

goes to college and law school. Otherwise one can not be a decisor of Jewish law. Obviously one who went to college and law school and passed the bar can not compare himself to one who spent the 8 years mastering the 4 parts of the Shulchan Aruch. Circumstantial evidence exists that the first man does not even know of the existence of some, many or most of the laws of the Shulchan Aruch. The conclusion is obvious. One needs an attorney also in conjunction with the Rabbi. But this attorney must specialize in marriage and divorce law and domestic relations, not someone who is a jack of all trades, a lawyer, doctor, engineer and rabbi. Such a man is master of none. . **WHAT YOU NEED IS AN INDIVIDUAL WHO HAS THE KNOWLEDGE AND EXPERIENCE IN ALL THE LAWS OF the Torah, in addition to, MARRIAGE AND GITEN -JEWISH DIVORCES. HE MUST OBSERVE ALL THESE LAWS HIMSELF.** See chapter three of HATOROT AGUNOT.

We also employ prenuptial agreements that serve as additional adjuncts to annul the marriage when the husbands refuse under any circumstance to give a GET. Again only Rabbis who have mastered and observe the four parts of the Shulchan Aruch can use this strategy. See chapter 12 of HATOROT AGUNOT. I discuss inserting the clause that the conditional marriage becomes effective Meachshov -immediately but it is precipitated by the occurrence of the condition in the future that will annul the marriage. I discuss that if the document is dated then it is the same as if one inserts the clause Machshov. In such a case one need not meet all the requirements of a conditional contract -marriage or divorce. Thus every Ksubah that is dated is in effect a conditional marriage. In the contingency that the husband refuses to give a Get the marriage can be annulled, in conjunction with other dispensations.

I also discuss why it is forbidden to have women make a Minyon of their own. The reason is that it uproots the Torah concept of the role of men and women complementing each other and being interdependent on each other, being a union rather than competing with each other. For women to make a Minyon of their own say Kadish, Kedusha, and read the Torah and make a blessing on the Torah is a cardinal violation of Halach. It is a sin of mentioning G-d's Name in vain.

There exists areas in life and Jewish Law that are the exclusive domain of women. Only women can have a period, give birth, are required to go to the Mikvah, light the candles and make a blessing on the Sabbath and Holidays and take Halah when baking bread. Women are exempt from all mitzvohs that are regulated by time. Only men must observe them. Women must observe all other Mitzvot and all negative commandments- That is why women do not don Tefilin and Talit. This is in addition to the fact that donning of Tefilin and Tzitzos are deemed men's apparel.

When women attend a Minyon of men , sitting separately where a Mehitza -is physically present , and answer Omen Yehai Shmai Rabah at the saying of Kaddish and say Kedusha they merit Olom Habo-the world to come. When they pray together with a Minyon of men there exists a greater chance that their prayer will be answered. When they listen to the reading of the Torah in a Minyon of men they have fulfilled their obligation. All these things can not be done in a women's Minyon. Just like a woman can not get pregnant without a male in the physical world , so too, a woman in the spiritual world can not achieve salvation and perfection without the assistance of men. Men likewise can not achieve salvation and perfection without the assistance of women. Show me a man who ever gave birth? It is only because of the existence of a woman that he can fulfill the mitzvoh of having children . UNMARRIED INDIVIDUALS ARE CONSIDERED INCOMPLETE.

I also discuss how one can have a successful marriage that will last.

Introduction

-Shroshim-Roots

I emphasize that the agunah problem is a combination of the conspiracy on the part of the x-husband, our critics, and the willingness by the agunah to be used by these men. It begins by a warped sense of what Orthodoxy and halacha is all about. The agunah is fed misinformation and distortion of Jewish law by my critics.

The agunah also wants to suffer and remain a victim. For every oppressor there must be one who assents to be oppressed. Once the agunah resolves to stop suffering, she will throw out of her life her abusive husband , as well as, the rabbis's distorted interpretation of the law -that she must remain celibate to eternity until the husband agrees to grant her a Get-Jewish divorce. It is our critics who warp 4000 years of Jewish law and practice and enable the agunah's x-husband to control her life -" beyond the grave" -after the marriage is dead. However unless the agunah is willing to buy into the misinformation and distortions of Jewish law by my critics, these men would be only talking to themselves. The Agunah gets hurt only because she trusts these men. That is why I have written numerous books in English and Hebrew and made hundreds of tapes -audio and video -in order to educate the Agunah and her family as to the accuracy of the facts and 4000 years of Jewish law and practice. Then let the Agunah and her family make an intelligent choice she wants to do.

Once the Agunah makes up her mind that what we are doing is in her best interest, she will come to our Rabbinical Court - Bet Din Tzedek Lebayot Agunot, Inc and we will move heaven and earth to find a Halachic solution to annul her marriage. She will then be free.

In reality practically all Gittin -Jewish divorces given today are annulments. The reason is that we do not know if all the thousands of laws governing the writing ,signing and giving of a GET were accurately followed. If they were not, the Ramo enacted over 500 years ago that an

annulment will have taken place. This is so since the Ramo enacted that the Get be kept by the Rabbinical Court and cut, rather than return the Get to the woman as was always followed until the time of the Ramo. See Even Hoezer Seder Haget 154:86. In the olden times when the divorcee kept the Get if there was an error it could be detected by knowledgeable rabbis. However following the enactment by the Ramo that the Rabbinical court keeps the Get, no one will be able to tell if there was an error. This is true since the Get is not given out for other rabbis to inspect and find fault. How then can we be sure that the Get is accurate? The answer is that we do not know. However, if it is accurate then it is a Get. If not, then it is an annulment.

This is based on the principle laid down by the Rambam that only when we know that anything is definitely forbidden, then it is Biblically forbidden. If there exists doubt as to the laws involved or to the facts, then the item involved is permitted Biblically, but forbidden Rabbinically. See Rambam Tumah Meth 9:12.

In our case we do not know if the Get was accurately prepared. If all the thousands of laws were followed. Therefore the Get is Kosher Biblically and the woman is forbidden to get married only Rabbinically. It is this Rabbinical Law that the Ramo overruled. Even if there was an error the Ramo retroactively annulled the marriage. The Ramo annulled all marriages, under the above circumstances just discussed, not only for his generation, but for all of posterity to the coming of the Messiah. In Chapter 1 -Roots- I elaborate and cite all the sources for what I write above.

PROLOGUE

by : Rav Yisroel ben Eliyohu Klotzkin

To all who will read this sepher:

A measure of the reliability of this book's contents rests upon the Semicha - The Rabbinical Ordination - given to the author, Rabbi _____ by Rabbi Moshe Feinstein, and Rav Kushelevitz of Torah Vodaath, another great Posek-decisor of Jewish Law. Rav Pikarsky added his agreement to their Semicha. Rav Pikarsky gave his Haskama [approbation] in writing on the books that Rabbi _____ wrote on the 4 parts of the Shulchan Aruch. Rabbi Feinstein gave his Haskama on 2 books written by Rav _____. In addition, Rav Naftuli Steinberg from Israel wrote his Haskama to eight responsa on Agunos .

None of the present day Rabbis and their organizational leaders have bothered to try to contact Rabbi _____ personally. They are content to attack him and defame him in articles or in public statements of condemnation. All of these Rabbis are hereby challenged to prove that they know the 4 parts of the Shulchan Aruch on their fingertips with their classic commentaries, that is if they have ever even learned all of them through in the first place. Until such time that they prove to the public that they actually are fully competent in Halacha, they are presumed to be ignorant pretenders, Tana'e Hevahle Olam. Chazal in Sota 22A says such types of pretenders are destroyers of the world. They are actually murdering Agunos who could be helped by knowledgeable Rabbis who are familiar with classical Responsa and who truly understand Jewish Law. These bluffers instead, want to destroy anyone who ventures to help Agunos. Rabbi Akiva himself said when he was an ignorant Am Ha'aretz, that he wanted to kill Talmidei Chachamim. These bluffers are like the self righteous person who refuses to rescue a drowning woman because she is

naked. These Rabbis claim that our Rabbinical Court by annulling dead marriages and enabling the agunah to start another relationship with another man is aiding and abetting the violation of the prohibition of “issur aishes ish” - a married woman having sex with a man not her husband.

These pretend-to-be-authorities scream, “How dare you and your so called Bais Din free an ayshis ish!! and aid and abet in the making of mamzarim!! -illegitimate children from man #2 ”!!! The truth, however is that they are the ones who are actually causing married women to sin because these poor victims can’t bear to be forced to spend their entire lives having no companion with whom to share their lives. Because of the attitude of these Rabbis , the husbands are helped by them to place the chains of Agunut for life on their spouses. Shame on the chillul Hashem -desecration of G-d’s Name - that these masquerading as Rabbis cause women to think Orthodox Judaism is heartless. Actually, never in our entire history has the Jewish community and court system ever allowed such a state. The public repudiation of such men, and the power of the Batei Din to enforce the Shulchan Aruch never permitted our festering modern situation.

Rashi in Talmud Gitten says Chazal were extremely concerned and careful in their edicts so women should not feel Rabbis don’t care for their welfare and the Rashba Gitten 88 and Yevamos 48 says Chazal made a Takana of Shulchusathu to enable the courts to physically force a man to divorce his wife when they found it necessary for the sake of the woman or else women would feel insecure to marry. And out of fear women would never marry in order not to become an agunah. Anyone who does not attempt to free Agunot, violates “not to stand by as innocent blood is shed.” “ Lo ta’amode al dam reacha.” Those who ignorantly abuse and undermine those who try to help are murderers masquerading as super frum-holy- people. If they be the majority,” Keshet Reshaim Ayiho Min Haminyan”, in Sanhedrin 26A -The prophet Yeshayohu told King Hizkiyohu not to be afraid of Shevna’s majority of Rabbis. Even if such Rabbis are the majority, “ a conspiracy of wicked people is null and void”.

When our Sages in the Talmud, our Gaonim, our Rishonim, and our Achronim deal with questions involving Aguna, there is always the dilemma: they must protect the sanctity and the institution of marriage, kedushin, as much as they are able, and never take lightly the possibility of a violation of the prohibition of aishes ish, the sin of adultery, by freeing a woman when there is too much risk of violating the above, or that their legal arguments are not strong enough. But at the same time, they dare not allow a woman, or a man, to languish as a prisoner of her or his marriage. They are duty bound to find some way to free them.

This Takana - equitable ordinances- to help women dates back to the verly early part of Jewish history. It is known in the Talmud that the soldiers of King David's army all wrote divorces for their wives before they went to battle, lest they become missing in action and their wives be bound forever, not being ever sure that they are actually dead. The Taz Shulchan Aruch Even Hoezer 17:15 , basing himself on numerous early classical s

We lowered our standard for the sake of Agunah. Another Takana-equitable ordinance- was made to reject what would be otherwise a valid claim on the husband's part to invalidate his get. This governs the use of a conditional divorce, where his condition stipulated that his divorce would be invalid if he returned from his trip for example, within 30 days of giving it to her. The husband however, claims that he wanted to be back within the 30 days, but was detained against his will. He should have, from a strictly legal standpoint, the right to say that his Get was extended to be valid only if he willingly stayed away. But the Sages took away his right because they were concerned that it would wreck havoc with the lives of ultra careful women who would always be afraid to remarry because of the odd chance the original husband might still come back many years later with his claim, thus remaining an Agunah; and to the opposite extreme, very uncareful women who would not wait even a reasonable amount of time after the 30 days because they would remarry immediately and all too often the first husband would make it back shortly afterward with a legitimate excuse of an accident which prevented him from coming within the 30 days. This type of woman would wind up an Aishis Ish who was unfaithful and be forbidden to both men. To prevent this, the Takana-equitable ordinance- made the Get a valid Get no matter what happen after the 30 days are up.

The Talmud justifies freeing a woman who may still be married legally should the husband come back with a justified claim by declaring the invalid Get valid Rabbinically. But that is only possible because behind the scene the Rabbis were using their power to annul the marriage retroactively. So ostensibly she is receiving a Get, but in reality the Get creates a situation in which she never was married in the first place.

The Rashba, in a Responsa, says that Rabbinical annulling is only done when there exists a seeming Get, based upon the cases listed in the Talmud. The only 2 exceptions of nullification of marriage without any Get involve wrongful behavior at the time of the original kiddushin on the part of the husband, so only those the Sages felt justified in giving a high-handed person a dose of his own medicine, and annulled even without the help of a Get. But the Sages did not see fit to use their power of annulment when her husband is missing at sea, in war, etc. and this despite the fact that there is a rove, a greater probability that he is truly dead, based upon statistics. Also, despite the fact that for most Torah legal and ritual decisions, rove suffices to direct the law. Yet here, the Sages were stringent despite Aguna.

This is the Rashba's proof that you must have some sort of Get to build upon. However, Rabbi Yitschak Elchanan Spector, for example, made it a major goal of his Rabbinic lifework to find ways to permit such Agunos of tragedy. His basic procedure was to find a second rove, in which case he says the Sages themselves meant to permit the women to remarry. The Sages were only insisting on some additional evidence that the husband was truly dead to prevent later tragedy should he return. In modern times, communication is relatively easy and since the husband has not communicated within a reasonable time, there is another rove that he is likely dead apart from the sinking of the ship itself for example. The additional rove gives the Rabbis the security of due diligence to free her.

But there is a major problem if the husband is alive but refuses to give a Get altogether, or is withholding to extort something from the wife. If the couple is separated without hope of reconciliation and even if secularly divorced or he has remarried or he himself says he doesn't want to be with her, withholding a get is an absolute crime without remedy. And what if the husband is in a country where it is considered a crime for him to send a Get or cannot be located or has changed his religion? The wife is faced with being an Aguna for life. Can it be that women are totally at the mercy of the whims of their husbands? And even in Israel, where there exist Rabbinical courts with legal power, the most that can be used to persuade a husband who refuses a Get is a jail sentence. There is no way, legally, to actually force a recalcitrant husband to give a Get. Can this be the true nature of our religious law?

To achieve the true picture we must go to the Talmudic sources of Jewish law. We find that the courts were empowered to coerce a reprobate or a physically unacceptable husband to divorce his wife if she demanded the divorce. If a man refused to support or to physically love his wife, she had valid grounds. No husband could extort his wife or mistreat her for any length of time. Jewish society and its legal system protected her rights. However, to enforce physically its rulings, the courts had to have Semicha, ordination from the Highest Court, the Sanhedrin. But what could the courts do when those Semichas were no longer possible after the Sanhedrin was abolished by our enemies? The Talmud declares the principle of Shelichusaihu. The Takana says the courts are pictured as the agents of the original courts who had Semicha. But this power is limited to case types which are essential to the functioning of everyday society. For example, loans which must be collectable or no one will lend. This Takana extends to divorces. The Rashba, Gitten 88, says we must be able to act as agents to enforce Get or else we would cause Aguna when women would be afraid to get married in the first place because there would be no way out if there were problems in the marriage later on. This is even more compelling if we realize that Rashba in Yevamos 46 believes this form of agency is itself only a Rabbinic creation, and ultimately rests upon the Rabbinic power to annul such marriages retroactively from their inception using the forced Get as a smokescreen. Throughout the history of the Jewish people, autonomous Jewish courts existed to enforce these laws. There was no opportunity for Aguna of this sort to occur until modern times where our courts have no power to judge or enforce. The need for the intervention of the courts came from the fact that the Torah gave the sole ability to create a Get to the husband. In order to restore the balance, it was understood that the Torah created the courts and justice systems to ensure the security of society in general and especially to be

vigilant in domestic issues. The courts had to act for the wife when she had a legitimate complaint of cruelty, violence, or the husband refuses to have children, or is incapable, or can't perform, or criminal behavior, sexual withdrawal or infidelity, withholding financial help, etc. and wants to be free of the marriage but the husband is refusing to give her a Get. Although a subject of legal controversy, many poskim accept a woman's complaint (over and beyond the blemishes and foul smells listed in the Talmud) that she can no longer stand living with her husband, "ma'ous awlai." Obviously, the Rabbis were duty bound to try to find ways to counsel and attempt to restore Shalom Bai'is between the couple. But if they saw the marriage was hopeless, they had to act to force a Get if persuasion did not suffice. The court system is such an essential part of Torah society that G-d commanded us to set up courts and enforcement people in every town. It is crucial to survival, or else Pirke Avos warns us that people will swallow each other alive. Therefore, throughout the history of the Jewish people, we had Jewish courts, at least for internal Jewish matters. It was unheard of that any woman should have a husband who would refuse to divorce her when it was merited by Jewish Law. If peer pressure couldn't force the husband to divorce his wife, then the court would act. The Rashba never had to be concerned with wholesale widespread Agunos of this sort. Both the Rashba and Rosh led courts in Spain which were so powerful they were entitled by the secular government to enforce their edicts by physical force and even mete out capital punishment for serious crimes.. The Rema in Shulch Aruch who talked about forcing divorces for justified causes had the autonomy in Poland to do so. None of our Sages, who went out of their way and dedicated themselves to rescue Agunos, such as Taz on the Shulchan Aruch who declared that Poskim in matters of Aguna should rely even upon a single persuasive opinion even when the circumstance involves the risk of a possible Torah prohibition, lived in a situation such as exists today. They could not imagine that there would be no Jewish courts who could enforce anything, by law of the land, anywhere in the diaspora. The result today: a complete breakdown of Jewish society. Even in Israel, a husband can choose to go to jail rather than give a Get which was ordered by the court. Pressure is generally weak in our society and the women who are in a dysfunctional marriage which cannot be repaired, is irrevocably separated and the husband refuses a Get or is using it to blackmail her into giving up her rights or is acting to spite her or goes into hiding or refuses to answer her communications, has no recourse. She is legally bound never to remarry, or even live with anyone else because it is adultery of Aishes Ish in the eyes of our tradition since she is technically still married. Suddenly Jewry is faced with the destruction of the foundations of the sanctity of Jewish life. This is a Chilul Hashem of the first magnitude plus a breeder of hate towards tradition and Rabbis on the part of the women. (Rashi on the Talmud understood that the Sages were extremely concerned about woman's attitude towards men and Rabbis.) This is also a Chilul Hashem because it turns the Torah and traditions from being a life-giving force, a peace-giving force, all of whose ways are sweet, into a destructive force.

Therefore it becomes the Holy obligation on an emergency basis for the Rabbis of this generation not to rest until they come up with a solution to this Churban. The following is one of the solutions developed by Rabb _____ and his Bais Din. The Rema in Shulchan Aruch ruled that a woman who does not receive financial support or

sexual attention has grounds to receive a divorce, to be enforced by the courts if the husband is not willing to give the Get. Today, all separations would fall into one or both categories and merit a Get. Since the secular governments no longer allow Bais Din to enforce Jewish law, we then enforce our laws by not allowing the husband to thwart Bais Din, and we achieve the woman's freedom by annulling the marriage. This is based on the Rabbinic power to annul any marriage since their approval is a condition contained in the original marriage vows. This makes it retroactive in eliminating the original marriage. A Get Ziku is issued by the Bet Din in order that no marriage be freed without an ostensible Get and to satisfy the requirement of the Rashba in his Responsium. As a matter of fact even a reform or a civil marriage and even a common law relationship is not taken lightly as per Rav Hankin and others. So all relationships are deemed marriages to require a Get. In the absence of the husband, the Bais Din becomes his agent to issue a Get for him, based upon rulings of R.E. Klotzin and R. Y.Y. Weinberg and ultimately upon the Rambam. The Rambam states that no matter how much a person is opposed to the giving of a Get to his wife, once the Rabbinical Court orders the Get to be given, his inner self which is good and wishes to do Mitsvos and what is right, agrees and approves of our desire to help free his wife from remaining an Aguna. A Get is written and given to an agent to deliver to the agunah. Once the agent is out of sight, the agency is invalidated. This in turn triggers the annulment procedure. This procedure retroactively invalidates the original Kiddushin-marriage.

The same Get or another Get is also thrown in the street in a manner which involves a second Rabbinic power to invalidate the original marriage. Both methods trigger the retroactive clause which lies in every marriage ceremony enabling the Sages of every generation to control the existence of the marriage, years after the marriage was consummated.

The Get Ziku also serves the purpose of giving the woman the security of an official and concrete document and keeps control of these matters in the hands of a Bais Din that is able to assess the unique situation that varies from case to case. A Get Ziku is given even where it is clear that the original marriage was contracted under false and misleading premises and therefore was in and of itself not binding. For example, the husband was married to someone else or was bisexual or homosexual or had AIDS or some other dread disease and did not disclose it at the time of marriage (only when there is a prospective suitor who is a Cohen will it be dispensed with in the above cases). But over and beyond all that has been said, there lies a deep reason why uniquely in our times there need be no Aguna problem. It is simply this: no normal woman would contract to being bound by marriage if she realized that it would cause her to be without the possibility of any other companion the rest of her life if it fails and she cannot obtain a Get because of his refusal. She would not willingly risk a living widowhood for as long as she lives, and especially with the high rate of failure nowadays. Tan Du does not apply. Tan Du means that any woman would rather be married to anyone no matter how bad, rather than be alone. Certainly it does not apply when having someone for a short period of time does not translate in having him -or anyone else- for the rest of her life. Certainly the Rashba's explanation for the need for Bais Din to have powers to

enforce divorce so that women would have confidence to get married in the first place would not make any sense if women would rather be married to an ogre than be single. Certainly women in modern economies and societies do not need the support of men to survive financially and don't feel any kind of man is preferable to being alone.

Perhaps an objection can be raised to the argument of "al menas kain lo hischasnah"-: no woman would agree to get married would she have known that would the marriage die her husband would refuse to give her a Get. She would remain eternally -for the rest of her life a Chained wife-a living widow.

It is known that a forced sale is post facto valid. Marriage ,in a sense is legally a sale. The bride sells herself to the groom . In exchange for support and the fulfilment of her sexual needs, the bride agrees to have sex only with her husband to be. In this sense she sells herself to him. The husband also agrees to have sex only with his wife to be. Technically since each is receiving a benefit , post facto even if the marriage was forced upon an unwilling spouse , the marriage should be considered valid. In commercial matters, a forced sale is post facto valid. That is the principle known in talmudic language as - "Talyoohoo Ve'zavin Have Zvina" where a forced sale is post facto valid. So too a forced marriage post facto would have been binding. However the Rabbis enacted a special Takana-equitable ordinance that invalidates a forced marriage where the bride opposes the marriage otherwise she would remain a prisoner for the rest of her life. This is so, since a woman can not divorce the husband without his consent. The Rabbis therefore annulled the marriage. However a forced marriage where the husband did not consent was post facto valid. The reason was because the husband could divorce the wife against her consent. Thus he would not remain a prisoner all his life. Now days a forced marriage where the husband does not consent is post facto invalid. The reason is because the husband can not divorce the wife with out her consent because of the the ban established 1000 years ago by Rabenu Gershon Meor Hagola. [Bais Yoseph Even Hoezer 42:1 ; Bais Shmuei Ibid 42:1]

Theoretically we see from the above discussion that a forced Kiddushin-marriage-act post facto is binding the same as a commercial transaction. In the Talmud Rav Hana explains that all deals are in a sense by coercion. The seller needs money; otherwise he or she would not have sold. It makes no difference, Rav Huna says, if the coercion is not internal-because the seller needs money; but from an outsider- the groom forcing the bride to marry him. In both cases post facto the sale or the marriage is valid. {The only reason the marriage is not valid is because of equity. The Rabbis annulled a forced marriage where the bride did not consent. If it was not for this special ordinance of equity the marriage would have been valid} Certainly, if the most basic and apparent objection from the very nature of the sale-in this case the groom forcing the bride to marry him - cannot invalidate the marriage , how can any events that follow the marriage such as abuse of the wife on the part of the husband be recognized to undo the marriage retroactively? If this logic is true , would it not undermine our legal premise of annulling all dead marriages where the wife is abused? The abuse are events that occur after the marriage has been consummated.

One must be aware that Rav Hana's law was disputed in the Talmud but the final

decision of the Talmud favors him. Nevertheless, Rav Hana himself retracts his own theory. If the seller protested his forced agreement before witnesses prior to the forced sale, it is not valid. But in the end did the seller not publically agree to the sale? After all he was physically forced till he agreed. The only conclusion is that Rav Hana himself isn't willing to go that far in acknowledging forced agreement to be valid. Certainly in the case of a bride being forced to get married against her wish by the groom, her parents or anyone else or by undue coercion the marriage contract is invalid as a result of equity. The Rabbis annul the marriage. So too, the Rabbis reserve the right -they have the power- to annul any marriage where abuse of the wife occurs after the marriage is consummated because of equity.

Now all agree a forced Get is valid, but we must force him to say he wants to give the Get even though he doesn't consent if he is not beaten. The only reason he consents is because he is suffering. He wants to stop his pain. Even so, wasn't Rav Hana's rationale that he received money for his forced sale? Just like forced gifts do not work, so too if the husband receives nothing in return of value to him why is a forced Get valid? Even though the husband agrees to give a Get to escape the beating of the Rabbinical Court, nevertheless it should be invalid? Tosfos addresses this problem with the following theory. A forced Get is valid because the husband receives the benefit that he is relieved from his obligations to his wife of support and sexual duties. He is now free to find and marry another woman. He can not find another wife while he is attached in marriage to his former wife who left him. Regardless if she is wrong, nevertheless, she will not return to him The marriage is dead. He loses nothing since his wife left him. She will never return to him even if he never will grant her a Get.

The whole concept, nevertheless, seems strained. Indeed, Rambam invents an entirely new reason why forced Get works. Rambam posits that it is the inner soul of the Jew that wants to do good and not force his wife to remain an Agunah. This inner soul of the husband wins over his evil inclination-not to free his wife. The pain inflicted by the beating of the rabbis assist his inner soul to win. Therefore, Rambam found some basis to justify the validity of a forced Get-Jewish Divorce, in addition to all the reasons stated above. Since in our day and age the Rabbinical Court is not permitted by civil law to beat the husband to give a Get-Jewish divorce, the Rabbinical Court annuls the marriage. Be it as it may, we still demand a Get Ziku for all the reasons listed above. We will not take chances and will institute the various triggers discussed previously for Afke'ihu Rabbanu Le'kiddushin Menay- where the Rabbinical Court will annul the marriage.

In conclusion, we know that Jews by nature and by obligation are a nation full of mercy, humility, and kind deeds to others, shrinking from macho attitudes, and looking to be helpful to those in distress. Who is more distressed than an Aguna? Those who are not so inclined, the Talmud assures us, did not have forefathers who stood at Sinai.

VOLUME -I

SHROSHIM - ROOTS

Points for Brief on Annulment of Marriages of Agunot

- 1. There were at least two critical periods for Agunot in the last 100 years. First, there was the emigration of thousands of husbands from Europe to the New World leaving wives and children behind and then the Holocaust. At the moment the number is also high because of the marked increase in the divorce rate of Jewish couples and the pathetic situations of the abandoned wives and the resort to extortions and violence.**
- 2. All doubts with respect to law and facts are resolved in favor of Agunot and even minority opinion of Gedolim in favor of annulment are relied upon (Rav Feinstein's view).**

Taz Even Hoezer 17:15 Taz Yoreh Dayoh 293:4 See chapter 2 Hatorot Agunot

סמכים על דעת יחידים בשעת הדחק
ובפרט כדי לשחרר עגונה ועיין עוד בחלקת
מחוקק אבן העזר - יז:עח

Sources and Commentary

2. See Taz Even Hoezer 17:15. See Shach on Yoreh Dayoh 293:4. Opinion of Taz is that to free an Agunah we will rule like a minority opinion even if the matter is Mederaisa - Divine Law. Shach on the other hand applies this law only to matters that are Rabbinical Law, not Divine Law. Shach admits that when there are numerous doubts ספקות concerning a case, the Deuraisa Divine Law is converted to a Rabonan - Rabbinical Law. This revolves around the classical dispute between Rambam Laws of Tumai Mes 9:12 and Rashba. Toras Habais Bais 4 Shaar 1 Aruch Hashulchan Yoreh Dayoh 110:89-96, 29:25. Rambam holds that in the entire Torah only what is definitely forbidden is Divine. Any doubt about the matter either as to the applicability of the Law - Dispute between authorities. See Aruch Hashulchon Yoreh Dayoh 110:109, or a dispute as to facts Aruch Hashulchon Yoreh Dayoh 110:127 converts the question even if Divine matter - to the gravity of a Rabbinical Law. Thus we say, according to Rambam Sofek Deuraisa Asur Rak Mederabanan

ספק דאורייתא אסור, אסור רק מדרבנן

Even a Divine doubt is prohibited by Rabbinical Law.

Rashba maintains that even in the case of doubt, it is still forbidden Meduraisa by Divine Law - Sofek Deuraisa Osur Meduraisa

ספק דאורייתא אסור מדאורייתא

A Divine doubt is prohibited by Divine Law. However, Rashba agrees that if there exists more than one doubt, certainly more than two; then the item in question is permitted even Rabbinically. See Aruch Hashulchon Yoreh Dayoh 110:99; also Aruch Hashulchon Yoreh Dayoh 29:25.

Now, in all our cases, we have 20-30 doubts existing. Thus in each case, it is permitted to rely on the minority opinions even according to Shach Yoreh Dayoh 242. See Ohel Yitzchok Vol. I. Rav Yitzchok Herzog who employs similar reasoning as above mentioned. See Shridei Esh Book 3 Responsa 25.

3. The annulments liberate only the Agunot. The husbands can liberate themselves by giving the Get. For them, doubts do not have to be resolved in their favor. They have a way out.

Sources and Commentary

3. The opinions of Taz and Shach above mentioned apply only where the woman in question has no other options **בשעת הדחק ואם לא נקיל תשאר עגונה כל ימיה**
If we will not be lenient, the Agunah will remain chained all her life. For the man there is no emergency. He is the cause for the emergency because of his refusal to give the Get. Consequently, we do not rely on minority opinions to free him. The lenient rulings of Taz and Shach do not cover him. See also Chelkes Meckokek Even Hoezer #17:78 for similar reasoning. We permit one Rabbinical authority to free an Agunah, rather than the required number of three Rabbis. See also Rambam end of Laws of Divorce 13:29 at the end. Shelo tisharnu Bnos Yisroel Agunos Hikulo Bo Hachomim.

שלא תשארונו בנות ישראל עגונות הקילה בה הכמים

We relax the rules of evidence in order to free an Agunah. See Laws of Yivom and Chlitzta Rambam 4:31 end. See Rambam for the same reasoning: Laws of Sanhedrin 24:1 end. Some authorities hold that the Rabbis even have the power to uproot a Divine Law if necessary in order to free an Agunah. See Tosphos Bava Basra 48B.

**ד"ה בעובדא דנרש וכו תינך דקדיש בכספא ויל דסבר
הכא דיש כח ביד חכמים לעקור דבר מן התורה וכו
ואף על גב דלא קדש מדעתם הוא עשה שלא כהוגן
יכולים להפקע הקדושין מפני שיש כח ביד חכמים**

לעקור דבר מן התורה

See also Talmud Yevomos 90B and Tosphos Ibid Rambam Mamrim 2:4

בהוראת שעה - יש כח לעקור מן התורה

All this only applies to free the wife who is powerless. It does not apply to free the husband who simply has to authorize the writing, signing, and giving of the Get. No Laws have to be compromised, all opinions can be satisfied. The strictest rulings can be adopted. See also Rambam Sanhedrin 25:4,5,6. Bet Din has the power at all times to confiscate another person's money if such action will serve the purpose of justice. See Choshen Mishpat and Tur Ibid 2:1 for same. See Chsan Soffer Even Hoezer 108, 109 - that even today, Bet Din can confiscate the money or ring given by the husband as the purchasing price to acquire his wife in marriage and change its character to be a gift. This can be done retroactively. Thus in time of need this method can be employed to annul marriages. See Kesubbos 3a, Gittin 33a, Yevomos 90B and 110A, Bova Basra 48B. See Rav Herzog Hachuka Leyisrael al pi HaTorah vol. 2 page 154 for same. See Ohr Zeruah Rabbenu Simcha #761, Bais Ov Book 7, Chapter 27

4. From time immemorial, rabbis have been empowered to annul marriages. The extent of their exercise of the power may have varied from time to time and from place to place (see Freiman). Jerusalem Talmud Ksubos 7:6, Meiri Bavali Ksubos, page 268

5. The power was not limited to Kiddushei Ta'ut but virtually exercised when ever the marriage was deemed dead because of situations created by the husband and for

situations intolerable to the wife, or for the inability of the Bet Din to coerce the husband to give the Get. It was also used to terminate the status of Mamzeruth. (Maharsham Book 1:9 See HaTorat Agunot Chapters 1,2,3. See #8 and exhibits attached to #8. See Ohr Zeruah Rabbenu Simcha #761, also Bais Ov Book 7, Chapter 27.

Sources and Commentary

5. See Igros Moshe (Moshe Feinstein) part I, chapter 78 end. See Dvar Eliyohu, Rav Eliyohu Klotzkin Chapter 48 (towards the end). See Ohel Moshe, Rav Moshe Zweig, Part 2 Chapter 123. See Ein Yitzchok Part I, Chapter 24: 39,39,40,41. See Chelkos Yoev, Book I, Chapter 24. See Meharsham, Book I, Chapter 9 - Methods used to remove stigma of illegitimacy. All coercion of the husband to give a Get is in reality annulment. See Bava Basra Bavali 48A. See Rambam Laws of Divorce 2:20. See Maharik Chapter 63. See Ohr Someyach on Rambam Laws of Divorce 2:20. See Minchos Yitzchok, volume 10:126 Rav Yitzchok Weiss.

6. The presumption that all women prefer any kind of marriage to none is no longer true and, at least in the view of Rabbi Elchanan Spektor, does not preclude annulment in any of the aforementioned circumstances.

טוב למשב טן דו מלמשיב ארמלתא לא אמרינן במקום
שהדין נותן שבית דין כופים להוצא אשתו

Sources and Commentary

6. See Ein Yitzchok, Volume I, Chapter 24:41. See Igros Moshe Even Hoezer, Volume I:78 (end). See Bach Even Hoezer 157:5. See Bava Kama Buvali 110 - Tosphos יכו ד"ה דאדתא דהכי לא התקדשה

See Bais Yoseph Choshen Mishpot 232:6 - that the standards that are considered as a defect that can negate any purchase (or a marriage that technically is also a purchase) are relative to time and place and keep on changing. What the talmud 3500 years ago considered a defect that can defeat a marriage even years later - changes by time and place. See Meshivas Nefesh, Rav Tzinz, chapter 15 - the standards are relative to time and place.

7A. Debunking the outrageous lies slander and libel against orthodox Rabbis and the Torah itself regarding the marriage ceremony.

Marriage is created when the wife accepts by taking a marriage ring to be faithful to her husband and not to have sex with any other man. The wife in this sense belongs and is purchased by the husband. She becomes at the same instant sacred to G-D. Fidelity to the husband is at the same instant fidelity to G-d. Even if her husband would consent that she have sex with another man she would be breaching her vows to G-d would she do that.

The man at the instant of marriage pledges in the Ksubah to behave as Jewish husbands

behave. Jewish husbands do not have other lovers , they are loyal , loving, understanding, support their spouses and children; do not abuse or threaten or hurt their spouses emotionally, psychologically, and certainly not physically. They are not addicted to foreign substances, alcohol , drugs, are not gamblers- bet on horses or any form of gambling. They do not disappear. they are not homosexuals or bisexuals they are not impotent. They pledge to satisfy the sexual needs and emotional needs of the wife. They pledge love and understanding, to respect the wife and honor her more than themselves and make her feel important . In return for support of shelter food and all her physical needs she pledges that what ever moneys she makes or fruit of the assets she possesses or will possess will belong to the husband. He can enjoy and takes possession of the fruit of her assets not the actual asset This is the meaning -what the wife possesses belongs to the husband. If a couple negotiate that the wife forfeits material support the fruit of her assets do not belong to the husband. She does not belong to the husband . She does not become her husband's possession. Yes, she belongs to her husband only sexually. She is the Kinyon possession sexually of her husband. her husband belongs to her. Since the edict of Rabenu Gershon Meor Hagola 1000 years ago a married man can take no more than one wife . He can not have any other woman as a mistress. All Ashkenazim accepted this edict. Sefardim swear in the Ksubah the same. Thus the husband belongs sexually to the wife . There only exists a problem when the marriage breaks up and the husband refuses a Get that only he can grant. If a husband breaches these understandings grounds exist to coerce him to grant a Get. When The Rabbis are powerless , the couple has gone to a Rabbinical trial , the wife is prepared to follow all the stipulations of the Rabbinical Court, and the husband still refuses a Get we will give a Get Ziku and annul the marriage . This is true if all civil remedies have been exhausted and the husband still refuses to give a Get.

We also discuss the question of the wife not having proper disclosure of the perils of an Halachic marriage. Since the perils of of Agunot is presently public knowledge and has been that way for the last 25 years, can a woman claim today that she did not have proper disclosure? Does the fact that the woman did not consult a Rabbi who is knowledgeable of all the laws and the perils of a Hallachic marriage deprive her of the argument of insufficient disclosure?

Obviously the wife knew that there are very serious problems when a marriage dies and the husband refuses to agree to give her a Get-Jewish divorce. However no sane individual or her family would agree to enter a Halachic marriage if there exists no exit . There exists Umdenah Demuchoch Metocho if not Anon Saddye-an unwritten or implied contract that the overwhelming majority of women would have a Pilegesh relationship under such circumstances. They insist that the marital relationship be one of being a mistress not a wife The women consider themselves as though married with a conditional marriage. If the husband breaches any of the conditions that we mentioned earlier how a Jewish husband must behave , the marriage is ab initio annulled. Would a prenuptial agreement have existed listing the proper behavior of the spouses there would be no question that the husband's breach would precipitate an annulment. As I point out in chapter 12 ,every marriage that has a Ksubah that is dated is the equivalent as a prenuptial agreement. Thus every time a marriage dies and the husband refuses to go to the Rabbinical Court or follow their order to give a Get, can be annulled on the basis of the Ksubah. In addition to the Ksubah there exists an unwritten contract that no woman will get married Hallachically with out this understanding. I have

brought proof else where in this book for the sources for this unwritten contract. No woman would agree to forfeit or forgive this privilege ever. No marriage can take effect unless the wife also agrees . The wife will not agree to get married otherwise. See Ramo Even Hoezer 157:4 ;Pischie Tsuvah Ibid ;Nodah Beyehudah Book 1 Even Hoezer # 54, 56 . The reasoning applied for a levirite marriage by Ramo Nodeh Beyehudah ,Bais Meir, Chsam Soffer Nachlas Shivoh and other authorities who sanction a conditional levirite marriage we apply for every marriage that dies , when all social and civil law remedies have been tried with no success after going to a Rabbinical trial and the husband refuses to give a Get. We will then give a Get Ziku-we substitute for the husband and give the wife a Get and annul the marriage. I will elaborate later in this chapter as well as in chapter 13 for the source of this procedure.

Sources and Commentary

7B. See Talmud Kedushin 2a

האשה נקנית בשלשה דרכים - בכסף בשטר ובביאה
וקונה את עצמה בשני דרכים במתת הבעל ובגט

A woman is acquired sexually by the husband by three ways and regains physical possession of herself- that she can have another sexual partner -the accepted way is through Halachic marriage - by the death of the husband or by divorce. See Rambam Ishus 1:2,3. See Tosphos Bava Basra 48:B

דה קדיש בביא מה איכא למימר תימא לרשב"א
דקדיש בביא בלא הפקעה לא ליהוי קדושין דהוי
תליוהו ויהיב דכנגד גופה שקנו לו אינה נותן לה
כלום ודוחק לומר לפי שיש לה הנאת ביאה וכו

The husband acquires exclusive sexual rights in the wife; and the wife acquires exclusive sexual rights in the husband.. Each one of the spouses must pledge fidelity ;otherwise there is no marriage.

7C. קדיש בביאה מאי איכא למימר . לפי דעת הרמבם
בספר המצוות שכסף קדושיו לומדים מיג מדות

וכל שלומדים מיג מדות הם מדברי סופרים מדרבנן
וכן פוסק הרמבם בהלכות אשות פרק א' הלכה ב', ג'
וכן סוברים רבותיו של רשי עיין רשי כתובות ג'
ובבא בתרא מח:

7C.. All present marriages have only rabbinical status. All modern day marriages are enacted by the groom giving the bride a ring. According to prominent authorities, the position of the Rambam, as well as the Rabbis of Rashi is that such kedushin is only rabbinical.

Likewise, all marriages that employ money are only Rabbinical. See opinion of Rabbis of Rashi mentioned by Rashi Bavali Ksubos 3a, Gittin 33, Yevomos 90b. See Rambam in Sefer Hamitzvohs Shorosh 2, that all laws that have derived from 13 principles are all Rabbinical, unless explicitly stated by Talmud that it is Divine. Marriage with money is learned from 13 principles. Therefore, it is Rabbinical. Rambam confirms this view in Laws of Ishas, Chapter 1:2,3

ובכסף מדברי סופרים

also Ibid Chapter 3:20 אבל הכסף מדברי סופרים

Responsa Shev Yaakov, Responsa #21. This position of Rambam is supported by Pischei Tsvah Even Hoezer #25 end of chapter 42 cites Rav Akiva Elger Responsa #94 and Shev Yaakov #21. Thus, there are grounds to consider that all marriages to say - at best- are only Rabbinical. See Ramo Choshen Mishpat 33:1, Magid Mishna Ishos 4:6; Kesef Mishna Laws of Witnesses 13:1 for same as above. This is position of Gaonim.

8. The history of Jewish family law provides ample proof that the improvement of the status of the woman was a primary objective. The rabbis held that the use of coercion against the husband was her way to get out of the marriage for justifiable cause. The very fact that physical coercion is not available to her now means that she can legally demand annulment since she never would have agreed to marry if no way to get out was available to her. Since the exercise of coercion is not available to her, and had she known this at the time of the marriage, she certainly would not have entered the marriage and this can also be seen as a marriage by mistake.

בכל מקום שהלכה שבית דין כופים הבעל
אם אי אפשר בזמן הזה לכופ לבעל או שהוא לא
נמצא אף במקום שיכולם לכופ אז מפקעים הקדושין
ואומרים דאדעתא דהכי לא התקדשה עצמה
אגרת משה אבן העזר חלק א' סימן עט - (בסוף)

In our day and age, when the Bet Din is precluded by civil law from coercing the husband to give a Get, then we will annul the marriage. With out this remedy, no woman would agree to get married. When Bet Din refuses to exercise its power to annul marriages, such refusal renders the marriage as a mistake abinito, since it places women who have an intolerable marriage in an impossible situation with no relief other than violation of the law or suicide.

אם בית דין לא היו כופים לבעל הנשים היו נמנעין
מלתחתן מפני שאין להן שום עצה לצאת במקום
שאי אפשר להמשיך באותו נשואין - חדושי הרשבא
גטין פח : יבמות מח :

Rashba Gitin 88B clearly states that women would not agree to get married if they could not rely on the remedy of Bet Din coercing the husband to grant a Get in an impossible marriage. Rashba Yevomos 46B states that the rationale for coercing the husband is because Bet Din annuls the marriage.

כל המקדש אדעתא דרבנן מקדש (ובית דין מפקעים
הקדושין)

Otherwise there would be a complete breakdown in the Jewish Judicial system. Even though the Sanhedrin no longer exists today (since 400 AD) never-the-less Bet Din, throughout the centuries, has been delegated the authority - Rabbinically - to exercise its authority in crucial matters. Matters of marriage and divorce and annulment are among those matters. The position of the Rashba is codified in Choshen Mishpat 2 in Tur Choshen Mishpat and Choshen Mishpat 2. It thus follows that in our day and age when Batei Din, Rabbinical Courts no longer can flog the husband into submission to grant his wife a Get, they can annul the marriage directly without flogging. Otherwise, the entire marriage institution would break down. If women have no relief or recourse in an impossible marriage, women will refuse to have a halachic marriage. Thus, the combination of

Rashba Gittin 88B and Yevomus 48B supports our position. Such is the position of Ohr Zerua , Rabbenu Simcha #761, and Ohel Moshe, Book 2, #123 who explicitly state that the marriage can be annulled. Such is the position of Igros Moshe Rav Feinstein Even Hoezer Book I #78 end and Mashiv Dov (Rov Eliyohu Klotzkiev) #48 and Ein Yitzchok (Rav Yitzchok Elchonen) - Book 1- 24:38, 39,40, 41. Baer Yitzchok #2 and Meshivas Nefesh (Rav Arye Leib Tzinz) #15 and Machne Efrayim, Laws of Zechrayoh and Matana #6. See Rashba Kedushin 23A, Rosh #12 on Sanhedrin 60B, also Ran Chapter 4 Gittin pruzbel בודה ומסתברא who state that even if the recipient of the gift suffers negative consequences but there are positive benefits, he takes possession of the gift. See Sdei Chomed Volume 2: Mare- Ches Zayin Klal 22 זכין לאדם שלא בפניו. The above authorities are relied upon when we issue a Get Ziku. Thus, even if the husband suffers some liabilities and negative consequences as a result of us giving the Get Ziku, it is halachically legal.

Sources and Commentary

8. See Bais Ov, volume 7 chapter 27. From Talmud Bavali Bova Metziah 104, Yerushalmi Ksubos 4:8, Tosefta Ksubos 4:9. See Bach Even Hoezer Tur Chapter 157, beginning. See Igros Moshe Even Hoezer Book I chapter 78 end. See Dvar Eliyahu Chapter 48. See Ohel Moshe, Volume II, Chapter 123. See Chelkos Yoev, Book I, Chapter 24. See Hatorot Agunot by HaRav Moshe Morgenstern, Chapters 1-12 for greater elaboration. See Aruch Hashulchon Even Hoezer 18:3; 139:3.

שאלות ותשובות התרת עגונות חלק א וחלק ב
מהרב משה מארגנשטרן

for actual analysis on numerous case histories - principles and methods used to emancipate 150 Agunot and Agunim. All this is done in the midst of threats of assassination. An active campaign of character assassination has been carried on for years against Harov Rackman and myself. We will fight in the court of public opinion - in the press. 99% of all Jews back us. Three areas can never be prohibited to any human:

- a. Sleep
- b. Food and Drink
- c. Sex

No woman in the world will pay any attention to anyone who attempts to cut off these basic needs. If all the living Rabbis, as well as all the Rabbis for the last 3400 years, would sign letters cutting off above basic needs no man or woman would listen. We are certain one million percent. Certainly, when the Torah granted such powers to the Rabbis in each generation to annul marriages.

שלא ישארנו בנות ישראל עגונות

Rambam Laws of Divorce 13:29 end - that Jewish daughters should not remain Agunot. Even if the woman herself elects to remain an Agunoh, Torah Law rules against her. See Rambam Laws of Yivom and Chalitzah, Chapter 2:16. Let us hope that all Rabbis - in addition to the lay public who already support us - see the light.

9. Get Ziku I

מזכים לאדם שלא בפניו

A. When a person has a מצוה to obey the decree of a court and refuses, the court arrogates to itself to give his wife a Get and exercises the performance of this מצוה. Thus when a husband refuses to grant his wife a Get, the Bet Din will do it for him.

נציב משיב דבר סימן 79
אליהו קלוצקין דברים אחדים אות מד
אהל יצחק (יצחק הרצוג) חלק ב' סימן 64
יצחק אלחנן - באר יצחק סימן ב' בקשר לבדיקת חמץ
מזכין לאדם שלא בפניו אם זה זכות גמור
חדושי הרשבא קדושין כג

B. העולה מידינו דבמידי דהוי זכות גמור וליכא שום
חובה דנראה דכל כי הא גוונא אפילו כי אתי לקמן
וצווח לא ניחא לי לא משגחינן ביה
מחנה אפרים הלכות זכיה ומתנה סימן ו' דה העולה
מדברינו

Whenever something is entirely beneficial for a person and there is no liability, one can acquire this matter for the other person. Even if the other person objects, we pay no attention to him. (Machne Efrayim Laws of Zechiyah & Matan #6) Acquiring a Get for a recalcitrant husband is morally and financially - in the long run - totally beneficial for the husband. Thus we can acquire the Get for him even if he objects. See Chapter 13 -The Agunah Rabbi is Right where I elaborate at great length about the concept of Get Zikui . I discuss the work done by Rav Eliyohu Klotzkin Dvorim Ahodim Responsa 25 . of freeing numerous Agunot employing Get Zikui. See Responsa Heichel Yitzchok Rav Yitzchok Herzog -first chief Rabbi of Israel Book 2 Responsa #64 who describes in great detail Rav Eliyohu Klotzkin's method of using Get Zikui. Also See Sridai Esh Volume 3 Responsa # 25 who cites Rv Eliyohu Klotzkin , as well as other authorities that permit Get Zikui. See Peasch Habayit 21:3 who also permits Get Zikui . He is cited by Sridei Esh Volume 3 Responsa 25 page 80. The Sredei Esh volume 3# 25 quotes Rav Kahane from Jerusalem who used to head the Bet Din at Warsaw- who testified to numerous Agunot who were freed by the Bet Din using Get Zikui. This was employed because there existed no other Halachic method to free these Agunot.

See also Bach on Tur Even Hoezer 123:1 and Aruch Hashulchon EvenHoezer 123:5,6 who support the position that according to Rambam the reason the husband must give his assent to the writing , signing and delivery of the Get to the wife is because only when the husband orders the above mentioned operations we know for sure that these operations were performed lishmo - for the express purpose of divorcing this woman.

However both Bach and Aruch Hashulchon maintain that there exists a doubt if the same result could also be achieved if the wife who wants a divorce writes her own Get. The same logic also dictates that if the Rabbinical Court performs the above operations with the authorization of the wife , who is possibly empowered to write her own Get, that the Get will be valid. We rule that whenever a doubt exists about any law, the Get is valid Biblically, but not Rabbinically, as previously mentioned. In such a case if one increases the number of additional adjuncts favoring annulments , the Get is 100% Kosher according to all Authorities. If the husband refuses to authorize the witnesses to sign the Get, again there is the problem that if the witnesses do sign the Get, anyway there is lacking in Leshmo- that it was intended for the wife when the witnesses do sign. However there are many authorities who claim that this deficiency is no more than Rabbinical, not Biblical See Aruch Hashulchon Even Hoezer 130:3 middle of paragraph. As mentioned previously it is much easier to deal with a Rabbinical prohibition. We will find a dispensation for the Agunah by finding additional Rabbinical doubts as previously discussed in this chapter.

True the husband must authorize the giving of the Get to the wife , she can not take it herself Rambam Gairushon 1:3.However the Rabbinical Court has the power when the wife argues Mous Alai -my husband disgusts me- to force the husband to give a Get. If the Court is not able to force the husband, it will then annul the marriage .

Since the wife refuses to return to the husband even if he would be the only male on the planet, the husband loses absolutely nothing by divorcing his wife. If he refuses and the Bet Din gives a Get Zikui for him it is entirely for his benefit. With a Get Zikui given without his approval - technically he is free to remarry. Yes, it was forced on him by the Bet Din and consequently it is in effect an annulment Ramban and Rashba as cited by Nesivos Hamishpot in Beurim in Choshen Mishpot 1:1.However after a Get Zikui is given to the wife he is also free. He no longer is constrained to remarry because of Cherm Rabbenu Gershon of not marrying another wife as long as he remains married to his estranged wife. See Aruch Hashulchon Choshen Mishpot 205 :8 for similar concept. True, we insist the husband give another Get voluntarily that observes all the strict interpretations and not depend on the authorities that permit annulments. The giving of the Get is in his control so we will be strict when dealing with him See Aruch Hashulchon Even Hoezer 42:2 and Igros Moshe Even Hoezer Book 1 Responsa #79 end . However technically if he does not bother to have a Get , he can remarry on the basis of the annulment. Therefore the annulment and get Zikui is definitely for his benefit. His estranged wife he will never get back. The annulment and Get Zikui enable him to go on with his life and meet another woman whom he can marry, without violating The Cherem of Rabbenu Gershon of not having more than one wife. See Nesivos Hamishpot Beurim Choshen Mishpot 1:1 who cites Ramban and Rashboh who give reason for forcing husband to give a Get because it is ,in effect, an annulment. Thus according to them an annulment must always have a Get. We therefore give a Get Zikui. See Aruch Hashulchon Even Hoezer 42:2 and 155:33 that for the sake of equity we will annul a marriage where the husband refuses to authorize the writing , signing and giving of a Get . In order to prevent the warping of justice and equity we will annul the marriage . We will rely on all authorities that we will elaborate in the coming chapters to annul marriages and to prevent women remaining Agunot.

It is of interest to note that Aruch Hashulchon Even Hoezer 141:60 explicitly sanctions giving a Get Ziku providing it is for the benefit of the husband. “ We do not have to hear the husband specifically appoint the agent to write the Get. As long as we know that the writing of the Get is for the benefit of the husband we can proceed and write the Get. The scribe who writes the Get will be considered the agent of the husband even though he was not verbally appointed by the husband. This will meet the requirement that the scribe must be appointed by the husband in order to for the Get to be Kosher.”

In that way we will fulfill our purpose for what we were created to do - TO USE OUR TORAH KNOWLEDGE TO HELP OTHER INDIVIDUALS AND BE HONEST TO OURSELVES AND TO G-D.

10. Get in Escrow

There exist many Botei Din -Rabbinical Courts that are corrupt. With out any trial where the wife is represented ,they agree to the demands of a husband to have a Get written and signed by two competent witnesses , but the delivery to the agunah is held up until she complies to conditions that reduce her support to herself and her children to a fraction of what she won in civil court .She is also forced by the Rabbinical Court to abandon custody of some or all her children won in civil

court to her husband.

Our Rabbinical Court will then proceed to write another Get, have the Get signed by two competent witnesses and delivered to the agunah . We will do this based on two theories developed by Rav Moshe Feinstein -Igross Moshe Even Hoezer Vol-1 responsa #117 and 118. Rav Mosh Feinstein rules that once the husband authorizes the giving of a Get to any rabbi for his wife and the Get is not given because of any reason even if that rabbi dies, another Rabbinical Court has the power to have a Get written , have two competent witnesses sign the Get and have the Get delivered to the wife. The conditions inserted by the husband are considered as being in conflict with what is written in the Torah. Consequently they are null and void. The Get is a Kosher Get and the agunah is free to go on with her life.Rambam Laws Ishos 6:9.10 see Mishne Lemech 10. Also Ishos 12:8,14. Also Even Hoezer 71:2 see Bais Shmuel and Celkos Meechokek ibid. Rav Feinstein rules that the second Rabbinical Court is duty bound to be the agents of the first Rabbinical Court in carrying out the sacred duty of giving the Get and preventing a woman of being an agunah The second court is giving a Get Ziku as explained earlier. Would the rabbis of the first court all die then there would be no question at all that the second court is authorized . Since they are corrupt they are deemed as dead. A corrupt individual is like one dead. -KESHER RESHOIM AINO MIN HAMINYON- In addition argues Rav Moshe Feinstein In Igros Moshe 1- Responsa #118 according to Rav Kahane formerly chief dayan of the Bet Din of Warsaw Poland the court can give a Get Ziku for the benefit of the husband. This is the position of Rav Eliyohu Klotzkin as previously described. In Rav Moshe's case the husband did not place any conditions that the wife had to fulfill before the Get was to be given. However, it is our position that the conditions placed by the husband violate Torah Law and are null and void. Consequently a new Bet Din can have a new Get written, signed by two competent witnesses and given by an agent to the wife, in accordance with the ruling of Rav Moshe Feinstein , Rav Kahane of Yerushelayim and Rav Herzog , Ohel Yitzchok- 2 responsa #64.

True, a man can insert monetary conditions in a Get. However after the edict of Rabenu Gershon 1000 years ago that no woman can be divorced forcefully against her will, any conditions must be approved by the wife. The wife certainly does not agree to such conditions that will reduce the support she won for herself and the children to what the first Rabbinical Court arbitrated. She also does not agree to surrender custody of any of her children to the husband. Custody of the children certainly is not a monetary matter.

Custody of the children is decided on what is in the best interest of the child. Custody and support for the wife and the children are amulatory and can be changed by the Bet Din or the civil courts in changed circumstances. Certainly, the decision about child custody can not be arbitrated by the father as a condition inserted in the Get. If that is inserted , such condition violates Halacha and is null and void.

WE ARE OPPOSED ONLY TO THOSE RABBIS WHO DO NOT HAVE AN IMPARTIAL RABBINICAL TRIAL. However neither can the wife unilaterally ignore Torah Law regarding alimony , child support, custody and visitation rights.

This is a matter that the impartial Bet Din must decide, not the civil court. The husband appoints one member of the Bet Din to represent his position, the wife appoints one member of the Bet Din to represent her interest. Both members of the Bet Din appoint a third Rabbi who will cast the deciding vote. This is called Zablah. Only when the husband is unwilling to use this form of impartial mediation; but instead gives the wife an ultimatum with the connivance of one of the Rabbis, that we will proceed to free the wife. This is true when the wife will accept the terms of settlement on all family matters that the Bet Din rules are in accordance with Halacha-Jewish Law. Bet Din has the advantage over both spouses. The husband wants to alter the terms of the alimony, child support, custody and visitation rights; the wife wants to obtain the Get-Jewish divorce. Thus we have a tradeoff. Bet Din can act as the middleman-in accordance with Halacha on all matters. Bet Din must not abdicate its very powerful position . .

Even if we argue regarding alimony that a wife is not entitled to any once she leaves the husband and no longer is cohabiting with him- Even Hoezer Ramo 70:12; nevertheless the wife is entitled to alimony from the standpoint of equity. Even if she be not Jewish and no halachic marriage be binding Rav Uziel -first Sefardic Chief Rabbi at the time Israel declared its independence-ruled that she is entitled to alimony and support of her children that the Jewish man fathered. -who never were converted. The reason is equity. The non Jewish woman would never had agreed to marry her Jewish husband in a civil ceremony if she had any doubts that in the contingency of a dissolution of her relationship her husband would refuse to continue supporting her and her children and she would not have any relief in any court of law. Under Jewish Law the non Jewish wife and her children are entitled to alimony and child support as equity. The same law of equity applies to a Jewish wife even if under common Jewish law she is not entitled to alimony, since she no longer cohabits with her husband. However this is a decision only for Bet Din to decide; not the wife exploiting the secular civil court system with the assistance of very sharp attorneys. Then she comes to us for a Get-that we should annul her marriage. Equity is a two sided affair for the husband, as well as for the wife.

Certainly, the husband unilaterally can not insert a condition in the Get-that he be absolved from his obligation of supporting the children he fathered. See Even Hoezer 71:1,2 in Ramo, Bais Shmuel and Chelkos Mechokek ibid. Consequently any such condition precedents in order to give the Get inserted by the husband are in contradiction to Torah Law and null and void. Any Bet Din that enforces such a condition is corrupt and forfeits its right as a Bet Din. The members are deemed as evil and dead and are to be disregarded. Another bet Din is authorized to pick up and have the Get written, signed by two competent witnesses and appoint an agent to give the Get to the agunah.

11. הפקר בית דין הפקר In addition, the Bet Din has the power to confiscate the ring retroactively and change its character to a gift. In that manner, no ring was ever given to the woman to acquire her in marriage.

הפקר ב"ד הפקר חשן משפט סימן ב
חתם סופר תשובות סימן 109,108
החוקה לישראל על פי התורה כרך ב'

אייזיק הרצוג 154

מהרב יצחק

12. When a husband displays abnormal behavior during the marriage it may be evidence that such behavior existed at the time of birth and this is another ground to annul the marriage on the basis of **מִקַּח טַעוּת**. Mistake in the making and operation of the marriage. See **Shaalot Utsuvot Hatorat Agunot Vol. I and II in Hebrew and English by**

13. We also will consider as being incompetent witnesses those individuals who slander and libel in the newspapers and in the internet any human, which is a million times worse than any violations of halacha by the Reform, Conservatives and Reconstructionalists. See Taz Yoreh Dayoh 99:8; Rambam Mamrim 3:3; Rambam Melochim 10:1. At least the non Orthodox honestly believe that the laws they are violating do not exist or are not binding. They are Shoggegim -unwitting. Some authorities -Rav Akiva Eiger will accept them as witnesses. Rav Moshe Feinstein and Aruch Hashulchon will not. See chapter #15. What ever their error it still is an error and they are disqualified from being accepted as a witness for marriage or divorce. . However what excuse do those individuals who libel other individuals have? Do they accept the pressure of a civil law suite, but disregard Torah Law and the summons to go to a Din Torah? Even if they are physically present at the wedding and witness the marriage ceremony their very presence corrupts the validity of competent witnesses.

Anyone who has not mastered and observes all four parts of the Shulchan Aruch is forbidden to have any business in performing marriages or divorces. Since all the Laws of the four parts of the Shulchan Aruch are intertwined with each and every other law one who has not mastered all the four parts of the Shulchan Aruch and observes them is prohibited from engaging in the performance of marriages and divorces or to give a Halachic ruling in any other area of Jewish Law. See Jerusalem Talmud Gitten 4:2; Nedorim 10:8; Chagiga 1:8; Rambam Sanhedrin 4:8; and Chapters 1,2,3,4,12 of this book. Even in civil law anyone not licensed to practice a profession and practices the profession is punishable under civil or criminal penalties. This is equally true if one lacks expertise in any area that he practices. He can also lose his license and also be sued for malpractice. Certainly he does not know if he did or did not violate any one of these laws since he does not know of the existence of the law. Such a person has no job volunteering to officiate in marriages or divorces. **IF THERE EXISTS ANY ERROR HE DEFINITELY WOULD BE LIABLE OF MALPRACTICE** See Aruch Hashulchon Choshen Mishpot 386:11. **HIS VERY PARTICIPATION WITHOUT SUPERVISION IS A SIN.** See Even Hoezer chapter 49:3; Kedushin 6b. For that alone he is banned from being a witness. **ALL YOU NEED TO BE BANNED IS A WILFUL VIOLATION EVEN ONCE OF ANY Law Rabbinical or Biblical.** See Yoreh Dayoh Aruch Hashulchon 119:14. That automatically renders the marriage ab initio null and void.

If these individuals are performing the marriage ceremony, we will presume unless proven otherwise that circumstantial evidence exists that they may be ignorant of some or many or all of the tens of thousands of laws governing marriage, divorce, annulments and the laws of judges, witnesses, sales, acquisitions, agency, partnerships, torts, theft, murder and all other business civil

and criminal laws contained in Even Hoezer and Choshen Mishpot that are related to marriage and divorce laws. Sages of the caliber of Horav Moshe Feinstein or Horav Piekarski must attest that the Rabbi has mastered and observes the four parts of the Shulchan Aruch . Witnesses- regarding testifying to deprive one of their rights such as in this case at hand that the woman is turned into an Agunah prohibited from ever having sex- in order to be valid are held to the highest standard in existence in the entire Torah. Nowhere in Torah Law does one have to meet such high standards. Such high standards are not necessary for one to ascertain that food is Kosher, that a butcher shop or restaurant can be used or in any other ritual matter. Unless two valid and competent witnesses exist there is no Hallachic marriage, even if both bride and groom admit that they were married. Even if one million non valid and non competent witnesses testify that they witnessed the couple getting married there exists no Hallachic marriage. See Aruch Hashulchon Even Hoezer 42:18,19,24, and especially 34.

Furthermore , relatives and women stand under the Chupah-canopy at the time of the ceremony. Since they are deemed invalid to be Hallachic witnesses their presence corrupts the testimony of valid competent witnesses. This can be cured only if the groom or a Rabbi designates that only competent witnesses -no one else -should witness the Hallachic marriage. Unless we know for sure that this was done all the competent witnesses are corrupted and again, there exists no Hallachic marriage. The Agunah need prove nothing. It is up to the one who argues that she is married and is forever forbidden to have sex when her husband refuses her a Get, to prove that the groom or a Rabbi designated only other competent witnesses and no one else . Failing this -by default- there is no Hallachic marriage. See Aruch Hashulchon Even Hoezer 42: 24, 31. This method of annulling the marriage is used post facto only when the husband refuses to free the agunah and she will remain imprisoned to eternity otherwise. In all other cases we will argue that the intent of both spouses was that only Kosher competent witnesses should be the only ones that are designated to witness the marriage. This presumption is made and there exists an onon sadye and umdenah demuchog metocho that all couples who wish to have a Halachic marriage have such an intention, even if is not verbalized. See Avnei Meluim Even Hoezer 42 as cited by Chsam Soffer # 100. Also also Rav Henkin Pirusha Ivra who likewise cites this Avnei Meluim.

We will not use this ruling to question any marriage that is not in trouble. All marriages Performed by ORTHODOX, NON ORTHODOX RABBIS OR CIVIL MARRIAGES OR COUPLES LIVING TOGETHER -NOT IN A CASUAL RELATIONSHIP -AB INITIO ARE CONSIDERED VALID HALLACHIC MARRIAGES . WE WILL RULE LIKE ALL THE STRICT OPINIONS REGARDING THE SANCTITY OF MARRIAGES. IN ORDER TO DISSOLVE THE UNION AB INITIO A GET MUST BE GIVEN . Thus couples who want to experiment with marriage thinking that as long as there was no Chupah and no giving of a ring in the presence of two religious witnesses they are not married and can walk out of the relationship at will are in for a rude awakening. Such a woman remains an agunah as if she has a marriage with a Chupah performed by an Orthodox rabbi. The man can not get married without a Get. There exists a Cherem of Rabbenu Gershon. Only when it is impossible to get a Get and the woman remains an Agunah for life or the woman refuses to accept a Get will we annul the marriage . A SEXUAL RELATIONSHIP CAN VERY WELL CREATE A Hallachic marriage. Only a RABBI WHO HAS MASTERED AND OBSERVES THE FOUR PARTS OF THE SHULCHAN ARUCH IS AUTHORIZED TO RESOLVE THIS MATTER.

However , in order to free an Agunah from eternal imprisonment -when we are mandated to rely

on even one Rabbinical authority even in Biblical matters [Taz Even Hoezer 17:15] to rescue the woman -by default we declare that there never existed a valid Halachic marriage unless proven otherwise. Any violation of any law Biblical or Rabbinical- even once -renders the witness as incompetent of being a witness. It is up to those individuals who claim that the woman remains an Agunah to prove that the two witnesses at the instant of marriage were valid witnesses. This ruling follows the well established Hallachic principle of Hamotze mechavero olof haraya . One who wants to deprive an individual from his property or rights it is up to him to produce the evidence. See Aruch Hashulchon Choshen Mishpot 232: 36 . It is up to those individuals who want to deprive the Agunah of her right to have sex to prove that she was married in the first place in accordance with hallacha. The agunah has to prove nothing. By default once her husband refuses to grant her a Get , she can be freed by annulling her marriage. The Agunah need prove nothing By default there exists no witnesses and ipso facto no marriage. See Responsa Hut Hamesholos vol 1 # 15 cited in footnotes to Chidushei Ritvh on Ksubos 3a . Likewise , even if the witnesses are valid they must remember the precise date when the couple got married and the place , otherwise by default there is no marriage . See Bais Shmuel Even Hoezer 17:63. See Rav Ovadye Yoseph Yabiah Omer Vol 3 Responsa #8 ; Igros Moshe Even Hoezer Vol 4 # 20 ; Aruch Hashulchon Yoreh Dayoh 119:14.;2:6. They can not refresh their memory by looking at the Kesubah or the Benediction books handed out at the wedding or consulting written records or computer records of the Halachic wedding. We do not deny that a wedding took place. We are stating that unless valid witnesses testify orally that a Hallachic wedding took place the woman by default is deemed never married Hallachically . See Aruch Hashulchon Choshen Mishpot 28:16,17,18,19. In effect we are stating that a loophole exists that the validity of practically most marriages can be questioned . This loophole is exercised only as an adjunct , in addition to other grounds mentioned in this book to rescue a woman from lifetime imprisonment by annulling her marriage when no other solution exists for her to be freed by a Get voluntarily given by her husband upon the order of a Rabbinical court.

Just like no one is believed that a product is Kosher without certification about its kashrut. See Aruch Hashulchon Yoreh Dayoh 119:8,9,10,11 ;so too, no one is deemed a Kosher witness without certification that he never violated any law between man and man Choshen Mishpot or Laws between man and G-D- ritual law. See Radvaz Laws of witnesses 11:2,3 Choshen Mishpot 34;14:17 See my chapter 58 and summary of the chapter in the table of contents. Only a Rabbi who has mastered and practices the four parts of the Shulchan Aruch has a presumption that he is a competent witness , no one else.

In addition to what I wrote every Ksubah is in reality a conditional marriage. In the contingency that the marriage dies and the husband refuses to give a Get the Ksuba can be used to annul the marriage. See end of my chapter 12.

Even if it was the obligation of the wife to prove the deficiencies that the witnesses are not competent , which in reality it is not , since at least one doubt exist concerning the validity of this marriage , at most the marriage is Rabbinical -even if the wife did not obtain the evidence that the witnesses are not competent. Once additional doubts are introduced as mentioned above that this marriage is riddled with doubts there is not even a Rabbinical violation for the woman to get married . In case of extreme hardship and to prevent the debacle of this woman remaining an Agunah for life we will give a Get Ziku and annul her marriage. See chapter 1 and other chapters of

this book for the Hallachic basis of what I am writing. This ruling would be accepted even according to those authorities that hold that Biblical matters even when one doubt exists , nevertheless , remains forbidden Biblically. HOWEVER ONCE THERE EXISTS MORE THAN ONE DOUBT , THERE IS NOT EVEN A RABBINICAL PROHIBITION.

It must be clearly understood that what I write here is not contradicted by Aruch Hashulchon Even Hoezer chapter 19:5 that a women is deemed married by Chazake . If a couple conducted themselves as married couple for a period of thirty days they are deemed married. However Aruch Hashulchon discusses the case where only saints are the only ones who are permitted to be witnesses for marriages , no one else . The rabbis have mastered and observe the four parts of the Shulchan Aruch. No one other than such Rabbis are permitted to engage in marriages and divorces. In such a community will we entertain the presumption that once a woman and a man conduct themselves as a married couple that they are married. This scenario does not exist in the USA OR ANY PART OF THE WORLD WITH THE EXCEPTION OF Israel. In our time and age what I have written is on million percent valid.

What I have written above and in the other chapters of this book may or may not also agree with the position of Chsam Soffer Responsa Even Hoezer 100 who rules that in the contingency that the witnesses to a Hallachic marriage are non competent , the marriage nevertheless , is valid as long as two competent witnesses exist at the wedding hall who know that a marriage took place. This is true , even if they do not see the actual giving of the wedding ring from the groom to the bride. Rav Henkin goes further and says that even if there exists no competent witnesses at the wedding hall, but the couple are sharing the same room or apartment or house for a period of thirty days, it can be assumed that during such a period of time that they are living together as man and wife . We will then presume that both spouses intended the relationship to be deemed as Hallachic marriage. For no one wants to engage in fornication. Ain odom ose beiuso beilus znus. Rav Henkin argues that it is a natural law that no man or woman would permit their spouse to live with an other person. Every one would jealously guard their rights to their spouse and would consider any infidelity on the part of their spouse as a betrayal. Some individuals will commit murder when the spouse betrays them. . Certainly the Torah view is that betrayal on the part of one spouse is grounds for divorce or annulment. Therefore every man will in advance be motivated to seal and ensure the acquisition of his wife by any Halachic means possible. If the original marriage has a flaw that the witnesses are not competent , the couple will agree that the Hallachic marriage be consummated by the knowledge of competent witnesses who are aware that the couple are living together as man and wife. One can acquire a wife in marriage by money- giving the bride a ring , or else by a written document where the husband acquires the wife . This document according to many Rabbis could be a marriage certificate in the civil court; or even a marriage license that groom and bride sign even if there exists no competent witnesses according to Hallacha . Those Rabbis who consider civil marriages as creating Hallachic marriage follow this position .See my Chapter 23. Or else the fact that the couple are deemed as living together as man and wife since they share he same room , apartment or house creates Hallachic marriage. This is the position of Rav Henkin and many other Rabbinical authorities. When a marriage is intact we will rule like all the strictest opinions. We will state that even if the witnesses are not competent the couple intend to be married hallachically by any means available. We will state that the fact that they are sharing the same abode together it is known that they are living as man and wife. We all are witnesses by construction that they intend Hallachic marriage. This theory creates Hallachic marriage. A marriage created by universal knowledge that a

couple is living together as man and wife is not destroyed because there also exists non competent witnesses. Only when a marriage is created by two witnesses then do we have to investigate the competence of each witness. This does not apply if a marriage is created by universal knowledge. We all are witnesses. The universal group of Torah Jews is not governed by the restrictions governing individual two Jews acting as witnesses. See Chsam Soffer Even Hoezer #100 end citing many authorities among them the Makneh -his teacher. The brides at that time were heavily veiled and the witnesses could not identify the bride. It was only by relying on circumstantial evidence that they assumed that it was the woman for whom the wedding was advertised as going to be made who was posing as the actual bride. Thus the validity all marriages that are being performed according to Hallacha -reasoned the Makneh -are based on circumstantial evidence. Circumstantial evidence when no other evidence is available creates Hallachic marriage. However in the contingency that the marriage dies and the husband refuses to give a

Get ,we will not rule like this opinion. See Aruch Hashulchon Even Hoezer 42:31.32;33,34.

However , Rav Henkin may or may not agree that if the couple live in an area that no Jews live that the presumption that they are living together ipso facto creates Hallachic marriage may not exist. Similarly the argument of the Chsam Soffer -that competent witnesses present at the wedding even if they did not witness the giving of the marriage ring by the groom to the bride creates Halachic marriage because we presume that a Halachic marriage exists since they know that a marriage occurred - may or may not exist in our day and age in any country other than Israel for the reasons I elaborated previously. Rav Henkin may or may not agree that in our day and age there may exists no competent witnesses . We elaborated in great detail that now days in our day and age in all countries with the exception of Israel there exists very few qualified Rabbis who have mastered and observe the four parts of the Shulchan Aruch and there exist no mechanism to guarantee that only saints are witnesses to the marriage , who have not violated even once any Biblical or Rabbinical Law. Therefore very few marriages can be presumed to have been made in accordance with Hallacha . POST FACTO WE USE THESE ARGUMENTS ONLY WHEN A MARRIAGE IS DEAD. As previously mentioned Rav Akiva Eiger will accept under certain circumstances witnesses that violate certain ritual laws as keeping their business open on the Sabbath or using a razor blade for shaving since they are under the impression that it is not forbidden ,althogh in reality there exists a gross violation of Jewish law. Rav Moshe Feinstein will not accept such witnesses . See Taz Yoreh Dayoh 99:8;Rambam Mamrim 3:3.Aruch Hashulchon 34:5; Igros Moshe Even Hoezer vol 1 and 4 regarding marriages performed by non Orthodox clergy. . There exists authorities that will consider as witnesses not being competent only if they violate the laws between man and man , not ritual laws -between man and G-d. See Aruch Hashulchon Even Hoezer 42 : 48,49;Choshen Mishpot 34:3. For these authorities a credit check to determine the credit worthiness and reliability of the witness as well as a check to see if the individual has no criminal record would determine how reliable the man is. Similarly we can inquire with the Rabbi whose congregation the witness attends as to his religious behavior in ritual matters. Thus when our purpose is to strengthen a good marriage we will take the extra mile and rule like the strictest opinions to ensure that the marriage remains intact. However, when a marriage is dead and the husband refuses to grant his wife a Get, our purpose and goal is to enable the agunah to go free . Then we will rule like the authorities that will enable us to prove Hallachically that the marriage was not legal ab initio . In both cases we go the extra mile but in the opposite direction. We do not have to adopt a consistent position or rule like one authority. We will rule for the same couple at the outset of the marriage like those authorities

that guaranteed the legality of the marriage. Once that same couple's marriage dies we will adopt an opposite goal and rule like those authorities that the marriage never existed legally in accordance with Hallacha.

Thus if our agenda is to annul the marriage since the husband refuses to give a Get when the marriage is dead- even if the Chsam Soffer and Rav Henkin will not agree with the above thesis that we use to destroy the credibility of the witnesses -then we will not rule like the Chsam Soffer and Rav Henkin and the other authorities who support their position that we previously elaborated.

It is of interest to note that both the Chsam Soffer and Rav Henkin subscribe to this thesis that I outlined of using those authorities to substantiate one's agenda **ONLY IF UNDUE HARDSHIP AND A CRIPPLING CONSEQUENCES WOULD RESULT OTHERWISE. THIS IS THE RULING OF Taz Even Hoezer 17: 15** . The Chsam Soffer in Responsa #107,108 permitted the annulment of a marriage by confiscating the marriage ring and considering it to be a gift rather than a payment of acquisition to create marriage. The Jewish community was forced by the King to annul all marriages that did not meet the standards of the civil authorities . Otherwise grave punishment would be meted out to those Rabbis who violate this law. The Chsam Soffer suggested several ways to abrogate the marriage one of them required the bride to make a vow that she will not accept any ring or money in marriage unless it is approved by her parents and the Rabbi . If she does accept such ring or money she should be forbidden to use in any form the ring or money. In such a case there is no marriage. However this remedy would only annul future marriages. It would not annul marriages that already took place. To annul these marriages the Chsam Soffer ruled to confiscate the ring or other item of monetary value and convert it to a gift.

Rav Henkin in Perusha Ivra page 115-117 advises writing a prenuptial agreement to annul marriages providing such an agreement would be ratified by a majority of Orthodox Rabbis meeting in Israel Several years later Horav Henkin changed his mind. This is also the position of Rav Herzog. I discuss this matter at length in my chapter 12 toward the end.

The strategy of being lenient in emergency situation that undue hardship and great loss would otherwise result is accepted practice in all areas of Jewish Law that I discuss in Chapters 1 , 2, 3 , 4 and in all the chapters of this book. I use the same strategy in the area of Niddah Mikvah in Chapter 32 and 33 . I use the same strategy in my responsa regarding Sabbath and Yom observance - Chapters 37,38,39,40, 41 ; and the observance of the dietary laws in Chapters 42and 43. as one will observe from the summary of the chapter in the table of contents in this book.

Or else we will assume that the woman does not know all the laws and intends her marriage to be consummated only with the non competent witnesses .Consequently in reality there exists no valid marriage. See Rav Feinstein in Igros Moshe Even Hoezer,; Rav Herzog in Ohel Yitzchok; ;Mishpetai Uziel; Chelkos Yaakov ; Otzer Haposkim;Piskei Din Rabbonim on chapter 26 in Even Hoezer regarding civil marriages and living together without marriage. By default the agunah who is doomed to become celibate for eternity needs to prove nothing that her previous marriage was valid according to Hallacha. It is up to those who wish to imprison her for life to prove that she was married in the first place. We have fully disclosed earlier in this book the position of those authorities who violently oppose our annulments and consider the woman as still married and any

children from man #2 are illegitimate Biblically or Rabbinically.

However in this book I prove that according to Hallach the agunah by default is free to go on with her life and get married, when her husband refuses to give her a Get and all social and civil court pressures have been exhausted to no avail. The agunah has attended a Rabbinical trial, she is prepared to follow the rulings of the Rabbinical Court and her husband refuses to give a Get after the Rabbinical Court ordered him to give a Get. We will then give a Get Ziku and annul the marriage in order to rescue the agunah from eternal imprisonment. We will officiate at her new wedding. Even if we would not officiate at her wedding, the agunah to get married does not need any Rabbis. The groom recites the formula to get married -harei at mekudeshes li betabas zeh kedas moshe veyisroel in the presence of two religious witnesses and they are married. **KSUBOT ARE PRINTED in English. One needs to fill in the blanks. All this can be done by any one. You do not need a Rabbi. Of course if this marriage dies we can annul it on the grounds that I previously elaborated.**

However as long as the relationship, is intact all marriages are presumed as Halachically valid, since we ab initio rule like all the strictest opinions regarding the sanctity of marriage. Ab initio all marriages performed by any Rabbi-Orthodox or non Orthodox or in civil court are valid. Any relationship where the couple are living together on a continuous basis -not casual affairs- can create Halachic marriage and requires a Get to dissolve the relationship. See Aruch Haashulchon Even Hoezer 31:41. Only in cases where the partner refuses to give a Get and the woman would be eternally imprisoned will we rule like the lenient opinions and search for dispensations to emancipate the woman from eternal prison. Thus the advise from well meaning but ignorant individuals that couples avoid Halachic marriages and in that way they are not married Halachically is nothing but ignorance. All sexual relationships can create Halachic marriage. There does not exist a pat answer for all situations. Each situation has to be adjudicated separately by a Rabbi who has mastered and observes the four parts of the Shulchan Aruch. It is the greatest sin in the world for any couple who has any marriage officiated by any Rabbi Orthodox or non Orthodox or in civil court or are living together in -not a casual relationship- to betray each other. Only when a marriage dies do we use all the life savings means to annul the marriage. All this is done only post facto because we have no other choice other than permit the agunah to remain imprisoned to eternity.

The only problem is that our annulments will not dovetail with those authorities who consider all civil court marriages or a marriage license as creating a Halachic marriage -since all marriages must first get a marriage license. We will then rule like those authorities who do not recognize civil court marriages as Halachically valid. To free an Agunah we are permitted to adopt any position and rule even as one authority even in Biblical matters. See chapter 1, 4 and other chapters in my book for elaboration of this concept. We do not have to adopt a consistent position-at all times. Post facto to free an agunah from eternal imprisonment we can adopt a minority opinion that we normally will not accept, otherwise. Furthermore we will adopt the arguments of Chsam Soffer of ANON SADYE AND UMDENAH DEMUCHOG METOCHO -we state that a PRESUMPTION exists AS AN UNWRITTEN CONTRACT -THAT NO WOMAN OTHER THAN AN INSIGNIFICANT FEW WOULD AGREE TO ENTER ANY MARRIAGE UNLESS SHE IS GUARANTEED THAT IF THE MARRIAGE DIES AND HER HUSBAND REFUSES TO GIVE HER A GET SHE WILL BE SET FREE, TO HAVE ANOTHER RELATIONSHIP. SHE WILL NOT AGREE TO REMAIN IMPRISONED TO ETERNITY. See Chsam Soffer Responsa Even Ghoezer #100 toward end and

citations from Ran on Gitten Perek Hamegarshin see Aruch Hshulchon Even Hoezer 42:31,32,33,34 citing Mehrav Mehrav in Mordecai Chapter 3 end of Gitten; Responsa Maimonis Noshim #61; Hamakneh #30-[the teacher of the Chsam Soffer-] for same concept in a different setting. But the theory applies to enable us to annul a marriage.

It must be clearly understood that there is great difference between the principle that everyone is innocent unless proven guilty and the fact that no one can be a Hallachic witness to imprison a woman to remain celibate once her husband refuses to grant her a Get unless he is a saint. . In the second case the witness wants to “condemn the woman that she is guilty of being married Hallachically”. She is deemed “innocent of not being married until proven guilty that she is married Hallachically”. This can only be done by a witness who must never have violated any Law between man and man or man and G-D. The witness must be a saint. This follows the known principle that hamotze machavero olov hataya. One who wants to deprive money or rights from his fellow man it is up to him to prove that the other man owes this money or is not entitled to the right that he wants to deprive him or her. Thus we must prove that the witness is competent before we will condemn this woman to eternal celibacy. Otherwise we will presume that she never was married Hallachically. If this witness wanted to borrow a million dollars unless he could prove his credit worthiness he will not be given the money. He won't receive any money on the grounds that he is innocent unless proven guilty. The same degree of competence must be met by the second witness. You can not condemn a woman to eternal celibacy without two witnesses at a trial conducted by a Bet Din in the presence of the agunah, her first husband the second husband and the children from the first and second husband , if any. The members of the Bet Din Din must have mastered and observe the four parts of the Shulchan Aruch. The reliability and competence of the witnesses must be attested by two rabbis who themselves have mastered and observe the four parts of the Shulchan Aruch. All these Rabbis from the Bet Din and who are testifying to the competence of the witnesses must have an approbation of sages of the caliber of Rav Moshe Feinstein and Rav Piekarski. A little later we will cite sources for these requirements.

Through out the Talmudic and Hallachic literature dealing with the subject of “one is presumed innocent unless proven guilty” we follow the above thesis. If one married a woman by giving her merchandise that is not worth the minimum sum in this country to effect a marriage we will not state perhaps it is worth the minimum sum in an other country. Let us go there and ascertain the value of this merchandise. There never occurred a marriage since the minimum sum in this place is missing. If one of the spouses argues that a marriage occurred and the witnesses are to be found in an other place or country and his or her partner disputes the contention , we do not label the dissenting spouse as married and wait until we ascertain if witnesses exist in the other place or country. Likewise we will not presume that a woman who is pregnant got pregnant from a relative that would cause the child to be branded as illegitimate. We will in all these cases presume the set of facts that will not cause tremendous hardship and evil. We will follow the principle that if you want to deprive anyone from his or her rights you must first prove it . The burden of proof is upon the one who wants to upset and change the status quo from innocent to guilty or from not married to married. The spouse who contends that they are married can behave as one who is married; but he can not bind his or her partner who contests these set of facts. Thus those Rabbis who do not accept our annulments have the right not to officiate at the new marriage of the agunah but have no other right to imprison her for life in celibacy. I have fully disclosed their position and am not deceiving any agunah who relies upon our annulments that it is universally accepted. It is not . But we are one

trillion percent certain that what we are doing is Halachically valid.

Any one of the Rabbis who vehemently insist that these agunot that Rav Rackman Rav Antelman and I have freed are still married and are forbidden to start a new relationship and any children they have from the new relationship are mamzarim illegitimate either Biblically or Rabbinically must prove that the particular agunah that they are condemning to life long celibacy was first married Halachically in the first place. The burden of proof is upon them. They must first convene a Bet Din consisting of Rabbis who have mastered and observe the four parts of the Shulchan Aruch . The members of the Bet Din must have approbation from sages of the caliber of Rav Moshe Feinstein and Rav Piekarski that they quailfy and have mastered and observe the four parts of the Shulchan Aruch . Then they must locate the witnesses who attended the wedding. They must locate Rabbis who have mastered and observe the four parts of the Shulchan Aruch to testify that these witnesses are saints and never once violated any Biblical or Rabbinical Law between man and man and between man and G-d. Aruch Haashulchon Choshen Mishpot 34:1,2; Yoreh Dayoh 119:14 ; Even Hoezer 42:50 end. That is why it is necessary that the members of the Bet Din ,as well as ,the Rabbis who are testifying as to the reliability of the witnesses have mastered and observe the four parts of the Shulchan Aruch. Otherwise how can they know what these Laws are? The two witnesses who saw the giving of the marriage ring must also testify orally as to the exact day and place where the marriage took place . They can not be aided by looking at the Benediction books distributed at the wedding or looking at the Ksubah or looking at marriage records on a computer or in marriage books kept by the community. We cited the sources previously. This trial must be made in the presence of the agunah the first husband and the second husband and any children born from the first and second marriage. If any of the above stipulations are missing the trial is null and void. See Ramo Choshen Mishot 28:15; Ramo Even Hoezer 11:4 : Responsa Rav Akiva Eiger #99 cited by Piscei Tsuvah ibid . With the passage of time the reliability of the memory of the witnesses is very questionable. See Chsam Soffer Even Hoezer # 100 end If any of the above are missing the agunah by default is free to start a new relationship and go on with her life. By default she is free . She need prove nothing. The burden of proof is on those who want to condemn her to life long celibacy.

All these dispensations individually or in a combination are used to free the agunah whose husband refuses to give her a Get once all civil and social remedies have been tried to no avail. The wife went to a Rabbinical trial and was prepared to accept their ruling , but the husband, nevertheless , refused to follow their order to give a Get. Rav Rackman and I use these dispensations as well . This last dispensation is authorized by Aruch Hashulchon Yoreh Dayoh 1:52, 2:8,9,10,11,16;11:3;119:14,43, Horav Moshe Feinstein Igros Moshe Even Hoezer I -# 82:11, 4-:20; 4:13, 1:82:11 Igros Moshe Yoreh Dayoh 1-54, and even Horav Eliyohu Henkin will agree. See my responsa # 2 ;29; 56;57 and # 58 and the table of contents to these responsa. We will also use the other dispensations mentioned in this book as adjuncts that our critics will not use. Thus even if there exists no mistake in the marriage- Mekach Tout we will annul the marriage but our critics will not

Once a rabbinical trial has taken place , the wife is prepared to follow the rulings of the Rabbinical Court and the husband when ordered to give a Get refuses , we will give a Get

Ziku and annul the marriage. This is true after all social pressures and civil court remedies have been tried and the husband nevertheless refuses to give a Get.

However , only a RABBI WHO HAS MASTERED AND OBSERVES THE FOUR PARTS OF THE SHULCHAN ARUCH IS THE ONLY ONE WHO HAS A LEGAL HALLACHIC RIGHT TO ANNUL ANY MARRIAGE. SEE CHAPTER 3 AND 4 AND 12.