

Book 162

~~Moshe S. Esh~~

CHAPTER 12
PROPOSED PRENUPTIAL
AGREEMENT

This agreement is taken from language used by Responsa Noda BeYehuda, Even Hoezer, Book 1, Responsa #56, Chasam Sofer, Even Hoezer, Book 1, Responsa #110. and Rav Akiva Eiger, Psokim, Responsa #93. The above Responsas discuss prenuptial agreements regarding a widow who is left childless, who wants to ensure that she does not fall to Yivum or Chalitzah to a brother-in-law who is totally irreligious, or is deaf or mute, or whose whereabouts are not known. The prenuptial agreement proposed extends the scope to a woman whose marriage dies and whose husband refuses to grant a Get, even after the Bet Din orders~ him to do so. It also covers the case of a husband who disappears or is incompetent mentally to give a Get.

This thesis and draft is adapted from that proposed by Ray Henkin in Prrushe Ivro, -pp. 110-117, with relevant additions. Rav Henkin proposes that the giving of a Get be effective automatically three years after the marriage dies. Rav Aaron Kotler has relevant comments in Mishnas Rebi Aaron, Responsa #60, that are incorporated in this draft. This draft also incorporates writing of the Gedolim (Sages), summarized by Rav Eliezer Berkowitz in TENAI BENESUIN UBEGET.

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The concept has the support of Rav Kook, First Chief Rabbi of Israel, and Rav Yechezkel Yaakov Weinberg, author of Responsa Shride Esh, who wrote the preface to TENAI BENESUIN UBEGET, by Rav Eliezer Berkowitz, both stipulating that the prenuptial agreement be employed only by a competent Orthodox Bet Din having expertise in all laws of marriage and divorce.

The first part of the prenuptial agreement is taken from a draft by Rav Feinstein, in Igros Moshe Even 'Hoezer, Book 6, Responsas #106 and #107. The author prefers using a time span of one year--the same time span used by Noda BeYehuda and Chasam

Sofer--rather than three years, used by

Rav Henkin. Also, rather than use the formula employed by Rav Henkin, the author reverts to
the

Pilegish formula employed by Ramban, Raavid, Rav Yaakov
Emdin, and Yaan Shel Shlomo and cited by Ramo Even Hoezer

26:1.

This formula is used in the contingency that weaknesses exist in the strategy
employed by the prenuptial agreement to enable the voiding of a marriage when a dead
marriage is used by a recalcitrant husband to imprison an innocent spouse from remarriage. In
that manner, the true intent of Halacha can be realized to demonstrate the G-d-given source of
all Jewish law from Sinai, 3400 years ago.

Furthermore, according to Halacha, even

the possible flaws in

the proposals at most creates

Sofek Kedushin-doubtful marriage.

Post facto- violation of the particular Law under consideration, according to Rambam, is

Rabbinical. Since four strategies are employed in the prenuptial agreement, even if they have flaws, at worst post-facto, there exists Sofek Kedushin -doubtful marriage-that, according to Rambam, is only Rabbinical.

When the doubts existing are multiplied, you now have, at worst, Rabbinical doubt taken to four places. Under conditions of stress, one can rely on lenient rulings even ab initio. (See Igros Moshe Rav Feinstein, Vol. 6, Resp. No. 83:3. When more than one doubt exists, then we can, ab initio, permit a remarriage, and the original marriage is null and void when it is impossible for the woman to obtain a Get. See also Responsa Basis Ov, Vol. 7, Resp. No. 11:4, middle.) This is especially true when the issue involves freeing a woman from the tremendous burden of imprisonment as a living Aguna. See Taz Even Hoezer, Chapter 17:15. We rely even on one Posek giving lenient ruling, under such circumstances.

We thus rely on Rambam, rather than Rashba, and the doubts are Rabbinical, not Deuraisa,-G-d-Given. In that manner, the respect and ideals of Torah will be advanced In the path blazed by Rav Moshe Feinstein, Rav Henkin, Rav Kook, Rav Herzog, GRO, Chasam Sofer, Noda BeYehuda, Rav Akiva Eiger, Orech HaShulchan, Chofetz Chaim, and millions of Sages for the past 3,400 years, from the day G-d gave us the living Torah to today. The Messiah will come to redeem Israel from

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their tribulations and bring peace to Eretz Yisroel. The Holy Temple will be rebuilt, and peace will reign supreme In the world.

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I ask other Rabbonim to comment and address their comments to me.

For Research and Study. Not for Actual Practice and Use

(To be recited prior to the giving the ring and pronouncing of HAREI AT MEKUDESSES LI
BETABAS ZU KEDAS MOSHE VEYISROEL

J

PROPOSED PRENUPTIAL AGREEMENT

(Jewish Date], in (Town or City, State, Country].

We, (groom's name], the son of (groom's father's name] and (bride's name], the daughter of (bride's father's name], represent that we agree that the act of marriage is conditioned upon the following:

The marriage will remain intact as long as we shall cohabit, other than when the wife is niddah, prior to immersing in a mlkva. Then the ring that I, the Groom, am giving will be intended by both of us to create halachic Kedushin. This fact is also created by the presence of

two competent witnesses: name of first witness], son of (first witness' father's name], and [name of second witness], son of [second witness' father's name]. However, in the following contingency or contingencies, one or more, the Kedushin is ab initio null and void and the ring given is intended only as a gift and not to create Kedushin.

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If a dispute and conflict arise between us, we hereby agree to arbitrate our differences before an Orthodox Bet Din. [f the differences are irreconcilable and the Bet Din orders me, the Groom, to grant a Get, and/or the Orthodox Bet Din rule, for other reasons, that I grant a Get, I, the Groom, agree to do that. In that case, the Kedushin is fully valid from this day up to and including the last time we cohabited. [Igras Moshe, Even Hoezer 6, Responsa #106 and #107.]

However, if I, the husband, (groom's name], son of (groom's father's name] refuse to grant a Get to my wife, (bride's name], daughter of [bride's father's name], then the Kedushin is null ,and void ab initio, and the ring is merely a gift one year after the last time we cohabited, Our conjugal relationship will have been one of Pilegesh.

Likewise, if I, (groom's name], son of (groom's father's name], am missing, and my address is unknown, and I cannot be summoned to appear at a Din Torah before an Orthodox Bet Din, or I refuse to appear before a Bet Din after three summonses, the Kedushin is void and the ring is a gift after one year from the last time we cohabited. Our conjugal relationship will have been one of Pilegesh.

Similarly, if I, (groom's name), son of (groom's father's name), am adjudged halachically incompetent to grant a get, because of medical or psychological reasons, then the Kedushin is null and void ab initio and the ring I, (name of

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groom], son of [father's name] presently am giving to (name of bride], daughter of (father's name], is a gift one year from the last time we cohabited. Our conjugal relationship will have been one of Pilegish.

I, (groom's name], son of (groom's father's name], and (bride's name], daughter of (bride's father's name], agree that our relationship be one of Pilegish, as recorded in RAMO, Even Hoezer, Chapter 26:1, citing Raaved, Ramban, Rav, Yaakov Emden, Tur in name of Rosh, and Yaam Shel Shlomo, providing that the woman goes to the mikvah when she is niddah; and no Kedushin was ever intended, ab initio; and we both, though living together, represent that we agree to nevertheless reserve the right to independently terminate our conjugal relationship without veto of the other spouse and begin a conjugal relationship with another spouse. This termination is effective one year after the last time we cohabited and I, (groom's name], son of (groom's father' name], am ordered by an Orthodox Bet Din to grant a Get to my wife, (bride's name], daughter of (bride's father's name], which I will refuse to grant to (bride's name], or else I refuse to appear to the Din Torah after being summoned three times on behalf of my wife, or my address is unknown, or I am adjudged incompetent, or I am lost, regardless if there exists marital discord between my spouse and myself. (See Otzer HaPoskim, Even Hoezer 26:1-6, re:

Pilegish. See also, Bais Ov, Volume 7, Responsa #11, Rav

Yudolovitz, re: court-civil marriage. See Gro Even Hoezer 26:6,7. See also Igros Moshe Rav Feinstein, Vol. 1, Responsa No. 52:4, re: civil marriage; Bais Shmuel Even Hoezer 26:2; Helkos Mechokek, *ibid.*, 26:1.2. When both groom and bride explicitly inform witnesses of no intent of halachic marriage, then no halachic marriage exists. Igros Moshe, Vol. 6, Resp. No. 79, Vol. 1, Resp. No. 74. Igros Moshe, Vol. 1, No. 82:10 (end), and Vol. 6, No. 112. See also Aruch HaShulchan Even Hoezer 42:28; 42:12, 27. See also Pirusa Ivro Rav Henkin, 4:22, page 99.]

Any other contingency represented by the groom and bride, including, but not limited to, the clauses regarding Yivom or Chalitza by a brother-in-law who is not religious, is repulsive to the wife, is deaf or mute, or is mentally incompetent, should be inserted. However, only an Orthodox Bet Din ordering a Get whose orders are not respected by the husband can precipitate that the Kedushin be, *ab initio*, nullified by the clear intent of groom and bride, one year after the last time the couple cohabit. By reference this marriage is made conditional that if I die without any child from this marriage or a previous marriage and my brother on my father's side is not religious or missing or has a physical or psychiatric problem that prevents him from giving my wife Chalitza or he refuses to give Chalitza with out any monetary payment or other condition then in all such cases this marriage is retroactively annulled.. This conditional marriage is referenced to the conditions set by Moses in the Bible to the children of the tribe of Gad and Rueven . They could only acquire their inheritance in Transjordan on the condition they join the other tribes and cross the Jordan and fight to conquer the rest of Eretz Yisroel under the leadership of Joshua . The technical stipulations recorded there apply to this conditional marriage by reference. See Aruch

Hashulchon Even Hoezer chapter 38.

However if I the groom name son of name do appear before the Orthodox Bet Din ad do follow their order to give a Get to my wife name daughter of name Or else we do not separate or else I die then the ring I am giving presently creates Halachic marriage . Our living together as man and wife is that of a married couple, not Pilegesh. . The same set of conditions as previously recorded - the conditions set by the children of Gad and Ruven from the Bible exist if I die without any child from any marriage and I have a brother from my father's side who refuses to give Chalitza or else can not be located , or is not religious, or is ill physically or psychiatrically then my marriage is annulled ab initio . Then my wife is free to get married. This conditional marriage is to be the same as the conditions imposed in the Bible by Moses on the children of the tribe of Gad and Rueven. . It is not necessary to mention all the requirements to make a conditional marriage once one mentions that the marriage is conditioned on the same mechanics -the regulations- as the conditions imposed on the children of the tribe of Gad and Rueven by Moses in the Bible when they were granted as their inheritance the lands conquered by Moses in trans -Jordan providing they accompany all the other Jews in battle to conquer all the other lands in Caanan across the Jordan. The mechanics employed in the other condition here for a conditional Marriage and Get -all follow the example of the mechanics followed by the children of the tribe of Gad and Rueven in the Bible.. See Aruch Hashulchon Even Hoezer chapter 38 for all the laws of conditional marriage .and 143 for conditional Get .

The fact of unknown address or husband being lost, either when there is marital discord or not between the spouses, or refusal to appear before a Bet Din after three summonses must be certified in writing by the Bet Din issuing the

summonses. Psychological or medical incompetence must be certified in writing by two physicians who have examined me, (husband's name), son of (husband's

father's name]. I hereby agree to waive any objections to examination by physicians appointed by the Orthodox Bet Din.

These conditions shall be repeated at the time of the Chuppah, and again at the time that we, as Groom and Bride, enter the Yichud room. They shall again be recited before cohabitation, at least the first time. All recitation shall be in the presence of two competent witnesses, or the presumption that the witnesses know we are cohabiting, since we share the same bed.

In accordance with the ruling of Rav Henkin, in Perushe Ivra, pages 115-116, and the comments of Rav Aaron Kotler, Mishna Rav Aaron, Book 2, Responsa #61, we both agree that I, (husband's name), son of (husband's father's name), herewith will write a Get and give it to my wife, (wife's name), daughter of [wife's father's name]. A kosher Get shall be written and given to my wife, (bride's name), daughter of (bride's father's name), The Get will become effective immediately -MEACHSHOV-. However it is given on the condition that it will become operational only after one year elapses from the last time that we had intercourse, we attend a Rabbinical trial, I am ordered to give a Get and I refuse. If I give a Get, the Get that I am authorizing for the Soffer [scribe] to write now and the two witnesses to sign now and witness the delivery to my wife is null and void. . If I refuse to give a new Get, only then will this Get become operational although it became effective now immediately after it is written. We are permitted to live together as man and wife

throughout the life of our marriage ., If our marriage survives than our being together is the relationship of all other married couples Halachic marriage. If our marriage does not survive and I agree to give a Get then again our being together through out the life of the marriage is the same as any other married couple Halachic marriage. If, however our marriage does not survive and I refuse to give a Get then our relationship is retroactively to be deemed as Pilegesh - the wife is a mistress. Retroactively the Rabbis will have annulled the marriage and the Rabbis will have converted the relationship to that of Pilegesh -mistress- not Halachic marriage. This arrangement is permitted not only according to Ramban and Raaved and Rosh , but is also permitted according to Rambam. . See Responsa Nodah Beyehuda Even Hoezer # 54 and 56. See Tnai Benesuin Ubeget by Rav Eliezer Berkowitz. We herewith vouch that our relationship .in that case will only be Pilegesh and never Halachic Marriage .See Rambam Garoshen 10:19 Tosephta beginning Kedushin. Only when the Rabbis do not know the intentions of both spouses do we assume that when a couple live together their intention is to create Halachic marriage. Even Rambam agrees when one of the spouses and certainly when both state in front of witnesses at the instant of marriage that under certain circumstance s they do not intend Halachic marriage that no Halachic marriage is created.see Even Hoezer chapter 41:1 See Aruch Hashulchon Even Hoezer 41;1. According to Ramban ,Raaved,and Rosh who permit Pilegesh to a commoner , not only a king, there exists no question that our relationship is Pilegegesh. As pointed out in our case Rambam would also agree since from the outset we live together in a hallachic relationships but only if certain contingencies occur that the Rabbis retroactively change the character of our relationship to Pilegesh that in such a case Rambam agrees that it is permitted even for a Commoner , not only a king.

In addition.. to writing presently a Get, we both agree that I, the husband, (groom's name], son of (groom's father's name], herewith appoint as agent anyone who reads this

prenuptial agreement, who will be empowered to write a Get for [bride's name], daughter of (bride's father's name], if he is competent to write the Get. I, (groom's name], also herewith appoint as agent anyone who is competent to sign the Get and reads this agreement and herewith appoint as agent anyone who is competent and reads this agreement to

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deliver the Get to (bride's name] no later than one year after the last day we cohabit. This Get will be given at the request of the Rabbinical court, an Orthodox Bet Din, once they have determined that a Get should be granted.

I, (groom's name], also herewith appoint one or more agents, up to one hundred or more, who will be competent and who will read this agreement, as is necessary, to write the Get, and, likewise, one or more agents, up to one hundred or more, who will be competent and who will read this agreement, as is necessary, to sign the Get, and one or more agents, up to one hundred or more, who will be competent and who will read this agreement, as is necessary, to deliver the Get to (bride's name], daughter of (bride's father's name], in accordance with the requirements of Halacha, as determined by the Orthodox Bet Din.

This language should be recited orally to the agent or agents delivering the Get, not in the presence of the agent or agents writing, the Get and signing the Get.

If I, (husband's name], son of (husband's father's name], appear before the Orthodox Bet Din and follow their order or orders to give a Get to my wife, (wife's name], daughter of (wife's father's name], then this Get I presently give is not a Get. Also the Get I presently commission the agents to write, the separate agents to sign, and separate agents to deliver the

Get to my wife one year after the time we last cohabited is not a Get.

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If I do not appear before the Orthodox Bet Din after being summoned three times, or I do appear and defy their order to give a Get to my wife, (wife's name], daughter of (wife's father's name], or my address is unknown, or I am lost, regardless if there exists marital discord or not, then the Get I am presently giving is a Get one year following the last time we cohabited. Likewise, the Get I presently commission agent(s) to write and commission separately agent(s) to sign and commission separate agent(s) to deliver to my wife, (wife's name], daughter of (wife's father's name], one year following the last time we cohabited is a Get.

However, if I do appear before the Bet Din and follow their orders to give my wife, (wife's name], daughter of (wife's father's name] a Get, then this Get I presently

write and give, to be effective one year following the last

time we cohabited, is not a Get. Likewise, this Get I presently commission the agent or agents to write, and other agent(s) to sign, and other agent(s) to deliver one year following the last time we cohabited is not a Get.

Orech HaShulchan, Even Hoezer 145:16, writes regarding the draft of a conditional Get. Aruch HaShulchan does not discuss the items in question of a recalcitrant, missing, or incompetent husband. The Get should always be in the possession of the wife. (Aruch

I, [husband's name], son of (husband's father's name), further swear that I will never annul the agent or agents to write the Get, sign the Get, and deliver the Get to my wife, [wife's name], daughter of [wife's father's name]. (Aruch HaShulchan, Even Hoezer 140:19.)

In the case of my incompetence, the Get is to become effective an instant before such a condition occurred. This is similar to the case of a sick man granting his wife a Get to be in effect before he dies. The Get becomes effective an instant before he dies, when he is still alive. (See Ramban, Gittin 84b; Mayim Amukim, Part 2, No. 5; Mahrit, Part 1, No. 66; Mahrival, Part I, Responsa 200; Knesset HaG'dol Even Hoezer 147; Beis. Shmuel Even Hoezer 147:1; Responsa Rosh 46:1; Orech HaShulchan 145:8, 9, 10, 11.) All authorities discuss the case of a dying husband. They do not discuss the case of an incompetent husband. The Get must be in the possession of the woman before the time the husband becomes incompetent. These laws can be exercised only with a Get written and given at the time of the marriage. This language should be recited orally to the agent or agents delivering the Get not in the presence of the agent or agents writing the Get and signing the Get.

If I, [husband's name], son of (husband's father's name), appear before the Orthodox Bet Din, am not incompetent, and follow their order or orders to give my wife, (wife's name), daughter of (wife's father's name), a

Get, then this Get I presently am giving is not a Get, and the Get I presently am commissioning an agent or agents to write, am presently commissioning an agent or agents to sign, and am presently commissioning an agent or agents to deliver to my wife one year following the last time we cohabited is not a Get.

However, if I become incompetent, then this Get I am presently giving is to become effective an instant before I become incompetent and is a Get.

However, if I do not become incompetent and appear before the Orthodox Bet Din and follow their order or orders to give my wife, [wife's name], daughter of [wife's father's name], a Get, then this Get I am presently giving is not a Get, and any Get I commission to be written, signed, and delivered one year following the last time we cohabit is not a Get.

I further swear that I will never annul the agent or agents to write the Get, the agent or agents to sign the Get, and the agent or agents to deliver the Get.

If any flaw is found in the above prenuptial agreement, [groom's name], son of [groom's father's name], and (bride's name), daughter of (bride's father's name), agree that our relationship be one of Pilegash, as recorded in RAMO, Even Hoezer, Chapter 26:1, citing Raaved, Ramban, Rav Yaakov Emden, Tur in name of Rosh, and Yaam Shel Shlomo, providing that the woman goes to the mikvah when she is niddah; and no Kedushin was ever intended, ab initio; and we both, though living together, represent that we agree to nevertheless reserve the right to independently terminate our conjugal relationship without veto of the other spouse and begin a conjugal relationship with another spouse. This

termination is effective one year after the last time we cohabited and I, [groom's name], son of (groom's father's name), am ordered by an Orthodox Bet Din to grant a Get to my wife, [bride's name], daughter of (bride's father's name), which I will refuse to grant to [bride's name], or else I refuse to appear to the Din Torah after being summoned three times on behalf of my wife, or my address is unknown, or I am adjudged incompetent, or I am lost, regardless if there exists marital discord between my spouse and myself. [See Otzer HaPoskim, Even Hoezer 26:1-6, re: Pilegsh. See also, Bais Ov, Volume 7, Responsa #11, Rav Yudolovitz, re: civil marriage. See Gro Even Hoezer 26:6,7. See also Igros Moshe Rav Feinstein, Vol. 1, Responsa No. 52:4, re: civil marriage; Bais Shmuel Even Hoezer 26:2; Helkos Mechokek, ibid., 26:1.2. When both groom and bride explicitly inform witnesses of no intent of Halachic marriage, then no Halachic marriage exists. Igros Moshe, Vol. 6, Resp. No. 79, Vol. 1, Reap. No. 74. Igros Moshe, Vol. 1, No. 82:10 (end), and Vol. 6, No. 112. See also Aruch HaShulchan Even Hoezer 42:28; 42:12, 27. See also Pirusho Ivro Rav Henkin, 4:22, page 99.]

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The ring presently given is a gift, and Kedushin was never intended by either of us.

Both (groom's name), son of [groom's father's name], and (bride's name), daughter of (bride's father's name), do solemnly swear, in the presence of two competent witnesses, (first witness' name), son of [first witness' father's name], and [second witness' name], son of [second witness'

father's name], -to be forever prohibited to annul this oath, that we never will otherwise agree to Kedushin other than under the terms of this prenuptial agreement.

If I do appear before the Orthodox Bet Din and follow their orders and give my wife a Get then all the time we lived together as man and wife should be Hallahic marriage and not Pilegessh taht the wife is like a mistress and the ring Iam presently giving is a ring that creates Kedushin -Hallachic marriage.

To this end, the groom signs:

_____ son of _____

The bride signs:

_____, daughter of _____

Witness:

_____ son of _____

Witness:

_____ son of _____

This date (Jewish), _____, at (town, city, state, country).

PSAK DIN OF BET DIN

The Bet Din certifies that the groom, [groom's name], son of [groom's father's name], and the bride, (bride's name), daughter of (bride's father's name), and the two witnesses, (first witness' name), son of (first witness' father's name), and [second witness' name], son

of (second witness' father's name), appeared before them on this [date of Jewish calendar], in (town, city, state, and country). and related and certified the details and conditions of this prenuptial agreement dated (Jewish date), in (town, city, state, and country). The bride is empowered to use this document Psak Din of Bet Din as valid proof that the prenuptial agreement is fully in power, in accordance with terms detailed, a copy of which is attached to the Psak Din.

HoRav _____, son of _____

HoRav _____, son of _____

HoRav _____, son of _____

Witness:

son of _____

Witness:

son of _____

This date (Jewish), _____, at (town, city, state, country].

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ARBITRATION AGREEMENT

Both spouses agree to arbitrate custody of children, visitation rights, support of children, and property settlement exclusively at an Orthodox Bet Din, whose decisions will be final and cannot be appealed other than to two more Orthodox Bet Din, but not to a civil court. The decision of the majority of the Bet Din first applied and then appealed will be final. (One must win two of three.) Any future conflicts regarding custody, visitation rights, support, or alimony can only be decided by Orthodox Bet Din. The Bet Din can enforce its decision by granting permission to the winning party to go to a civil court. (Even Hoezer, Igros Moshe, Vol. 6, Responsa #106.)

Violation of these agreements by the wife can put in jeopardy the validity of the Get

granted by the husband, in accordance with Responsa written by Rav Moshe Feinstein, Even Hoezer 6, Responsa #115 and #116. However, no condition, precedent or subsequent, is attached to the Get other than what already exists in Responsa, Law, and custom.

All custody, visitation, support, and alimony matters are separate and apart from the prenuptial agreement entered upon and cannot hold up the granting of a Get to the woman. However, any recourse directly to the court by the wife or ex-wife will jeopardize the validity of the Get.

Signed: (husband's name), son of (husband's
father's name]

[wife's name], father's name] 22

Witnessed:

daughter of [wife's

(first witness' name], son of (first witness'
father's name],

(second witness' name], son of second
witness' father's name]

ANALYSIS

The authorities cited discuss the case of a missing husband who may possibly no longer be alive. See Rav Eliezer Berkowitz, TENAI BENESUIN U'BEGET, pp. 88-119, who applies the above authorities to the case of a husband going to war who does not return after

two or three years. The author, however, applies the above authorities to the case of the recalcitrant husband who refuses to give a Get or to appear before a Bet Din, and/or the incompetent husband.

There exist two Schools of thought as to whether the sick husband is permitted to live with his wife following the giving of this conditional Get. Rambam rules that he is not permitted Ramban and Raavad and Rosh rule that he is permitted. Aruch HaShulchan and Rav Feinstein rule like the Rambam. As previously pointed out when the Rabbis later on when the marriage fails and the husband refuses to give a Get retroactively annul the marriage and the original Get becomes operational even Rambam concedes that even a commomer is permitted in a Pilegish relationship. . See Nodah Beyehudah Responsa Even Hoezer # 54 and 56. See Tnai BenesinUbeget by Rav Berkowitz.. .

Rav Henkin agrees that a competent Orthodox Bet Din, having expertise in all laws of marriage and divorce, can employ a prenuptial agreement. We mentioned this fact in our introduction, and the spouses can live together. Rav Henkin conditioned his prenuptial agreement upon the convening of an international conference of Torah sages and acceptance of his principles. We have drafted some of his principles into this prenuptial agreement, the conditional Kiddushin (Halachic marriage), and conditional Get (Jewish

divorce). We likewise agree that only the Torah sages are competent to decide such a critical matter.

The reason for the reluctance of many authorities to rule against Rambam is because, in matters of divorce, Erve, permitting a married woman to remarry, is very grave. If she is not really free and she lives with another man, she has committed adultery, and any offspring with the new mate are Mamzerim, bastards. We therefore are Machmir, rule very strictly.

However, under circumstances of duress, to free a woman from eternal marital imprisonment by a recalcitrant husband who prevents her from remarrying by refusing to give her a Get, the author maintains that the Ramban's ruling can be considered by a Bet Din as a factor to help extricate the woman from eternal marital imprisonment when there exists no other means to free her. Thus, if civil law can be brought into play to protect the civil rights of the woman by having

the husband give the wife a ,Get, in a manner that is in agreement with Halacha, then this prenuptial agreement should not be used, even if it was adopted prior to the wedding.

The State of Israel is considering withholding business or professional licensing of husbands who refuse to give their wives a Get, in violation of the ruling of a Bet Din. [See Igros Moshe, Even Hoezer, Book 6, Responsas No. 106 and 107.] A similar law has been passed by New York State. At this point, New York law states that a husband is not free to remarry before he enables his former spouse to remarry by granting her a religious divorce, or Get. In effect, the civil divorce is made conditional upon granting a Get. However, this becomes effective only where the husband initiated the divorce. When the wife initiates a civil divorce, she has no recourse in civil law, as it presently stands.

When no means exist to free a woman from lifelong marital imprisonment, then this prenuptial agreement can be used, if it was adopted prior to the wedding. (See Igros Moshe Even Hoezer, Vol. 1, 79:5 (end), re: case of husband who is impotent, where there exists no doubt that any woman would ever agree to such a Kedushin, where she is to remain in lifelong marital imprisonment, without marital relations.] Likewise, in a conditional Kedushin and conditional Get, no wife would agree to relent on the conditions that would free her from

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eternal marital imprisonment. [See Igros Moshe Even Hoezer, Vol. 1, Resp. No. 74, and Vol. 1, Resp. No. 82:10.]

In a conditional Kedushin and Get, both wife and husband explicitly stated their intentions before the wedding that no Kedushin or Get will take place other than as agreed upon. If the conditional Kedushin or Get are flawed, then the relationship is to be only Pilegsh from day one and minute one. Under no circumstances do they accept unconditional Kedushin for a second.

WARNING

ALL PROPOSALS IN THIS PRENUPTIAL AGREEMENT ARE ONLY
STATED AS QUESTIONS TO BE DECIDED BY THE POSKIM, RULING OF
THE GEDOLIM, THE SAGES AND ARBITERS OF JEWISH LAW. NO ONE
SHOULD RELY ON WHAT HAS BEEN WRITTEN AS HALACHA. IT IS ONLY
FOR RESEARCH AND STUDY.

For Research and Study. Not for Actual Practice and Use

The issue of Pilegesh is shrouded in dispute, dating to the Talmud, between the Jerusalem and Babylonian Talmuds. (Jerusalem Talmud: Ksubos 5:1; Sanhedrin 7:6. Babylonian

Talmud: Yevomos 77B, 78A; Sanhedrin 53A. See Resp. Bais Ov, Vol. 7, Resp. No. 11:3, Anaf 2.]

The Jerusalem Talmud holds that only a king is permitted to have a Pilegesh. A common Jew who is not a king is forbidden to have Pilegesh other than Omah Avriya, a child servant under 12 who could become a Pilegesh to the owner or his son. The Babylonian Talmud permits Pilegesh.

The institution of Omah Avriya ceased at the destruction of the First Temple. This is so since such an institution was linked to the survival of the institution of Yovel, which equally ceased with the dispersion of the twelve tribes from their ancestral home sites in Israel, before and during, the destruction of the First Temple.

Although Jeremiah, the prophet, later resettled representatives of the twelve tribes,

they nevertheless did not resettle in their ancestral homes. Consequently, the Jerusalem Talmud and Rambam, who rules like the Jerusalem Talmud, hold that a common Jew, not a king, is forbidden to have a Pilegesh.

There are differences of opinion as to which prohibition is violated. Ramo Even Hoezer 26:1 cites Tur,

in the name of Rosh, which considers Pilegesh, according to Rambam, as a divine prohibition—a Lav. Rav Avraham, son of Rambam, interprets Rambam that one who violates this law is subject to Malkos, the 39 beatings. (See Kesef Mishna, Chapter 15, Laws. Isurai Biah. Rav Hamagid and Raaved's interpretations of Rambam hold that there is Malkos. However, Gro (Vilna Gaon, *ibid.*, 5, 6), as well as Bais Shmuel (*ibid.* 2), interpret the law's Divine prohibition, according to Rambam and Tur, in the name of Rosh, as referring only to chance sexual liaisons, not a conjugal agreement to live only with one mate for an extended period of time, open to freedom on the part of either spouse to terminate such relationship at will. Pilegesh, according to Tur, in the name of Rosh, would be permitted.

Nevertheless, the partners, according to Gro, are in violation of a positive Divine commandment when they do not contract a halachic marriage. This is also the opinion of Mahrit in *Hidushe Alphos to Kedushin* and also the opinion of Haf lob and Ran, in *Parshios Chayei Sarah*, interpreting Rashi.

The distinction between the violation of a negative and a positive commandment is the following. One violating a negative commandment is subject to Malkos, beating 39 stripes,

during the time when there exists a Sanhedrin having ordination dating back generation after generation, to Moses at Sinai. Jews currently have no such tribunal. Such a tribunal, according to Maimonides, Laws of Sanhedrin

4:11, could be re-instituted by a majority vote of all living sages gathered in Israel. Historically Radvaz (ibid.) advises that a Sanhedrin was never re-instituted, although Smicha, ordination, was re-instituted at the time of Bais Yoseph, who was ordained together with a few sages. However, a Sanhedrin never was re-established.

Rambam however, in Codes Sanhedrin 4:11, remains cautious as to whether, halachically, it can be or should be done, even though he initially does advise it. In his interpretation of the Mishna, he omits his cautious remarks.

Bais Shmuel Even Hoezer 26:2 claims that the violation, even if it is Divine, nevertheless, according to Rambam, would not result in Malkos, the 39 beatings. Bais Shmuel interprets Tur and Rosh that violation of Pilegish is punishable by Malkos only if the woman did not go to the Mikvah.

Hilchos Mehokak, ibid., 1 and 2, interprets that Rambam teaches that violation of Pilegish is Rabbinical. (See also Redach; Atzei Y.; and also Kenesot Hagdollo; and Bais Ov,

Vol. 7, Resp. No. 11, Anaf 1:1,2..]

Even though Ramban and Raaved teach that Pilegesh is permitted, as the Babylonian Talmud holds, to a commoner, not only king, nevertheless, they caution against the actual practice of such an institution alongside Halachic marriage. Fear is expressed for the moral backsliding of the participants who will engage in casual relationships, not in

long-time conjugal liaisons. Casual relationships are unanimously forbidden by both the Babylonian as well as the Jerusalem Talmud.

Likewise, fear is expressed that the woman will be embarrassed to go to the Mikvah when she is Niddah if she is a Pilegesh. This is a violation of Kores and subject to Malkus, the 39 stripe beating, to avoid Kores. This is what Tur, in the name of Rosh, in Ramo in Even Hoezer 26:1 meant:

that Pilegesh is a violation of Malkos. (See Gro and Bais Shmuel, *ibid.*)]

Also, Jewish practice historically sanctioned only Halachic marriage, in order not to violate the prohibitions cited in the Jerusalem Talmud. Maimonides rules like the Jerusalem

Talmud. Pilegish is employed only in emergency rulings where Halachic marriage is, for practical purposes, impossible or can cause unbearable suffering. Bais Ov, Vol. 7, Anaf 4, rules that, in emergency cases, one can be lenient.

It is with the above overview that we apply the principles to our prenuptial agreement. All of the following Responsas warrant Pilegish for emergencies: Resp. Ramban Hameyuchoses No. 284; Atzmos Yoseph, beginning of book; Resp. Ran No. 68; Yaan Shel Shlomo Yevomos, Chap. 2, No. 10; Birkas Yoseph, No. 1; Taallmos Lev, Part III, 32:1; Mahram Padwa, No. 19; Rav Yaakov Emden in Responsa Yaavetz, Part II, Resp. #15; Rav Hoffman, Responsa Melamed Lehoel,

Part 3, Responsa No. 8; Rav Moshe Feinstein in discussions and Responsas cited earlier; and Rav Yudelevitz in Baia Ov, Vol. 7, Resp. No. 11. See Rav Herzog in Responsa Hachok Leyisrael, who interprets Darkei. Moshe Ramo Even Hoezer. 7:13. Rav Herzog uses the principles of Pilegish in the case cited by Ramo Even Hoezer 7:13. The wives of Kohanim had been captured and presumably raped by non-Jews during pogroms that affected thousands of Jews. The Kohanim nevertheless were permitted to keep their spouses, because they had a Pilegish relationship, once their original marriages were voided by the sages and poskim of that generation. In addition it is the ruling of Ritvo that if a non Jew rapes a Jewish woman , she is prohibited to marry a Kohen only by Rabbinical Law. Furthermore the Kohanim did not remarry their wives, who were raped and whose Halachic marriage had been annuled . They remained together in a Pilegish relationship. Therefore according to Rambam Laws of Issurei Bioh 15:2 there exists no violation of the prohibition of a Kohen with a woman raped by a non Jew, if there is no Halachic marriage. Only if the Kohen had a second Halachic marriage with his former wife would there exist a prohibition. True the

Rambam prohibits a Pilegish relationship. The sages at that time split their decision. They ruled like Ramban and those other authorities that permit a Pilegish relationship. They ruled like Rambam that the Kohen was not in violation of living with a woman raped by a non Jew if there was no Halachic marriage.

In addition , according to Meshivas Nefesh #15 since the annulment was made by the Rabbinical Court-that ,in effect, created retroactively, the Pilegish relationship , even Rambam will agree that there is no violation . A violation only occurs when ab initio from day one, the spouses enter into a Pilegish relationship, not Halachic marriage. However where they enter into a Halachic marriage, that remains a Halachic marriage, eternally, if the factors would not have existed that precipitated the annulment by the Court-not by the spouses on their own volition, then no prohibition exists even according to Rambam.

Furthermore , the Sages at that time ruled in accordance with Responsa Mahrashdam #235 cited by Pischei Tsuvah Even Hoezer 7:2 that Kohanim in our day can not prove -trace their real ancestry - from Aaron -the first Kohen. They are at most Sofek Kohanim-doubtful Kohanim. Therefore ,this doubt combined with the other doubts elaborated previously, will permit the Kohanim to keep their wives. Furthermore, there is no definite proof that the Kohen's wife was in fact definitely raped .This fact ,combined with everything else mentioned, created Sfek Sfeka multiple doubts. In such a situation , the woman is permitted to remain with her husband.

The Pilegish principle is used to enable a wife to extricate herself from lifelong marital imprisonment when the husband refuses to grant her a Get. Baias Ov, Vol. 7, Resp. No. 11, Anaf 4, rules that, in emergency cases, we can group all the various interpretations re Pilegish, and we have a Sfak Sfeka, a double doubt.

It is doubtful that we rule like Rambam, rather than Ramban, Raaved, and Ran. Even if the ruling is like Rambam, doubt exists as to whether the prohibition is no more than

Rabbinical or Divine. In cases of more than one doubt, we rule leniently, even in matters of marriage and divorce, which are of Divine nature. (See also ruling of Taz Eve# Hoezer 17:15.) Therefore, in the case of Pilegsh, no Get is necessary.

The prenuptial agreement, even when entered and halachically administered, is to be used only when all other halachic as well as civil remedies have been exhausted and failed to secure marital freedom for the imprisoned woman, in violation of halacha, following the ruling of an Orthodox Bet Din. If one obtained a Get, even after contracting to have a Pilegsh arrangement, the spouses, in effect, do not violate the Jerusalem Talmud and Rambam's prohibition of Pilegsh. [See, Perushe Ivro, by Rav Henkin. Chapters 3 4, and 5, pp. 74-117.] If the woman is not able to obtain a Get, then an emergency exists, and she relies on the Pilegsh principle, as discussed. In addition, since the annulment is made by the Rabbinical Court, that, in effect, a Pilegsh relationship is created retroactively does not violate Rambam's ruling against having a Pilegsh. Rambam's ruling is only when the parties ab initio never had a Halachic marriage.

However when they entered ab initio into a Halachic marriage that is later annulled, by the court, the prohibition does not apply. See Meshivas Nefesh #15 by Aryeh Leib Tzinz.

See Pischei Tsuvah 157#9 on EvenHoezer 157:4

This agreement has no link whatsoever with the contingency of a woman receiving an automatic Get, once she obtains a civil divorce. It was such a link that was almost unanimously condemned by the Torah sages almost 100 years ago, when they opposed the French rabbinate's proposal of a prenuptial agreement, which was supposed to automatically

void the marriage upon receipt of a civil divorce.

Rav Henkin's prenuptial agreement and the sages cited by Rav Berkowitz represent the foundation of our prenuptial agreement, which is totally different. One needs to study Rav Henkin's entire Sefer Pirushe Ivra, which provides the foundation for his prenuptial agreement, as well as the entire Sefer of Rav Berkowitz, TENAI BENESUIM U'BEGET, which cites the sages as the foundation for the prenuptial agreement.

Breira

In the cases that the prenuptial agreement covers, there is no questions about Breira. Breira is a principle in Halacha that, in Divine matters, there exists a doubt as to which of several options a person may have chosen, which resolution cannot be determined until a future date. We do not say that the person may have chosen a definite given option retroactively. Such a principle is stated only in rabbinical matters.

However, such a principle is not applicable where the condition is under the control of the person making the conditions for various contingencies. Almost all the contingencies covered by the prenuptial agreement are under the husband's control. It is in his power to appear at an Orthodox Bet Din and grant a divorce, if so ordered. It is in his power, in most instances, not to be incognito and lost. (See Aruch Hashulchan Even Hoezer 38:67.)

In those instances where he has no control, Aruch Hashulchan cites Tur and Rambam, who maintain, nevertheless, that in cases of conditions regarding marriage and divorce, the Issue of Breira has no relevance. (Ibid., 38:68.) This is so since matters of marriage and

divorce involve the future status of the woman as married or as divorced. Since, for the future, we definitely can state that a predetermined choice or option was made, we likewise can

state that a predetermined choice or option was made retroactively.

This is not true in other Divine matters, where Breira cannot be assumed when there is no "future" matter that is relevant for our consideration

Conditional Get

If the husband stipulates that the Get is meachshov that it becomes effective retroactively from the instant it is given then the husband can not annul the Get at a future date. Thus the problem that we posed that the husband even though he makes a conditional Get can abort it at a future date is solved. See Rav Henkin Sheorit Yisroel Lev Ivra Ezras Torah 40th anniversary page 71 that he states that in a regular conditional Get the husband can abort the Get or the agency at any time. See also aruch Hashulchon Even Hoezer 141;157 for the same. This is true even if the husband swears that he will not abort the Get or cancel the agency to have his agents deliver a Get to his wife. This is true if he aborted the Get or cancelled the agency before the Get reaches the wife.

However if the husband stipulates that the Get is effective immediately then he can not abort the Get or cancel the agency. See Even Hoezer Bais Yoseph 143:3; However

Ramo Ibid mentions authorities who dispute this premise. However in the case of extreme hardship that every agunah qualifies we will rule like the lenient opinions of those authorities who will free the agunah. See Taz Even Hoezer 17:15; Taz Yoreh Dayoh 293:4;Ginas Veradim 3:24. See Rambam Ishos 6:17 ;See Aruch Hashulchon 143:14 for the same. See the same for conditional marriages Aruch Hashulchin 38:48

Even if the Get is not physically available . It was lost or burnt or destroyed the woman at a future date when the condition takes place , the Get retroactively takes effect at the instant when it was given; although it becomes operational later when the conditions listed in the conditional Get occur. This could be many years or decades later.

EVERY ORDINARY KSUBAH CAN BE A CONDITIONAL MARRIAGE

As previously discussed if one states that the Get is to take effect immediately -meachshov- the husband can no longer abort the Get and cancel the agency . The same applies regarding a conditional marriage. Furthermore it is not necessary to follow all the requirements similar to the conditions of the children of the tribe of Gad and. Ruven. If one dates a document it is the same as if one states that the contract is effective immediately. Since every Ksubah is dated then it follows that there exists a conditional marriage in every halachic marriage. If a husband abandons his wife and does not provide for her support, shelter and clothes then he has breached the contract of the ksubah . If he abandons her he does not obviously have sex with her. He again breaches the contract of the ksubah. In both instances if the breach is not cured ,then the wife can sue to have the marriage annulled

providing the husband refuses to give her a Get. Then the marriage can be annulled retroactively. This can occur years after the wedding. See Aruch Hashulchon Even Hoezer 38:3; 38:48 ; 38:17; 38:25 ; 143:28 ; Bair Haitiv even Hoezer 38:3, and 38:6- that if one mentions that the condition in a marriage is effective immediately it does not need to qualify all the other conditions stated in the Bible regarding the children of the tribe of Gad and Rueven. He same is true if the **CONTRACT OR THE KSUBAH IS DATED**. Thus since the Ksubah is dated it qualifies for this exemption. In situations that the couple has gone to a rabbinical trial and the husband is ordered to give a Get that he refuses then the marriage can be annulled. This is true after all other means have been exhausted to force the husband to give a Get to no avail.

This has nothing to do with Mekach Tout -a mistake with the marriage that can be used only if it occurs before the couple married. Then the wife must leave the marital home the instant she discovers the defect of the husband that was concealed and not revealed to her. She first discovered this after the marriage. What I am proposing can be a remedy to free the agunh in the case of the husband abandoning her.

The **KSUBAH ALSO CONTAINS A CLAUSE THAT THE HUSBAND PLEDGES TO BEHAVE AS Jewish Husbands behave -kehichosa givrayin yehouyodin** . A Jewish husband does not have an other woman as a lover; he does not abuse his wife ; he does not threaten harm to her physically and certainly does not harm her. He does not beat her, or abuse her physically , psychologically, or emotionally. He is not addicted to alcohol or narcotics or gambling. He is not a homo-sexual or bi-sexual. He is not impotent. If the husband breaches any of these understandings and they are not cured and he refuses to give a Get when ordered by the Rabbinical Court ; the wife is prepared to follow all the stipulations of the Rabbinical Court; all social and civil court remedies **have been exhausted and the husband still refuses to give a Get then the marriage is annulled retroactively**. Even if this breach occurs years after the marriage the **Rabbis are empowered to annul the marriage**.

This strategy coupled with the 20-30 other strategies mentioned in this book should provide the Rabbi with an arsenal to annul marriages when all other civil law and social pressures have been tried and have had zero effect to have the husband give a regular Get.

As I mentioned in my introduction and summary of the relevant chapters Rav Piekarski gave me his approbation on this chapter . He told me that it is halachically accurate , but should not be used in practice . This dove tails with the ruling of Ramo Even Hoeazer 28:21. He states that even if one has a prenuptial agreement one should be strict and demand a Get. Ramo cites Mahrik #84. This is the position of Aruch Hashulchon Ibid 28:96 . See Bais Yoseph on Tur Even Hoezer end of chapter 28 . He cites responsa Rashbash son of Tashbatz that at no time were prenuptial agreements ever used in practice even if all or the majority of all the Rabbinical Courts in a community voted in favor of it.

Rav Berkovitz claims that all this was true when the Rabbis had the power to enforce their authority by other means. This is not true in our day and age. In such a situation unless we prudently use prenuptial agreements and prenuptial Gitten -Jewish divorces the agunah will remain in prison for ever. See Tnai Benesuin Ubeget by Rav Eliezer Berkovitz. pages 161-162. ; 156-164. This is the position of Rav Yudelovitz, Rav Moshe Feinstein, Rav Klotzkin, Rav Rosen , Rav Moshe Tzeig. Rav Gorin and The Shredei Esh- Rav Yehiel Yaakov Weinberg. I prove in this book that the Aruch Hashulchon agrees.

The above authorities discuss annulments each of these Rabbis have their own stipulations under what set of circumstances an annulment can be given; and when it can not be given.

All areas of halacha -Jewish law are the province of only those individuals who have the training-they have mastered and observe the four parts of the Shulchan Aruch.

ANNULMENTS OR CONDITIONAL MARRIAGES ARE TO BE DECIDED ONLY BY SUCH INDIVIDUALS. NO ONE ELSE CAN HAVE ANY ROLE WHATSOEVER.. . SEE MY CHAPTER -3 FOR THE SOURCES FOR THIS FUNDAMENTAL LAW. In civil law any one who is not a licenced professional and practices any given profession is in violation of the law . Any one who helps such an individual practice the licensed profession is equally guilty as an accomplice. I do not understand why in areas of halacha non rabbis suddenly feel that they can interfere and direct how religious law is to be practiced. This is the basic foundation of reform and conservative Judaism .

This principle is so critical that Rav Moshe Feinstein once threw out a number of very influential members of the board of directors at his Yeshiva Tiferes Yerushelayim because they wanted to have a role in running the yeshivah in a manner that was in conflict with halacha. Rav Moshe Feinstein then himself solicited funds for his yeshivah.

**MIXED SEATING AT THE SYNAGOGUE WOMEN RECEIVING ALIYOT
WOMEN HAVING A MINYON OF THEIR OWN INTERDEPENDENCE OF THE
SPOUSES ON EACH OTHER SECRET OF A LASTING MARRIAGE**

**MIXED SEATING AND ALIYOT FOR WOMEN AND WOMEN HAVING A
MINYON OF THEIR OWN** are opposed by the Israeli chief Rabbinate. I have written chapters 30 and 31 showing that these innovations -mixed seating and aliyot for women -are against Halacha and must be opposed. These innovations ,as well as , women having a minyon of their own -that I discuss here - present a threat to the sanctity of the role of women within Torah Judaism. In addition to many Halachic violations enumerated in my chapter 30 and 31 such innovations can possibly jeopardize the union and

interdependence of the sexes on each other in ritual observance ,marital life , earning a living , child rearing, Jewish education and every moment of life from the cradle to the grave. In all areas and times the sexes are interdependent. They can not survive if they stand alone.

The spouses must complement each other ,not be in competition with each other. Marriage must not be a war of the sexes. They must love, honor and respect each other and make each other feel important. When one gets married the spouses must make a one million per cent commitment to each other. Their commitment must supersede all other loyalties emotionally, psychologically, financially and in every respect to everyone else in the world including their parents brothers sisters former loves and all their children . THE SPOUSE COMES FIRST. UNLESS THIS BASIC FOUNDATION EXISTS THE MARRIAGE WILL NOT SUCCEED. THIS IS THE UNDERSTANDING AND PART OF THE UNWRITTEN CONTRACT OF THE KESUBAH. OF KEHILCHESA GUVRAYIN. THE SPOUSES PLEDGE TO BEHAVE AS JEWISH SPOUSES BEHAVE. IT IS CALLED UMDENAH DEMUCHOH METOCHO .or ANON SADYE THAT IS KNOWN AND MANDATED BY EVERY ONE [THOSE WHO DO NOT MANDATE IT ARE A VERY TINY FRACTION OF THE POPULATION AND THEIR OPINION IS IRRELEVANT] IF EITHER SPOUSE BREACHES THIS CONTRACT GROUNDS EXIST FOR A DIVORCE IF THE BREACH IS NOT CURED. WHEN THE WIFE IS THE ONE WHO BREACHES THIS CONTRACT A GET CAN BE FORCEFULLY GIVEN WITHOUT HER CONSENT. WHEN THE HUSBAND BEACHES THIS COMMITMENT AND HE REFUSES TO GIVE A GET, AN ANNULMENT CAN BE GIVEN . OF COURSE ALL SOCIAL PRESSURES AND CIVIL REMEDIES MUST FIRST HAVE BEEN TRIED TO NO AVAIL WE WILL THEN GIVE A GET ZIKU AND ANNUL THE MARRIAGE.

UNLESS A PERSON IS PREPARED TO MAKE A ONE MILLION PERCENT

COMMITMENT THEY SHOULD NOT GET MARRIED. WHEN CHILDREN ARE NOT PREPARED TO MAKE THIS COMMITMENT PARENTS MUST BUT OUT. .THEY MUST NOT PRESSURE THEIR CHILDREN TO GET MARRIED. EVEN IF THE CHILD IS GETTING OLDER AND MAY REMAIN UNMARRIED LATER, LEAVE THEM ALONE. OTHERWISE THE PARENTS ARE SETTING THE FOUNDATION FOR A DIVORCE. PARENTAL INTERFERENCE AND COERCION TO GET MARRIED CONSTITUTES A HALACHIC -JEWISH LAW- GROUND TO ANNUL THE MARRIAGE. UNLESS THE SPOUSES HAVE THE MOTIVATION TO GET MARRIED THEY WILL NOT FIGHT AND SACRIFICE TO MAKE IT WORK. EVERY MARRIAGE ENTAILS SACRIFICE ,

DEVOTION , PATIENCE AND COMMENCE SENSE . IF ONE DOES NOT WANT TO MARRY ONE PARTICULAR PERSON THE PARENTS MUST BUT OUT. THEY CAN'T LIVE THEIR CHILD'S LIFE LATER ON . GETTING MARRIED IS BUT ONE SMALL STEP TO A MARRIAGE. WHAT COUNTS IS REMAINING MARRIED , NOT GETTING MARRIED. THE PARENTS CAN POSSIBLY COERCE THEIR CHILD TO GET MARRIED; BUT CAN NEVER FORCE THEM TO REMAIN MARRIED. IF THEY FORCE THEIR CHILD TO GET MARRIED; THEY WILL THEN BE SETTING THE STAGE FOR THEIR CHILD'S DIVORCE OR ANNULMENT OF THEIR MARRIAGE. PARENTS SHOULD EXPLAIN ONCE TO THE CHILD AND PRESENT THEIR VIEWS AND CONCERN. IF THE CHILD REFUSES TO LISTEN TO THEM THEY MUST BUT OUT IF THEY REALLY LOVE THEIR CHILD AND ARE CONCERNED FOR THEIR WELFARE. IT IS BETTER TO MARRY LATER OR LATE THAN TO MARRY TO PLEASE SOMEONE-A PARENT OR FAMILY MEMBER OR A FRIEND WHEN SOMEONE IS NOT READY TO MAKE THE COMMITMENT TO GET MARRIED AND BRING CHILDREN INTO THIS WORLD.

A WIFE OR HUSBAND AND CHILDREN ARE A RESPONSIBILITY. ONE

MUST HAVE THE MOTIVATION TO MAKE THIS COMMITMENT. THE PARENT'S OR FRIEND'S MOTIVATION IS NOT A SUBSTITUTE. I herewith by reference include all the above as additional Conditions to the prenuptial agreement of the groom and bride according to the conditions of the children of Gad and Ruven mentioned in the Bible and previously discussed in length earlier in this responsa.

Man woman and G-D comprise an eternal partnership. THAT IS WHY JEWISH SPOUSES MUST CONDUCT THEMSELVES ACCORDING TO JEWISH LAW.

The roles of the sexes in Torah does not only relate to ritual observances and prayer only. Torah observance considers the over riding interest of the welfare of the family rearing of children harmony in the home and making a living as more important than the rituals of prayer a minyon and synagogue services. Women as well as men share in these areas. There exist areas in life and in Jewish ritual that are exclusively the domain of women.

Only women have a monthly period and can bear children and only they are required to go to the Mikvah after 12 days from the beginning of their period and after they give birth. Only women make a blessing when they go to the Mikvah. They are the most important members in passing on the tradition. Those laws that women passed on there exist no dispute in Jewish Law. Women make blessings when they light Shabbot and Holiday candles and when they bake bread and take hala. Women must pray each morning and for Mincha. They must recite the blessings before eating anything and recite the blessings following the eating. They are exempt from any Motzvoh that is governed by time. They Must observe as well as men all other Mitzvot. They must observe all the negative commandments. That is why women do not don tefilen and a talit. In addition that tefilen and a talit are considered men's apparel that women are forbidden to wear.

MARRIED WOMEN MUST COVER THEIR HAIR.

Women are exempt from praying with a minyon that can be constituted only

with ten males over 13 years of age. If women attend a Minyon where there are men over 13 years of age and recite the Prayer of Kedusha and answer- omen yehai shmai rabbo at the saying of Kaddish **THEY WILL MERIT OLEM HABO THE WORLD TO COME.** If they say the shmonei esrei -the Amida with a Minyon of men there exists a greater chance that their prayers will be heard. If they listen to the reading of the Torah in a Minyon of men they will have fulfilled their obligation of listening to the reading of the Torah. None of these Mitzvohs can be fulfilled if women make their own Minyon. Would they make a blessing on the Torah in their own Minyon they have violated a sin of making a blessing and mentioning G-d's Name in vain. **THEY ARE NOT PERMITTED TO SAY KADDISH OR KEDUSHA IN A WOMEN'S MINYON. IF THEY DO ,THEY HAVE A SIN OF MENTIONING G-D'S NAME IN VAIN.**

I am not going to discuss sexual arrangements that existed historically and exist today that are outside the perimeters of halacha-Jewish Law and accepted practice. I will not discuss trial marriages and living together without marriage . I will not get into deviant and forbidden practices such as homo sexuality and lesbianism. Unfortunately some Jews engage in all these practices and some people propose to make such unions legal civilly. Torah Law is one million per cent opposed to such practices. This opposition is in

addition to the risks of getting aids and other sexually transmitted diseases. Unfortunately with the advent of scientific advances lesbians can get pregnant using the facilities of fertility clinics. Homosexuals can have host mothers bear their children. Such scientific advances should be used by couples who are infertile and have impediments to bearing children in the normal way. There exist many Halachic questions if it is permitted to employ these methods and a Rabbi who is versed in the four parts of the Shulchan Aruch must be consulted.

Our opposition on Halachic grounds to these practices does not mean that lesbians , homo sexuals and non married partners should be discriminated against or persecuted or be subject to any torts. One can abide by the law of non discrimination and still oppose on religious ground such behavior. One can elect not to have themselves or their children and family associate with people who elect another sexual orientation. Just as they have the freedom in the free world to choose a different sexual orientation ; so do we have this freedom to choose not to associate or have the members of our family not associate with them.

Let us hope that Jews be committed to observe Torah Law and be equally committed to their spouses . Jews must have good marriages and act responsibly in all their conduct.

RAV HENKIN'S POSITION REGARDING CONDITIONAL MARRIAGES- NOT IN ACCORDANCE WITH HALACHA-JEWISH LAW FACTS

-Bride and groom sign a prenuptial agreement that if the marriage dies the groom retroactively appoints as an agent anyone who will read this contract to write the Get and any two witnesses to sign the Get and give it to his wife. If such an arrangement

be ruled as flawed, then both groom and bride swear now to have this marriage retroactively annulled . The wife would be believed that the agreement was not annulled. The ring would then be deemed retroactively a gift.

RESPONSE

Rav Henkin on 40TH Annual Ezras Torah Lev Ivri page 73 reverses himself and says that all prenuptial agreements are null and void . This represents a reversal in Rav Henkin's position from what he wrote in Perushei Ivro115-117 when he endorses a prenuptial agreement providing it would win acceptance by all or the majority of all the Orthodox Rabbis meeting in Israel . Rav Herzog Hahuka Leyisroel al pi Hatorah vol 1 page 91 explicitly states that he is opposed to all annulments unless they win the acceptance of all or the majority of Orthodox Rabbis meeting in Israel.

Furthermore, if the husband at some future date refuses to grant his wife a Get that ipso facto negates any agency he set up in the prenuptial agreement to have any one competent write the Get and any two competent witnesses sign the Get and witness the giving to his wife. This is true even if he swears that he will not negate the agency. Aruch Hshulchon Even Hoezer 141:140'. He violates his oath , but the agency is annulled. Likewise the husband post facto does not have to inform the wife at the moment of negating the agency. See Aruch Hshulchon Even Hoezer 141:142. So, she does not know if he did or did not annul the agency. Therefore , it is irrelevant that at the instant when the husband made the prenuptial agreement , he stipulated that the wife will be believed that he did not negate the agency. Such a stipulation is valid only when the husband makes a condition that the Get should become effective if he does not return at the latest at a certain time frame and the wife's testimony should be accepted to verify that he did not return . Then we accept

the wife's testimony.. The reason is because she was present when and if the husband returns. However in the case of negating the agency, it is not necessary for the wife to be present at the instant that the husband negates the agency. So she does not know. See Aruch Hashulchon Even Hoezer 141:157. See also Rav Henkinin Sheorit Yisroel Lev Ivra Ezras Torah 40th year Anniversary page 71-bottom. I answered this objection that a clause be inserted -MEACHSHOV -that the Get become operational immediately , but will be precipitated by a future event .

In addition there is a principle in Jewish Law that one can not make an agency of words. Thus I can make an agency to appoint some designated person to give a Get that already exists to my wife. I can not however make an agency to create at a future date something that does not exist now. I can not appoint an agent that he should in turn appoint an other agent to write a Get or that he should designate two other witnesses to sign and witness the giving of a Get. This is called milli lo nimsoru leshliach. If this is done the Get is null and void Biblically. Other authorities hold that it is Rabbinically forbidden Other authorities hold that it remains in doubt. . See Aruch Hashulchon Even Hoezer 120 :47 . The conditional Get can be distinguished from this objection by the following: In our case The husband himself appoints the agent or agents. He is not delegating this task to other people. However he does not now know which people at a future date will read his instructions and agree to be his agents. One can appoint an agent even if the agent is not aware at the time that he or she is being appointed. Rav Berkowitz uses such an appointment in his book Tnai Benesuin u Beget. IT WAS USED BY SAGES IN MAKING A CONDITIONAL Get for soldiers departing to war to ensure that their wives be divorced if they do not return after the war is finished and the women not remain agunot. See

Chapter 3 page 118.

At the end of the day having such a Get is equivalent to no Get at all. So we

would fall back to the fact that the couple get married with the understanding that once the marriage dies, then the woman walks free with no Get required. Instantly, We would be advising a course of action that contradicts Mishne Lamelech on Rambam Ishos 6:10 masne al ma shekosuv betorah. Mishne Lamelech explicitly states that if one makes a prenuptial agreement that he is getting married only if there will be no need for a Get or there will be no need for Yivom- leverite marriage or Chalitza a form of divorce to free the sister-in-law whose husband dies with out any child -then such condition is null and void. The reason is because it negates Torah Law. It is deemed unconstitutional. Thus this prenuptial agreement is unconstitutional.

We can distinguish the prenuptial agreement in our previous writing from what the Mishne Lamelech is discussing by the following:

If one does not list the conditions that the marriage will be annulled in the future then the objections of the Mishne Lamelech are true. However if one enumerated the individual conditions similar to the cases that the Ramo in Even Hoezer 157:4 listed in the case of the leverite brother then the objections of the Mishne Lamelech do not exist. If they do, then Ramo, Nodeh Beyhudo, Chsam Soffer, Bais Hamair and all the other Halachic authorities who endorse a conditional marriage in the case of a leverite brother oppose the ruling of the Mishne Lamelech.

As pointed out on many occasions all annulments with the exception of Mekach Tout -a mistake at the instant of marriage- will be in conflict with the following authorities:

Rav Yitzchok Elchonen Spector vol 2 #42:3 ; Rav Eliezer Waldenberg in Tzitz Eliezer vol 1 # 26: 2, 3, 4 ; Rav Shlome Auerbach in Minchos Shlomo -vol 1 Even Hoezer # 76 ; Brit Avrohom Even Hoezer # 59:5 ; Netziv Mashiv Dovor # 79;

Responsa Ksav Soffer Even Hoezer # 68; and Responsa Oneg Yom Tov. All of them concur with the interpretation of Shita Mekubetzas on Ksubot 3A on Rashbah that if no Get or a semblance of a Get exists the woman remains married Rabbinically even after the annulment. Any children she has with man #2 can possibly be illegitimate -mamzarim - Rabbinically. I have in this book wrestled with the above major obstacles in the annulment of marriages. This is a task for only a rabbi who has mastered and observes the four parts of the Shulchan Aruch and only in very isolated and limited circumstances as I have discussed. There exists a danger that if used regularly such use will lead to have an annulment become the standard practice and the Get will become history.

It is for the above mentioned objections that Rav Piekarski told me not to use my conditional Get -divorce and conditional marriage as a standard practice. This is my conclusion as I mention on numerous occasions in this book.