthing a girl, [thereby delaying also the resumption of physical intimacy with their husbands]. While he wrote numerous reasons for perpetuating it, he made no effort to abrogate it on the basis that it is not a permanent custom. And my father, my teacher, the wise one, takes him to task in his book (*Chakham Tz'vi*, no. 8), and we know that [my father] abolished this abhorrent custom in his community and instructed women not to delay their ritual immersion [beyond the time when their postpartum healing has completed]. And this edict did the women in his community follow, according to what my father spoke, for he realized that this was a stringent practice that would only lead too easily to actual transgression [on account of the lengthy period of abstinence that would result].

And so, regarding these rabbis who follow in the Ashkenazic (Germanic, Western European) customs, it would have been better had they never existed and had they never been created in this land, for they have wrought all sorts of destructive stumbling blocks upon the people, compelling many to transgress what is indeed forbidden by the Torah [in their attempts to create safeguards around what is not at all forbidden by the Torah]. Therefore, in my opinion, it is a great *mitzvah* to publicize that [*pilagshut*] is permitted. Especially is this so in our generation, when the "Canaanites" dwell in the land who so love sexual licentiousness—in particular, the spreading among our people of the immoral cult of Shabbatai Tz'vi, prince of the adulterers, which seeks the destruction of souls together with their bodies by their belief that they will bring the Messiah through the impure rites of random, indiscriminatory sex. . . . (Note: Shabbatai Tz'vi [seventeenth century] was an eccentric Turkish kabbalist who declared himself the Messiah and misled hundreds of thousands of Jews with false hopes and promises following a series of tragic pogroms in Eastern Europe that wiped out entire Jewish communities. He and his close disciples engaged in indiscriminate sexual activity, which he believed was a means of redeeming the severe impurity into which the world had fallen. He was eventually arrested by the Sultan of Turkey and converted to Islam under pain of death, though he continued living secretly as

a Jew. When he was found out, he was banished to Albania. His sect continued thriving in secret for awhile after his death, ostracized by the mainstream Jewish rabbinate and their communities.]

. . . And although I am certain that nothing harmful will result from what goes forth from under my hand, as it is taught about those who strive for the benefit of the community that sin eludes them (Babylonian Talmud, *Pesachim* 8a). . . .

—for indeed all my efforts and all my writings have been with the intention of benefiting the Jewish people and promoting harmony between them and their Father in Heaven, and I have sacrificed my soul and cast to the wind my life and all of my finances for the good of my people and for their refinement and for them to regain their full authenticity in this world and the next. And in spite of my own efforts, the faith of our people would have departed nevertheless from their lips had it not been for the fact that God has been with us—

. . . nonetheless, I do not want that a person should rely exclusively on my opinion about this subject, unless it is endorsed by the Greats of the Generation. And if [my opinion] finds favor in their eyes, may my share in all this be with them and may I be like the borrower in relationship to them, borrowing of their *mitzvah*, for I am but a subsidiary to these lions, for Yaakov, who is called also *Ya'avetz* (Yaakov Emden ben Tz'vi), is small and lowly.

Furthermore, I declare to anyone who wants

to rely upon my ruling on this matter that they should first seek the involvement of a rabbinic authority, someone who is a righteous teacher and *halakhic* decisor for his community, that [this teacher] should arrange [the *pilagshut* on his behalf so that it is certain to be in such a way] that it is permissible and clean of any hurdles, that there be an exclusive relationship. This means that the woman must be accorded a private room that is hers, and he must caution her against unchaperoned liaisons with other men, and that if she is found with other men, she will be evicted from his house instantly. And he must also instruct her to perform [the postmenstrual ritual of] immersion, and he must inform her that there is no cause whatsoever for her to be embarrassed to do so [on account of not being married]. And he must also tell her that any children born from their union are considered as legitimate as any other child of Jewish descent, providing that she keeps her part of this covenant and remains faithful to this man, whereas if she has sexual relations with another man during the course of this relationship the children will be considered like the offspring of prostitutes [, concerning which there exists no stigma in Jewish law,] and anyone who has sexual relations with her from then on will be liable [for the transgression of] “There shall not be a prostitute from among the daughters of Israel” (Deut. 23:18) for every act of intercourse with her, whether it is this man or another.

In this manner, if the couple will adhere to all that has been said above, then there will be no burden of guilt or sin to bear whatsoever in this regard. On the contrary, it will be considered a *mitzvah*, one of removing obstacles that do indeed lead to sinfulness. Even more so do Torah scholars need [to know of] this option. For “one who is more spiritually evolved than their fellow, their lustful inclination is that much greater, too” (Babylonian Talmud, *Sukah* 52a). And it is appropriate for him to have “bread in his basket” (i.e., option) and for him to be able to bring a child into the world [with a *pilegesh*] if he is unable to do so through the woman that fell unto him by lottery (i.e., the woman who was destined to be his wife). And everything is determined by the intention of the heart (Babylonian Talmud, *Megilah* 20a), as long as a person’s consciousness is directed toward the Heavens (Babylonian Talmud, *Berachot* 5b). For “the Compassionate One desires the heart” (Babylonian Talmud, *Sanhedrin* 106b) and “[God] watches over the walking of the pious” (I Sam. 2:9), so “do not be overly righteous” (Eccles. 7:16) lest you end up becoming overly wicked (Eccles. 7:17), as is evidenced by experience, both in regards to the great and to the small alike. And let this suffice. And I have already elongated on this subject matter more than necessary for those who understand and have wisdom regarding this topic. And I did this because “it is a time to do for God” (Ps. 119:126).
