

CHAPTER II

Mamzarus

Problem

One of the red herrings thrown against our Bet Din is that the women are still married. Any children born from a second relationship are mamzarum - illegitimate.

Answer

First of all, all the women that we freed are not 100% free, but one million percent free. They are free to get married. We are following in the footsteps of: Aruch Hashulchon, Rav Moshe Feinstein-Igror Moshe, Rav Yitzchok Elchonon - Ein Yitzchok, Rav Eliyahu Klatzkin-Dvar Eliyohu, Rav Moshe Tzweig - Ohel Moshe, Rav Arye Leib Tzinz - Meshivas Nefesh, The Meharsham, Rav Yitzchak Herzog - the Ohel Yitzchok, Shrideye Esh - Rav Yechno Yaakov Weinberg, Rav Yudelowitz, Mahrik, Rashi, Tosphos, Rashba, Ohr Zeruah, Rambam, Ramban, Rabonen Sabroye, Gaonim, Bais Yosef, Ramo, Shach Toz Bais Shmuel, Pischei Tsuvo, Tzitz Eliezer, Minchas Yitzchok, Bais Ov, Shoel Umaisiv, Rav Shlomo Kluger - Tuv Toam Vdoas, Sdei Chemed, and a multitude of other authorities cited in prior chapters. Those so called holier than thou "Rabbis" are not only libeling us; but rather are libeling all the authorities we cited in our Responsa and English book Hatorot Agunos - Emancipating Chained Women. As such they are heretics, to say the least - Talmud Bavali Sanhedrin 99B. See Kesef Mishne Rambam on Laws of Repentance 3:8, 3:14

מאי אפיקוריס רב ורב חנינא אמרינן זה המבזה תלמיד

חכם או מבזה חברו בפני תלמיד חכם סנהדרין צט:

"One who insults scholars is a heretic or one who insults his friend in front of scholars is a heretic and will not merit Olam Habo - Heaven." These holier than thou individuals condemned us, acting as judges and jury without even speaking to us, they reached their biased opinions from heresy information. They thus violated Ramo Choshen Mishpat 28:15 and Even Hoezer Ramo 11:4. Consequently, these individuals are incompetent to be witnesses. See Aruch Hashulchan Yereh Dayoh 119:14. One who commits any sin, even inadvertently, is disqualified from acting as a witness (Choshen Mishpat 33:1,2). One who is disqualified from acting as a witness is disqualified from acting as a judge in a tribunal. See Choshen Mishpat 33:1. See Yereh Dayoh 243:6,7. One who insults Rabbinical scholars invokes upon himself the death penalty. He will not have Olem Habo and is liable to be excommunicated. He is called a heretic. See Kesef Mishneh on Rambam Laws of Repentance 3:8, 3:14.

My master Rav Moshe Feinstein freed entire classes of marriages amounting to annulling hundreds of thousands of marriages. In his day, 80-90% of the Orthodox Rabbinate opposed him. Rav Henkin, a leading Posek, told me 35 years ago that every one of the women Rav Feinstein freed, was an Eshes Ish - a married woman. All her children from the new relationship are mamzarim - illegitimate. The other alternative, when the husband refuses to grant a Get - a Jewish Divorce, is to have him beaten up by thugs until he gives a

Get. Again, many Rabbis argue that such a Get is defective and the children from a second relationship are Mamzarim. The Gitin given in Israel by the Rabbonut are not recognized by the Haredim. Children from a second relationship are labeled Mamzarim. What is the woman to do? Commit suicide? Yes. In Israel and in America they do this. Many recorded cases are in my files. If one Rabbi or a group of Rabbis will disqualify the Gitin of another Rabbi, then everyone is a Mamzer. 85% - 90% of all Jews are not practicing orthodoxy. Every relationship between a man and a woman is considered marriage. If a man lives together with a woman - without marriage - this is considered, Halachically, marriage. When they split, both cannot start a new relationship unless there is a Get or an annulment. The same applies to civil marriages only, and no religious ceremony. The same applies to a religious ceremony officiated by a non-orthodox Rabbi. 50% of all relationships and marriages end in separation. There is no Get. These women remarry. 90% of women - even orthodox - who are religious, when the husband refuses to grant her a Get, live with another man - without the Get and may have children from the other man. If the annulments are not recognized then everyone is a Mamzer. This is the full circle, the height of absurdity. Rabbenu Tam cited by Mordecai, end of Laws Gitin tractate Gitin #455 made a cherem with a death penalty - by heaven - to anyone who libels another Rabbi's Get. See Ramo Even Hoezer 154:22. We don't need anti-semites to destroy us. These holier than thou "Rabbis" are doing it. The Noda Beyahudoh expanded on this cherem and stated even if those Rabbis, who criticize another Rabbi's Gitin and libel them, be as tall as the Cedars of Lebanon, be great scholars, if they libel another Rabbi's Gitin they will be guilty of the sin of violating Rabbeim Tam's cherem carrying the gravity of the death penalty by Heaven. In 1768 Nodah Beyohudah warned the Bet Din of Frankfort of the death penalty invoked for slandering the Get of another Rav. Rav Moshe Feinstein reiterated the cherem Igros Moshe Even Hoezer. - 1:137

The prohibition of Mamzaras is considered from the point of view of Halacha, Jewish Law, as set apart from every other Law of Torah. Every Law of the Torah is violated regardless if one knows about the violation or not. If one eats pork and is not aware that it is pork, one never-the-less violates the Law. True, it is not wilful and one may escape punishment, but one never-the-less violated the Law of eating pork. In the case of Mamzars, it is different. If people are not aware of the status of the child, the child is not a Mamzar (Aruch Hashulchon Even Hoezer 2:14). It is only when people become aware of his status that the stigma attaches. Thus, if the identity of the woman is hidden, the child is not a Mamzer. Furthermore, if any doubts exist about the status, of Mamzarus - doubt about the validity of the mother's prior marriage, then the child escapes the status of Mamzarus.

ממזר ודאי אבל לא ספק ממזר

Only one who is definitely illegitimate is prohibited from marrying another Jew or Jewess. However, one who only is possibly a Mamzer - doubts exist about the validity of the mother's prior marriage, such child is not a Mamzer meduraisa - by Divine Law. Only is a Mamzer by Rabbinical Law. Once you increase the number of doubts then such a child is not a Mamzer as far as Rabbinical Law either. See Aruch Hashulchon Yoreh Dayoh 110:99. This is true even according to Rashba who is strict about situations whose doubts exist. He holds that the prohibition is Divine. But in case of Mamzarus, Rashba admits that in doubtful situations the child is not a mamzer from Divine Law; only from Rabbinical Law; Aruch

Hashulchun Yoreh Dayoh 110:90 Torus Habayas Shaar 4. In case you increase the number of Doubts in the case, there isn't even a Rabbinical prohibition (see Aruch Hashulchon Yoreh Deyoh 110:99; see Bais Ov Book 7, chapter 11 from Rav Yudelowitz for same reasoning).

In every one of our cases, we have 20-30 doubts . Therefore, it is impossible that, at the worst possible

contingency, the child from the second relationship is a Mamzer. See Yabiah Omer Book 7, Chapter 6. See Igros Moshe Even Hoezer Book 4 Responsa 20.

Furthermore, the women rely on our legal opinion. They are completely innocent. They are not in violation of any Law. See Even Hoezer Ramo end of chapter 17:58, Pischei Tsuvoh 17:175 and Rav Shlomo Kluger's commentary Chochmos Shlomo 17:58. See also Even Hoezer chapter 178:3 Ramo Bais Shmuel 178:4, Pischei Tsuvo Ibid. She therefore is permitted to return to her husband or marry the new man the Rabbis

previously ruled she could live with even if they erred. For substantiation of what we said, see Yabiah Omer Book 3 Responsa 7:16. When the woman is not in violation of any Law, the child is not a Mamzer. See Oneg Yom Tov Book 2, Chapter 121.

The citations we have made describe the annulment of King David's marriage to Marav - King Shaul's daughter mentioned in Samuels 1 chapter 18:19 and the annulment of the marriage of Michel -King Shaul's second daughter to David mentioned in Samuels 1 chapter 25:44 . The Talmud in Bavali Sanehdrin 19b and the Tosefta Sotah 11:8,9 (see comments by Hazon Yechezkel in Chidushim and Beurim) detail what occurred. King Shaul and his son in law -David had a Halachic dispute if David's marriages first to Marav and then to Michel were Halachically binding or not. King Shaul held that both marriages were not binding. Both marriages to each of his daughters were a Mekach Tout - a mistake. There was a basic deficiency in the contract of acquiring both Marav and then Michel . Consequently both were able to leave David without a Get. King Shaul had announced that any one who defeats the Philistines would be handsomely rewarded and be given the king's daughter (Shmuel 1 chapter 17:25). David defeated Goliath. He was supposed to be rewarded a vast treasure and use that money to acquire in marriage Marav, Shaul's eldest daughter. Since Shaul had not yet paid David , it was only an accounts receivable. According to Jewish Law one can not give accounts receivable as the equivalent of money to acquire a wife in marriage. Consequently David's betrothal to Marav was considered a mistake. Marav then proceeded and married Adriel without first receiving a Get from David.(Radak on Shmuel 1 Chapter 25:44)David on the other hand had in mind to acquire Marav in marriage by the fact of having vanquished and killed Goliath and thus meeting the condition of marrying King Shaul's eldest daughter. Certainly that had the monetary worth of at least a PRUTAH the minimum money to acquire a wife in marriage. Or else he acquired Marav by forgiving the accounts receivable to Shaul and in that manner giving Marav the satisfaction that her father was released from his monetary debt to David. (Malbam

and Abarbanel on Shmuel 1 chapter 18:19; Ibid 25:44; Shmuel 2 Chapter 3:14).

The Rabbis of the Talmud agree with David's understanding of Jewish Law. Consequently Marav was legally married to David and committed a sin by marrying Adriel without first receiving a Get from David. However since Marav received permission from King Shaul's Rabbinical Court and relied

on their ruling her marriage to David was annulled

and her five children with Adriel were legitimate.

After Marav married Adriel, King Shaul advised David that if he would produce their foreskin, he would permit him to marry his younger daughter and vanquish one hundred Philistines and provide for Michel, who was in love with him. David fulfilled this condition and married Michel. (Shmuel 2 3:14). When David lost favor with King Shaul who wanted to kill David, he was forced into exile to save his life. King Shaul then persuaded Michel to leave David without a Get and marry Peltiel Ben Layis. Shaul's position in the case of David's marriage to Michel was the same as his position regarding David's marriage with Marav his eldest daughter. This position was supported by the Rabbis of King Shaul's Rabbinical Court.

After King David came to power the Rabbinical Court appointed by David annulled the marriage

of Michel to Paltiel Ben Lishai and Michel returned to David. (Radak Shmuel 2 Chapter 3:14 explains that David annulled his marriage to Michel by appointing an agent to deliver a Get to her. When the agent was out of sight he vacated his agency. In that manner an annulment is triggered. Thus David was permitted to take Michel back although she was living with Paltiel ben Layish. (Responsa Mahrsham Volume 1 # 9) Paltiel ben Layish likewise did not marry Michel, but was only a friend and close advisor (Malbim on Shmuel 2 Chapter 3:14). Or else did he marry Michel and relied on the ruling of the Rabbinical Court of Shaul, who vindicated Shaul's Halachic reasoning that David's marriage to Michel was defective since he acquired her with accounts receivable that never were turned into cash. One can not acquire a wife in marriage with accounts receivable.

The ruling of Both the Talmud Bavali Sanhedrin 19b and the Tosefta Sotah 11:8,9 consider the ruling of King David Halachically sound. The legality of the marriages did not have to wait until he gave other money or rings to his wives or performed other recognized means to acquire a wife in marriage. What David did as explained above was sufficient. Certainly risking his life - and bringing the foreskin of one hundred Philistines is worth at least a PRUTAH - the minimum amount to acquire a wife in marriage. Or else David forgave King Shaul the debt of a vast treasure that was due him from smiting the Philistines that was due him from Shaul. Michel could have been acquired from the satisfaction of knowing that her father's debt was eliminated in her behalf by David.

The Talmud Sanhedrin and Tosefta Sotah agree with the ruling of King David's Rabbinical Court as the accurate one. They call the subsequent marriages of Marav to Adriel and Michel to Paltiel Ben Lishai a sin. The question is posed how could Marav and Michel take two contradictory courses. Michel is reputed as being a great talmudic scholar and independent thinker. She is reputed as having worn tefillin while praying that was accepted by the Rabbis-Babavali Eruvin 96a (An other version that Michel was condemned by the Rabbis-Yerushami Brochos 14 a). The Ramo in Even Hoezer 17:58 ; Responsa Rasba 1178;Bais Shmuel Ibid 172 ; Pischi Tsuve Ibid 178; and Chochmos Shlomo Ibid 58- explain Michel's contradictory actions-that Michel relied on the rulings of the Rabbinical Courts. First marrying Paltiel Ben Layish without a Get -being freed by the annulment of King's Shaul's Rabbinical Court. Then when David came into power leaving Paltiel Ben Layish by the ruling of David's Rabbinical Court that her marriage to Paltiel Ben Layish was annulled. She then returned to her former husband- David. Obviously Michel was permitted to have sex with each of her husbands and did not have to use contraceptives. She could have gotten pregnant from either of her husbands. The rabbis of the rabbinical courts who permitted her to marry each one of her husbands did not advise a course of action that would Michel have gotten pregnant the child would have been a Mamzer. Furthermore her sister Marav likewise had left David without a Get, married Adriel and bore him five children that Michel raised after Marav died. These children were not Mamzarim, although both the Talmud Bavali Sanhedrin 19b and the Tosefta Sotah 11:9 clearly claim that Shaul's Rabbinical Court erred. Thus this story is evidence that if a woman follows the legal advise of a Rabbinical Court -even if it is determined that such advise is wrong- she has not committed any sin. The children born from such a marriage are legitimate.

See also Aruch Hashulchon Even Hoezer 6:8 for similar concept regarding a child born when a Kohen follows the Biblical law of the Mitzvoh of Yivom (his brother married -in violation of Jewish law- a divorcee and died without any children. The living brother who happens to be a Kohen is obligated by Biblical law to live with his brother's wife once ESAH DOCHE LOSASA The Biblical obligation of living with his brother's wife Yivom-when his brother dies childless supersedes the violation of marrying and living with a divorcee. Technically the Rabbis insisted that he give Chalitzah (a ceremony similar to a Jewish divorce-that frees the widow to have a relationship with an other man)rather than Yivom because they suspected that given human nature the brother in law would not abstain after living once with his sister in law. He would continue to live with her. If his brother's wife becomes pregnant from this relationship the resulting child is not a Challel and is deemed a kosher Kohen. This is because the stigma of Chollel (The child loses his status of Kohen and is deemed as an ordinary Jew) attaches to the child only when there exists a sin. Since the surviving brother was obligated to live with his sister in law after his brother died childless there is no sin . Consequently no stigma attaches to any resulting child.

The same logic is used when the Agunah acts upon the advice of a halachic authority - even if such authority be proven wrong - she has committed no sin. She has performed a Mitzvah LO SOSUR MEMAH SHEYOMRU LECHO YEMIN USMOL . You shall not depart from what the Halachic authority has ruled right or left. Right is interpreted to mean when the authority is ultimately proven correct; while left means that he is proven wrong. Even the Rambam who rules in Isurei Biah 15:1 that if a married woman had intercourse with a man not her husband voluntarily, out of ignorance or was forced the resulting child is a Mamzer. Rambam , nevertheless admits that if she received a positive ruling from a halachic authority, relied on this authority and got pregnant from an other man, no stigma attaches to the child and the child is one million percent legitimate. The cases of King David's wives - Marav and Michel , as well as the cases that come to our Rabbinical Court can be distinguished from the Rambam's ruling Isure Biah 15:1- that in all cases of a married woman having intercourse with a man not her husband the child is a Mamzer . The reason

is because the marriages were annulled in all the cases that the woman received a positive ruling from the Rabbinical Court. (Radak Shmuel 2 Chapter 3:14 and Mahrsham Vol 1 # 9). The Rambam discusses the case where the previous marriage is not annulled. Then in all cases the child is a Mamzer. This is true only if at the time of the married woman having intercourse with a man not her husband two witnesses were present who observe all the ritual , as well as, the moral and ethical laws of the Torah . It is necessary to prove that the woman got pregnant from this other man , not her husband or artificial insemination. This other man must be proven to be Jewish. By default the resulting child is deemed legitimate .

The same conclusion is derived if a woman claims that a family member committed incest and got her pregnant. The resulting child is considered legitimate. Even if the intercourse took place in the presence of two Halachically competent witnesses - that is an impossibility -, nevertheless , what evidence exists that the woman did not get pregnant from a relationship she had with other men , not relatives? Failing that , no stigma attaches to the resulting child. We will argue that it was possible the woman got pregnant from a man , a relationship with whom, there is no incest and does not cause the child to be stigmatized as illegitimate. The one who wants to stigmatize the child must produce proof. If no proof is produced by default the child is legitimate. See also chapter 15- Conversions-for greater elaboration of the laws governing evidence. See chapter 18 that DNA testing is not permitted in order to establish that the child is a Mamzer illegitimate. Without the testing the child is considered legitimate . Testing would only complicate matters and it is strictly forbidden. The essence of Halacha is equity. What equity is served to make the child an outcast- a Mamzer - forbidden to marry . Not only is the mother of the child a non married mother , but also has an eternal reminder that she got pregnant from a family member . The damage to the family's reputation would be beyond repair. Let the guilty parties do

repentance, without damage to anyone . Especially, without hurting innocent parties -the resulting child. According to Halacha-Jewish Law incest is a cardinal sin. It is considered by Civil Law a heinous crime with a long prison term if convicted. However , it is critically important to be cognizant that as far as Halacha -Jewish Law is concerned , it is impossible to stigmatize the resulting child as illegitimate for the reasons cited above. See Otzer Haposkim Even Hoezer 4:15:1-14 especially 7 who cites authorities that reach the same conclusion as I have written.

Likewise, if a married woman would be raped under threat that she would be killed unless she submits, she is obligated by Jewish law to submit. Even if she become pregnant the child is not a Mamzer. The reason is because she followed Jewish law and did not sin, she submitted to save her life. Therefore, no stigma attaches to the child. Furthermore, the Rabbis are obligated to annul her marriage to remove any stigma that can attach to this child, if she conceived as the result of the rape. They would also employ various strategies to legitimize the child. See Hatorot Agunot Volume 2 -the Responsa. See Rambam Isurei Biah 20:5, 20:7 for similar concepts. Furthermore, if an ordinary Jew's wife -not a Kohen would state that she had a consensual relationship or a Kohen's wife would claim that she was raped, they would not be believed -since the rabbis would have annulled their marriage even if it was true . (The wife of a Jew not a Kohen who willingly has an affair witnessed by two competent witnesses is forbidden to her husband and the resulting child is a Mamzer.

The Torah extends this law to the wife of a Kohen - even in the case of being forced to have sex with a man not her husband. However if there are no two competent witnesses present and a woman comes and confesses of having an illicit affair she is not believed. Perhaps this confession is fraudulent and a stratagem of escaping an unhappy marriage to force the husband to divorce her. Since if she really had an affair she is not permitted to remain with her husband. The Ran and Tosfos on Nedorim 90b and the Shar Hamelech Ishos 9:15 explain that the Rabbis , in effect annulled the woman's marriage that even if her confession is true, she was not a married woman at the instant when she had the affair. Consequently, she was single. Since her status was single, she is permitted to remain with her husband in a Pilegesh -concubine relationship. A Pilegesh even if she has an affair with another man is still permitted to return to her first man. Any children she conceived from the illicit relationship are not Mamzarim. Thus even if she claims that she was raped we will not believe her and claim that she was partly responsible by her attire or encouragement and the relationship was voluntary that ended up in a rape. If it is voluntary she is not believed at all, as previously explained. Thus she is permitted to her husband and the child, if she got pregnant, is not a

Mamzer. Furthermore, we will attribute her pregnancy from her husband or a non Jew or from artificial insemination. Consequently the child is not a Mamzer. As long as definite proof required by Halacha-the existence of two religious witnesses who observe all the ritual and moral laws ,who witness the alleged sexual intercourse does not exist , then the child is not a Mamzer.(Rambam

Ishus 24:18).Thus practically the harshness of the Rambam in Isurei Bioh 15:1 that in all situations of a married woman having sex with a man not her husband the resulting child is a Mamzer is for all intents and purposes not existing.

At most the woman claiming to have had illicit sex is making herself prohibited to her husband because she committed adultery and that she is not believed as already discussed. She likewise can not say that her husband is prohibited to her since she commit adultery-just like a person can consider food prohibited to her to be -not kosher -even though in reality it is kosher because one is not believed -when such belief can cause harm and injury to someone else. One can not be more pious and prohibit something that is permitted according to Halacha, when in the process another person is harmed. Believing the mother that she was raped or willingly had an affair, causes her child to be deemed a Mamzer. Therefore she is not believed.(Even Hoezer chapter 48 Responsa Mahrival part 1 klal 2-13,14 citing Reoh: see also Tosfos Rid cited by Shar Hamelech Ishos 9:15)

Any wrong doing evidenced by self incrimination-by confession is not acceptable -she is permitted to her husband. The child by default is legitimate. No proof need to be produced that he is legitimate. The burden of proof is on those who claim that he is illegitimate-a Mamzer. (Magid Mishne on Rambam Isurei Bioh 20:5) (If a married woman gets pregnant from a non Jew or artificial insemination the resulting child is not a Mamzer. Even if she did have an affair she is still able to remain with her husband and the child is not a Mamzer). See Rambam Isurei Bioh 18:8, 9. Therefore, even if what we ruled would be wrong - which it is not - one million percent - the woman relying on our rulings is not in violation of any Law.

Consequently, any children she has from another man are not Mamzarim. See also Mishne Lamelech on Rambam Isurei Bioh 17:7 who cites Rav Hamagid on Rambam Isurei Biah 19:4 that explicitly state that the only time a child is considered a Cholul -loses his status as a Kohen- is only if the Kohen engaged in illicit intercourse and committed a sin. But if the Kohen did not violate any sin- peculiar to priestly injunctions-although he violated another sin with his intercourse - then the child is not a Cholul . See Rambam Isurei Bioh 19:5Magid Mishne and Lechem Mishne ibid. See also Rambam Isurei Bioh 19:7. Although the Mishne Lamelech and Rav Hamagid discuss the case of a Kohen and Cholul , this principle holds equally in the case of a Mamzer .This principle is equally applicable that the child is not Mamzer - illegitimate - if the couple followed the advice of a rabbinical court. They did not violate any halacha. What more were they to do? If Jews follow the advice of rabbinical courts who later on it is determined erred, the Jews have not committed any sin. They are blameless. See Rambam Shegous.-14:2. It is the

rabbinical court who takes full responsibility and has to bring sin offerings -at the time that the holy temple existed. But the whole discussion is academic. I am a scholar who specialized in the Laws of Marriage and Divorce for over 30 years. I studied under Rav Feinstein and Rav Piekarski for over 30 years. I have the approbation from Rabbi Piekarski on the Four Codes of the Shulchan Aruch. What Rav Rackman and myself are doing, we are one million percent sure. Over 30 Rabbis approve overtly; many Rabbis support us, but are afraid because of their livelihood to openly support us. Practically every lay person supports us. We freed over 400 women and men as of this writing.

Problem: Rabbis who oppose us threaten they will not marry the women we free.

Response: You don't need any Rabbi to get married. The groom recites the formula and they are married.

הרי את מקודשת לי בטבעת זו כדת משה וישראל

You are married to me with this ring in accordance with the Laws of Moses and Israel. This is recited in front of two male Jews over 13 who are competent to act as witnesses and the couple is married. In order to recite all the Seven Benedictions you need another seven adult males - even relatives count. If you do not have 10 male adults you can only recite the first and last of the Benedictions. The Ksuboh is already printed and available in English. All that is required is filling in the names of groom and bride and the date. The same procedure that you do not need any Rabbis to marry the couple applies to the children of the second union. They can get married without any Rabbis. Torah is life for living humans. No Rabbi can veto our procedure or decide with whom a woman is going to live with for the rest of her life. Not her ex-husband nor the Rabbis can veto her life. She is empowered to go on with her life. We have empowered her. No man can interfere. A woman is master of her body - not the ex-husband and not the Rabbis. This is true where Torah Law supports the woman like in the case of our annulments. This is true whether the husband and the Rabbis agree or not. They do not count. They are irrelevant. Case closed.

CHAPTER III

Wise men - chochomim - have the power to uproot Torah Laws.

יש כח ביד חכמים לעקור דבר מן התורה

Any time a woman is freed - marriage annulled without a Get given by the husband voluntarily - represents the uprooting of Torah Law. Only chochomim, sages, can annul marriages. Yerushalmi Gitin 4:2 Bavali Ksubos 2B,3A. Only Rabbis who have mastered the four codes of the Shulchan Aruch are authorized by Halacha to annul marriages. See Yerushalmi Nedorim 10:8, Yerushalmi Chagigi 1:8, Rambam Sanhedrin 4:8.

We destroy the validity of the witnesses to the marriage. If there are no halachically valid witnesses, there is no marriage. See Igros Moshe Even Hoezer book 4 Responsa 20. The witnesses must remember the precise date of marriage. If they do not remember the precise date, their testimony is null and void. Yabiah Omer Book 3 Responsa 8. The witnesses must be saints. If they violated even one law of the Four Shulchan Aruchs, they are incompetent to be witnesses. See Aruch Hashulchan Yoreh Dayoh 119:14. See my Responsa Hatorot Agunot. Any Jew who violates any Halacha willfully, cannot be a witness to a marriage Aruch Hashulchan Yoreh Dayoh 119:14; see Magid Mishne Laws of Shechita 4:15, Radvaz Laws of Shechita 4:15, Kesef Mishne Ibid 4:15, and consequently can't be members of a Bet Din. Choshen Mishpot 33:1 Anyone who violates Halacha for money is incompetent to be believed in any area of Halacha to be a witness or a member of a Bet Din. Such men have no intellectual integrity and violate a basic foundation of Judaism. See Igros Moshe Vol. III Even Hoezer #18 citing Yam Shel Shlomo Bava Kama 4:9. One must rather sacrifice his or her life rather than be intellectually dishonest.

The rationale and reason de etre - existence - of our Bet Din is to put into concrete form G-d's Word - His Torah into practice. G-d has empowered the Gedolai Hador, the great men in each generation, to become his partners in creation

המחדש בטובו בכל יום תמיד

for G-d continuously creates the cosmos. G-d, the Infinite, the One whose essence - the G-d Head - is beyond mortal understanding, never-the-less, created the Torah as a link - a bridge - to enable mortal man to cross over this bridge from mortal to partner to G-d and achieve salvation - eternity. This is the meaning of G-d. Israel and the Torah are one. Through the mastery of the Torah, Israel achieves union with G-d.

Judaism believes that the flesh - mortal man can become spiritual and partner to G-d. In order to achieve this height, man or woman must climb the height of spiritual perfection by the mastery and observance of All the Torah. Then the human becomes the partner to G-d and can even abrogate Torah Law to achieve G-d's purpose. This is the meaning of

יש כח ביד חכמים לעקור דבר מן התורה

The Chochomim have the power to uproot Torah Law. Yerushalmi Gitin 4:2. See Rambam Yesodei Hatorah 4:13, Rambam Mamrim 2:4,9, Rambam Yesodei Hatorah 7:1, 7:7, Yevomos (Bavali) 89B, Sanhedrin Bavali 46A.

The definition of Godol is one who has mastered all the Four Codes of the Shulchan Aruch and can rule on all areas of Torah life. Yerushalmi Nedorim 10:8, Yerushalmi Chagigah 1:8, Rambam Sanhedrin 4:8, Avodo Zoro Bavali 20:B, Rambam Talmud Torah

4:1, Rambam Sanhedrin 2:8, Rambam Tumos Ochlin 16:12, Rambam Meila 8:8, Rambam Mikvahos 11:12, Rambam Tzorahs 16:10, Rambam Temuroh 4:13, Rambam Shmitah Veyovel 13:13. Thus Yerushalmi Gitin 4:2 states that to free an Agunah by annulling her marriage can be done by chochomim because they have the power to uproot Torah Law. Bavali Ksubos 2B 3A says chochomim can annul marriages because they are empowered by the husband at the instant of marriage when he declares that he betroths the bride "with this ring in accordance with the Laws of Moses and Israel." He thus, ipso facto, appoints the chochomim who represent Moses and Israel to function in the role of guardians or godparents to withdraw their approval to this marriage at any time of the marriage when they see the necessity. Thus, if the husband does not behave in the living style of a Jewish husband as enumerated in the Ksuboh, "כהלכות גוברין," the Rabbis are empowered to withdraw their assent to the legitimacy of the marriage contract. The marriage is then annulled and the woman is free to remarry without a Get. See Aruch Hashulchon Even Hoezer 38:61, 38:64. See Bais Shmuel Even Hoezer 38:8 Chelkos Mechokek 38:14, Bais Shmuel 38:20 for the Halachic support of this cardinal principle. Thus, when a husband beats a wife, or abandons her, or abuses her physically or mentally, or commits adultery, does not support her, is addicted to drugs or alcohol, or the wife ceases to love him and he becomes repugnant to her so that she refuses to have sex voluntarily, he must give her a Get. If he refuses, Bet Din are empowered to beat him until he complies. Today the Law forbids the Bet Din to beat the husband, so we will annul the marriage. See Igros Moshe Volume 1:79 end, Dvor Eliyohu #48, Ohel Moshe Volume 2:123:8. Otherwise, no woman would agree to have a Halachic marriage. See Rashba Gittin 88A ואי אפשר להיות ד"ה 46B ויבא עיין תורה שבעל פה כרד יב and Rashba Yevomos 46B דלמא אנן שליחותיהו עבדינן בגטין וקדושין דכל חדשי הרשבא ובמות מו המקדש אדעתא דרבנן מקדש והפקענו רבנן לקדושין מיניה

Just like Hillel established the Pruzbel, otherwise creditors would not jeopardize their money and make loans, so too if Rabbis will not coerce the husband to divorce his wife when the marriage is dead, no woman would marry halachically. Coercion of a Get is a form of annulment. See Maharsham 1 Responsa 9. See Minchos Yitzchok volume 10:126. See Ohr Someyach on Rambam Laws of Gairushen 2:20 citing Mohrik Responsa #63:3.

Since in all instances cited by Talmud for annulments, a Get is given even if the Get is defective; so too we will grant a Get Ziku even if there are authorities who question the efficacy to a Get Ziku when the husband does not consent or opposes its giving. See Rav Klotzkin, Essay in Hebrew Re: Get Ziku. See Netziv Responsa Mashiv Dovor #79.

In Chapter I, I cite the principles and sources for our annulments. It is there that I cite the sources for Get Ziku. Suffice it to say that without a Get Ziku there is no annulment. If anyone other than a Rav who has mastered the four codes of the Shulchon Aruch follows the procedures we discuss, there is no annulment. The reason is because every annulment, ipso facto, uproots Torah law that only the husband is empowered to divorce his wife. Only the Godol, one who mastered four codes of Shulchon Aruch, is empowered to overrule this Law. The annulment frees the wife, not the husband. He must give a Get in order to be free to remarry. Otherwise, he is under the ban of Rabbeim

Gershon that forbids him to remarry or have sex with any female - outside of marriage - before giving a Get. See Igros Moshe Volume 4:3,4. See Even Hoezer, end of chapter 1 and commentaries, and Even Hoezer 119, beginning and commentaries.

The Rambam explicitly says that any Bet Din can uproot Torah Law, not only the Bet Din at the time of the Gemora הוראת שעה - temporary uprooting, not forever - Rambam Mamrim 2:4.9; Kisveh Hagoan Rav Yechiel Yaakov Weinberg Bal Shredi Esh Vol. 1 #32, page 62 citing Responsa Radvaz Vol. 1 #120, edited by Melech Shapiro, Scranton, 5758; Responsa Shredi Esh Vol. 2 #8. See Ravad Mamrim 2:9. Just like a prophet could uproot Torah Law, Yesodei Hatorah 9:2,4, Yesodei Hatorah 7:7; no prophet had the power to do anything in Halachah unless other Rabbis could do the same thing. See Rambam Melochim end 12:2. See Aruch Hashulchan Even Hoezer 2:14.

יש כח לכל בית דין לעקור דבר מן התורה בהוראת שעה

CHAPTER IV

Can the woman argue that the husband's misbehavior existed before in latent form and therefore constitutes Mekach Tout-a mistake in the marriage? Is the husband's refusal to give a Get evidence that he is a sadist and always was a sadist -and is and always was sick? I do not agree that this conclusion is a valid basis for a Mekach Tout - a mistake in the marriage. However the Rabbinical Court must weigh all the evidence and draw their own conclusions. Every case is different. Certainly psychological evaluations can be factored in to establish a pattern of unacceptable behavior that can be used as another adjunct to annul a marriage. This can be used even if we can not draw a conclusion that this unacceptable behavior existed before the marriage. At least such a pattern strengthens our evaluation that no wife would agree to remain married under such intolerable behavior on the part of the husband.

Rav Moshe Katzenelbogen, my great grandfather from Mezritz, Poland, author of Responsa Ohel Moshe, who received approbation from Rav Yitzchok Elchanon, Rav of Kovno, acknowledged world renown Godel deciser, (Yeshiva University Rabbinical Seminary is named after him), living 100 years ago, stated "that one of the critical criteria of marriage: before entering a marriage, one is to determine that if the marriage does not work out, the family will consent to a divorce. Otherwise, not to contract a marriage". If that is not true, then it may become a mistake in the marriage. When all means of saving that marriage are futile and the marriage is dead, and the husband and his family refuse a divorce arbitrarily, that in itself may very well be a sign of some abnormal behavior that existed before the marriage. The fact that the husband has the power to exercise control and not act abnormal before the marriage does not alter the fact that if he fails to exercise such control and gives full vent to his abnormal behavior by refusing to give his wife a Get that it may be a Mekach Taut, a mistake in the marriage. On the other hand, the husband and his family may be doing everything in their power to save the marriage, especially where children are involved. Likewise, the husband and his family may insist that a Rabbinical trial adjudicate custody, alimony child support and visitation rights as a condition before he grants a Get- Jewish divorce. There exists no leverage on the wife to have her follow Torah Law unless she won't receive the Get. Some women exploit the court system to their advantage even if such ruling is against Torah Law; and then come screaming to the Rabbinical Court that they have been victimized by the husband when he refuses to give them a Get. One can not jump to conclusions that the husband or his family are sadistic or abnormal because they refuse to have the husband give a Get.

Moses, the Lawgiver, is described in the Medrish as being in possession of a very violent nature like a murderer. However, he exercised self-control and became the father of all prophets. If Moses had lost control, even once, of his violent nature and struck his wife - domestic violence, his wife Tziporah could have argued that she did not bargain to get married to a man who had the potential and temper of a murderer. A criminal who commits a violent crime only once, can be locked up for many years even though he many

otherwise be a saint and a genius. The man who collaborated with Webster in writing the dictionary was a genius but also was incarcerated for life and convicted as being criminally insane after killing someone in a fit of rage. Once a person exhibits violent behavior that can be traced to chronic psychological problems existing prior to the marriage, such symptoms can then serve as a “sniff” - additional grounds for Mekach Taut, mistake in contracting a marriage. “Kan Nimtzo Kan Hoyu”. If something is found now, we can assume that it existed prior to the marriage.

כאן נמצא כאן היה

Thus, if we establish that the husband is abusive and has psychological problems now, the husband must prove that at the time of the wedding those problems were not present. Failure for him to prove normalcy renders the marriage null and void as a mistake in the marriage - Mekach Taut. See Mishneh Teharos 3:5. See Interpretation Rash. See Tosephta Teharos 5:6. See Rambam Avos Hatumo 18:14; 5:9, Avos Hatumo 19:1. See Taz Yorah Dayoh 1:5, 2:7, Aruch Hashulchan Even Hoezer 37:42. See Aruch Hashulchan Yoreh Dayoh 1:49,50,51,52, Yoreh Dayoh 201:211. See Yoreh Dayoh Ramo 1:1. The thrust of all the cited sources is that once we establish a state of facts that show a defect on the part of the husband, we say that the opposite side has the burden of proving its position that the defect did not exist before the marriage.

In the case of the Ramo Yoreh Dayoh 1:1 ruled that a Ritual Slaughterer who had forgotten his learning of the Laws of Shechita, ritual slaughtering, is deemed to have forgotten them now, not before. The reason, according to Aruch Hashulchan Yoreh Dayoh 1:49,50,51,52, is because the shochet had been tested at one time and found to have known such laws. This position is, nevertheless, contested by Taz Yoah 1:5 who refuses to make a distinction between the shochet’s knowledge of Ritual Laws of Slaughtering of animals, shechita, now and before. At the present time, we know as a fact that he does not know the laws. We assume that he never knew the Laws. The reasoning of the Ramo is applied when a Mikveh is found to be missing the 40 se’ahs, the proper amount of water that renders it kosher. If the Mikveh was measured a short while before, one will assume that all people who used such a Mikveh dipped in a Mikveh having the required measure of water. See Aruch Hashulchan Yoreh Dayoh 201:210,211. We say, just now the Mikveh lost the proper measure of water. However when the Mikveh was not measured a short while before, no such assumption is warranted. The person dipping in the second Mikveh is deemed as dipping in a ritually disqualified Mikveh. See Aruch Hashulchan Laws of Mikvohos 201:210,211. See Rambam Laws of Mikvohos 2:23, Mikvohos 10:6.

The same reasoning is applied if we discover worms in flour after bread is baked. We assume that the flour was infested with worms and therefore the bread is not kosher. If other customers purchased flour from the same grocery, the Law is the following: If the grocer sold the flour from a barrel, not individual packages, and upon inspection found that the flour in the barrel was infested with at least three worms, Aruch Hashulchan Yoreh Dayoh 84:76, then all the flour sold previously to unsuspecting customers is deemed to have been infested with worms. Any food or bread prepared by such customers is deemed to be not kosher. However, if the grocer testifies that he inspected this flour carefully at one point and found no worms, all flour purchased at his store is kosher. We then assume that the

flour was contaminated at the customer's house. The same Law applies if another customer inspects her flour and finds it free from worms. See Aruch Hashulchan Yoreh Dayoh 84:78

So too, since we have no starting point that the husband was normal and did not lose control of his violent nature and now we see the outburst of chronic violence and sadism, we can assume that such nature existed before. Such argument is additional grounds for annulment. The reasoning is that the burden of proof shifts to the husband to prove that he was normal at the time of the marriage. Rash Mishnayoh Taharas 3:5. Failure by the husband to prove that he was normal at the time of the marriage by default negates the marriage. The wife need prove nothing.

I want to state as a matter of policy that all the loopholes and lenient ruling we utilize are used only because there exists no other means to extradite the woman from the chains of being an Agunah. If no such emergency exists, of course, we will rule like the strictest decisions. The same policy exists regarding our acceptance of the ruling of Rabbi Feldblum of Israel that no modern woman today accepts the status of being "purchased" by the husband. I have serious reservations with such a concept. Thus, in effect, such a concept uproots the very essence of Halachic marriage by definition. It is similar to a woman making a precondition that she is getting married under the condition that no get is required or that no chelitza is required. Such a precondition is deemed null and void as being in contradiction of what was written in the Torah

מתנה על מה שכתוב בתורה

See Mishneh Lamelech on Rambam Ishus 6:10,11. The marriage takes effect anyway, even if she makes such a pre-condition; but the pre-condition is null and void. However, the Mishneh Lamelech is discussing the case that a woman accepts the concept of marriage meaning that she is "acquired" by the husband but never-the-less balks at the conclusion of requiring a Get to terminate the marriage, then the Mishneh Lamelech is correct that she can not do this since this is an inherent contradiction. But if she does not accept the very concept that halachic marriage is grounded on the fact that the wife is "acquired" by the husband - then there exists no halachic marriage period. She does not accept Halachic marriage. Her relationship is then pilegsh not marriage. Unless we have definite proof of a sexual relation being halachic marriage, it is deemed Znus or free sex according to Rambam Gerushin 10:19, or according to Ramban - Pilegsh. See Ramban Responsa #284. See Even Hoezer 26:1, Otzer Haposkim chapter 26. Such an interpretation is used only under very tight conditions when we have no other alternative. Otherwise, the wife will remain an Agunah, chained like an animal, for life. Such a decision can be made only by a Godol, only a person who has mastered the four parts of the Shulchan Aruch, not by anyone else. Otherwise the marriage institution will collapse. See Jerusalem Talmud Gitin 4:2

יש כח ביד חכמים לעקור דבר של התורה

See Yerushalmi Nedorim 10:8, Yerushalmi Chagiga 1:8. In ordinary circumstances, in the case of a normal marriage, we definitely rule like the majority of opinions that are strict. We rule that all marriages, even with a ring, even according to the Rambam, are Meduraisa - Divine. We rule that woman CAN NOT state "I do not recognize or accept that I am being "acquired" by my

husband similar to a Cannanite slave.” “I am a modern woman and such a concept is degrading!” We counter that acquired means that she must be faithful and have sex only with her husband . Her husband is also acquired by the wife and he can not have any mistresses There exists nothing degrading of having a mutual pledge of fidelity. It is irrelevant if the husband’-+s pledge is made in the Ksubah and the wife’s pledge is made at the instant that she gets the ring under the Huppah . Yes there exists problems if the marriage dies and the husband refuses to give her a Get. Then after Rabbinical trial and all social and civil remedies have been tried to no avail we will give Get Ziku and annul the marriage. . Only when she, G-d forbid, becomes an Agunah do we entertain to put into operation all the loopholes we mentioned. Otherwise, never.

We will even burn the candle from both sides in the case of extreme pain and suffering inflicted on the woman if we do not rely on minority opinions. See Taz Even Hoezer 17:15, Yoreh Dayoh 293:4. See Ginas Veradim Volume 2 Klal 3:24. See Rambam Mishne Lamelech Avos Hatumoh 19:1.

The thesis that only in emergencies will we be lenient is supported by Mishne Lamelech or Rambam Avos Hatumoh 19:1.

A man traveled on a route that had two branches and he does not know which branch he took. One branch had a dead body that would render him upon contact as ritually impure. He then proceeds and touches sacred food as Trumoh. If he be ritually impure he would have defiled the food ritually. The Law is that he himself can easily purify himself by dipping in a Mikvah. So he will be pure ritually for the future. However, the Trumoh - sacred food that he touched would remain defiled, if we adjudicate him as having taken the route with the dead body. The decision is to burn the candle on both ends and deliver a split decision. We adjudicate the case that he took the ritually pure road. Consequently, the Trumoh that he touched is ritually pure. To do otherwise would condemn the food to destruction. There is no way out. However, regarding himself, we will insist that he be strict and dip in the Mikvah in order to purify himself for the future. There is no emergency for him. He is not locked in by being strict. This ruling illustrates the policy followed in Halachic jurisdiction. Thus in the case of an Agunah, we will rely on all lenient rulings. However, where there exists a normal marriage, not an Agunah situation, or when there is a normal divorce with a willing husband, we will insist that all the strict opinions are followed. Thus we can not be accused that we are breaking up any marriage.

Every marriage, unless it is an emergency situation like the case of an Agunah, we will rule that a marriage transaction created by the groom giving a ring, is divinely binding; not only Rabbinically binding. We will interpret the Rambam to espouse such an interpretation. See Magid Mishne on Rambam Ishus 1:2,3,4, Kesef Mishne Ishos 1:2,3,4, Mishne Lamelech Ishos 1:2,3,4. See Megilos Ester on Rambam Shroshei Hamitzvohs beginning Shoresh 2. See other commentaries Ibid. See Shach Choshen Mishpot 33:1,2. See Magid Mishne on Rambam Laws of Shechita 5:1.

In all situations that Rambam denotes the efficacy of a certain action as “Medivrei sofrim” it means that G-d entrusted such Law to be orally transmitted by the “Sofrim”, the Rabbis. However, it still carries the efficacy of a Divine Law. Thus, marriage with a ring that is denoted by the Rambam in Sefer Hamitzvohs Shoresh 2 as “Medivrei Sofrim” means that it is Divine Law but orally

transmitted by the Rabbis. Since the Talmud did not specifically label such Law as Divine, it did not earn a place to be counted as a separate Mitzvoh in the Sefer Hamitzvohs composed by Rambam.

However, it, never-the-less, is divine. Otherwise, a married woman, which marriage is contracted with a ring, when she commits adultery would not be liable to a capital punishment. One gets a capital punishment only if one violates a Divine Law not Rabbinical Law. See Magid Mishne Rambam Ishos 1:2,3.

Those authorities who dissent and interpret the Rambam that marriage with a ring is only Rabbinical maintain that certain Rabbinical Laws do carry capital punishment. So the fact that the woman and her paramour who commit adultery get the death penalty does not mean that it is divine, it is Rabbinical. Consequently, in the case of an Agunah, it is much easier to annul her marriage in the case of doubts. See Choshen Mishpat Chapter 25:2, Ramo Shach 25:18, 19, Yoreh Dayoh 242. Furthermore, even if it be Divine, if there exists at least two doubts, the woman becomes free. See Magid Mishne Rambam Shechita 5:2 (end). See Orech Hashulchan Yoreh Dayoh 110:99, 110:66 to 110:135. In our cases we have multiple doubts more than two doubts. We have 20-30 grounds that we use to annul the Agunah marriages. However, in the case of Agunot when there exists no remedy to free her, since civil law today forbids the Rabbinical court to interfere and beat the husband, will we annul the marriage. See Igros Moshe Even Hoezer Volume 1 #79 end; Mishne Lemelech Zchiyoh and Matona 6:1; Dvar Eliyohu #48; Ohel Moshe Rav Moshe Tzweig Volume 2 123:8.

The competent Bet Din who have mastered the four codes of Shulchan Aruch will annul the marriage. We will also use as additional adjuncts and grounds for the annulment that the husband's refusal to grant the wife a Ge could possibly be the manifestation of abnormal behavior. originating prior to the marriage. Thus the marriage is a Mekach Tout - a mistake. We will factor in psychological evaluations.

We will use as an adjunct the thesis of Rabbi Feldblum of Israel that since the woman was not appraised of the mechanics of Halachic marriage that she is "acquired" by the husband and her husband is not "acquired" by her, she can argue that if she had such information disclosed she would never have agreed to Halachic marriage. "I refuse to be in any way or form compared to a slave regardless if "acquired" means that the husband acquires the rights to sex only," Rambam Ishos 12:1,2,6,7; Aruch Hashulchan Even Hoezer 55:4, 61:4; Even Hoezer 17:1; Ramo 20:1; but his rights to her personal property and duties that she is required to serve the husband are only Rabbinical. See Rambam Ishos 12:3,4,5,6. Obviously there are tremendous differences between "acquiring" a wife and "acquiring" a slave. You can not sell your wife to another. You can sell your slave to another when the institution of slavery was legal by the civil authorities. However, the Rabbis to free the Agunah only can use non-disclosure at the time that the Agunah got married as an additional adjunct to declare the marriage Mekach Tout, the contract is a mistake and is voidable, not void. The Rabbis must declare the marriage void. This declaration can not be made by herself. That is why we insist that a Get Zikui be employed, in addition, as part of the annulment process. Thus this woman is no different than the woman whose husband consents to give her a Get. Bet Din substitutes for him- takes his place - and gives her a Get. She does not terminate her marriage without a Get. She must come to Bet Din. We will use all the 20-30 different ways outlined in this book to free the agunah. Even if we have our reservations about the argument we will give the agunah the benefit of the doubt in order to set her free. If one argument or basis is deficient we will

use another argument and basis. This is the strategy that the Aruch Hashulchon uses to enable Jews to sell their stores on the Sabbath to a non Jew in order to enable them to keep the business open on the Sabbath or else they would go bankrupt. See Aruch Hashulchon Orech Chaim -laws of Sabbath and selling one's business to a non Jews or having partners who are non Jews for the Sabbath.

Let G-d save us from those Orthodox Rabbis who, in effect, uproot Torah Law. Any Rabbi who forbids anything that is permitted by Torah Law violates Halacha, Taz Yoreh Dayoh Chapter 117:1, and he should be removed from his job. Gilyon Mahrshau, Rav Shlomo Eiger son of Rav Akiva Eiger, Yoreh Dayoh 1:2; Chidushe Gilyon Mohrsha part 1:174 citing Responsa Rivosh and Yerushalmi; Responsa Bais Yaakov #31 citing Tosphos Sanhedrin 87A. For if a Rabbi is ignorant and will forbid something that is permitted, he will equally, in his ignorance, permit something that is definitely forbidden. Gilyon Mohrsha on Yoreh Dayoh 1:2.

CHAPTER V

RATIONAL FOR KFIYA - ANNULMENTS

Forcing a Husband to give a Get Mekach Tout - Mistake in the Marriage

We annul marriages in all cases that the Hallacha dictates that the Rabbinical Court would coerce the husband. When the court is powerless to coerce because it violates civil law, the court will annul the marriage. See Igros Moseh Even Hoezer Volume 1 Responsa #79 end. See also Dvar Eliyohu Responsa #48. Ohel Moshe Volume 2 Responsa #123 who states that if the Rabbinical court in its judgement determines that the woman cannot remain with this man, the court can annul the marriage. The Ohel Moshe cites the Chelkes Yo'ev Volume 1 Responsa #24 who also places the criteria for granting the husband a get without the wife's agreement, in the judgement of the court. The Ohel Moshe, Rav Moshe Zweig, applies the same reasoning for the granting of an annulment to the wife. Even though Rav Moshe Feinstein, Igros Moshe Even Hoezer Volume 1, end of Responsa #79, discusses the case of a husband who is impotent, he acknowledges that whenever there exists any case that the Rabbinical Court will coerce to give his wife a Get but are unable to do so because of civil government restrictions, that the court is empowered to annul the marriage. That conclusion can be deduced from the language Rav Feinstein uses in Volume 1 Even Hoezer #80. Rav Feinstein explains the Responsa of Rosh cited in Even Hoezer 154:5. The Rosh who teachews that the court does not coerce the husband to grant his wife a get when he fights with her, is not discussing the case that the wife is beaten and certainly not the case that her life is threatened or jeopardized. The Rosh is not discussing cases that the court can force the husband to grant his wife a Get. For if there is a case that the Court can force the husband and the Rabbinical Court is powerless to coerce; then the court is empowered to annul the marriage.

דאדעתא דהכי לא התקדשה

For no woman would agree to get married under such circumstances that she must remain an Agunah - like a chained animal - for the rest of her life. No woman would agree to have a Hallachic marriage, not having a crystal ball and not knowing what the future has in store for her. It is only because she relies on the guarantee of the Rabbinical court that she agrees to have a Hallachic marriage. That is the reason the marriage formula reads:

הרי את מקדשת לי בטבעת זו כדת משה וישראל

You are hereby betrothed to me in accordance with the laws of Moses and Israel. It would have been sufficient to state "You are betrothed to me." The woman would have been married. Why is it necessary to state "in accordance with the Laws of Moses and Israel?" The reason is because at the instant of marriage, the contract is made that the marriage take place with the active involvement of the contemporary court. At the instant of marriage, both bride and groom agree to submit their marriage from inception to the end of the marriage to the active involvement, to the scrutiny, guidance and orders of the Rabbinical court. From the inception, both spouses agree and insist, certainly the wife, (see Igros Moshe Even Hoezer Volume I #79 end and see Pischei Tsuvah Even Hoezer 157:9 end citing Node Beyehuda #54 that no woman would agree to be married other than under a prenuptial agreement that the Rabbinical court intervene forcefully to ensure that the husband strictly adhere to the marriage contract. If he breaches the marriage contract, the court

will force him to cure the situation; or if not, to free the wife. Otherwise no woman, other than a tiny group that are hardly to be found, would agree to get married. This is the meaning of Rashba in his Chidushim Gittin 88 A.

Would the Rabbis not have collected the monies owed by the debtors on the 7th year of shmita by the Prozbell, creditors would not lend their money. So too, would the Rabbis be lax and not enforce the Laws of Marriage and Divorce and coerce the husband to give a Get when the Torah Law requires it, women will not get married. This conclusion of the Rashba is not to be taken to mean that ab initio the women would not get married; but post facto if the court's hands are tied and they cannot coerce the husband then they will agree to marry brutes who will give them hell on earth and abuse them. Never. No woman would agree. This is so obvious, that the marriage is a mistake because the Rabbinical Court failed to do their duty. Never mind, that the court had its hands tied; that civil laws made it a felony to beat up husbands. The woman gets married only by her consent. Even Hoezer 42:1 If she would make a condition precedent that she agrees to get married only if the husband or relatives of the husband or the Rabbis give her one million dollars, but the relatives or the Rabbis do not have this sum of money, there is no marriage. Aruch Hashulchan Even Hoezer 38:54. See Bais Shmuel 144; also Bais Shmuel 38 beginning; also see Pischei Tsuvo Even Hoezer 144:3 - there is no such thing as an act of G-d that excuses performance of a condition when it comes to marriage. The woman gets married under such a condition only. Here too, the woman gets married on the condition that the Rabbis act as guarantors and insurers that if the husband breaches the contract of marriage and the Rabbis can't change his behavior, they will beat him until he gives the wife a Get. See Buva Basra 48A; Rambam Laws of Divorce 2:20; Ohr Someyach; Rambam Ishus 14:8; Titz Eliezer Volume 5 Response #26; Mahrik Shoresch #62; Avadye Yosef Yabiah Omer Volume 3 Responsa #18; Ramo Yoreh Dayoh 228 #20.

Thus if the Rabbis fail to do their side of the bargain, there is post facto no marriage. The reason is because the entire concept of forcing a husband to give a Get, in reality, is Hafkoes Kedushin - annulment. See Rashba Yevamos 46B; see Mahrik Shoresch #62; see Ohr Someyach on Rambam Laws of Divorce 2:20; see Mahrsham Volume 1 Responsa #9. Furthermore, just as any person making a purchase has a right to cancel the purchase even after the passage of many years if a defect is discovered (Rambam Laws of Selling 15:3; Choshen Mishpot 232:3) because when one makes a purchase it is understood that one buys perfect merchandise (Ibid 15:6; Choshen Mishpot 232:7) without defects.

דבר שלם

So too, the wife can insist that the marriage be annulled if the Rabbis do not fulfill their part of the bargain. The marriage contract involved not only the husband but the Rabbis to fulfill their role of beating the husband if he breaches the marriage contract. If the Rabbis fail in fulfilling their role as guarantors and insurers, there is no marriage. This can happen years later. This is similar to the case of a woman whose husband dies and he has no children and has brothers. She is required to marry one of the brothers or get chalitza from the brother. What happens if the brother is non-observant and would force the widow to become non-observant and sleep with him while she is in her Nidah state? It is the ruling of the Gaonim cited in Taz Even Hoezer 157, that such a brother-in-law is exempt. The woman need not marry him nor does she need chalitza.

The Bach Even Hoezer 157:5 goes much further. He states that if a woman marries a man who is observant and later ceases being religious, the woman's marriage can be annulled. The reason is that the woman at the instant of marriage did not contemplate to be married to a non-

observant husband. Thus, it is a Mekach Tout - a mistake in the marriage contract. Bach on Tur Even Hoezer 157:5 holds that the woman can elect to annul the marriage to her deceased husband. That can be 50 years or more after the marriage. There exists no time frame. Because as a result of the husband's death and the circumstances that the widow falls to the non-observant brother-in-law, the marriage is declared retroactively a nullity. The reason is that no woman would agree to get married in the first place if the end result would be to end up with the non-observant brother-in-law. This is so because when a person makes a purchase or acquisition it is understood, unless specifically stipulated otherwise, that the entire contract is complete.

דבר שלם

Rambam Laws of Selling 15:6; Choshen Mishpat 232:7. Otherwise the aggrieved party can back out of the contract even after the passage of many years. Rambam Laws of Selling 15:3; Choshen Mishpat 232:3. In our case, the Rabbinical Court is a party to the marriage contract. When they fail to fulfill their role as guarantors and insurers of the marriage contract, by beating the husband into submission to give a Get, the marriage contract lapses.

This is the meaning of Rav Moshe Feinstein Igros Moshe Even Hoezer end Responsa #79 and middle Responsa #80. If the court is powerless to force the husband, the marriage contract retroactively collapses and the marriage is annulled. We do not require an explicit condition precedent in the Ksubah to stipulate such a series of events. On the contrary, the husband is required to stipulate in advance that the above mentioned does not apply, that even if he breaches the marriage the contract is still intact. See even Hoezer Rav Akiva Eiger Hasholem Choshen Mishpat 232:5,6; for Responsa see Pesach Hagilyon citing Sema #16 and Bach on 232 who reinforce this position. See Rambam Sales 13:3 that the defendant (seller) must stipulate precise defects that are present in the objects he sells. If he fails to stipulate the precise defects, by default, the purchaser can cancel the purchase. The proof is on the defendant, the husband in this case, to prove that a condition precedent exists stipulating that even if he breach the marriage contract and violates all the wife's rights, the Bet Din will not intervene. He must stipulate the kind of misbehavior that he will have (eg. beat the wife; commit infidelity; not support the wife; not have relations with her; threaten to kill her; verbally abuse her; cause her to violate Jewish law; etc).

Many authorities hold that even if such a contract is signed by the wife, she can breach such an agreement stating "I thought I could endure such abuse, but I see now that it is impossible." See Aruch Hashulchan Even Hoezer 154:6. We will rule like the opinion supporting the wife to force the husband by beating him into submission. See Taz Even Hoezer 17:15; Taz Yoreh Dayoh 293:4; Shach Yoreh Dayoh 242; Shach Tokfu Kohan; Piskeeee Dan Rabonim.

צערה דגופה שאני

Peroch Aaron - When she has to endure psychological distress, she can back out. Peroch Aaron Responsa - a woman's psychological abuse. Personal relationships of spouses or in-laws go beyond normal contract law and the wife can back out of a contract because she can not endure personal and psychological abuse. Certainly where there exists no stipulation and premarital agreement giving the husband the right to breach the marriage contract and abuse the wife that the Rabbinical Court must force the husband to give a Get. Failing to do so, the marriage contract is dead, null and void. This is the reasoning in the Rashba's Gittin 88A; Igros Moshe Even Hoezer #79 end Volume I, #80 middle of the page, and in Rav Klotzkin Dvar Eliyohu Responsa #48; Ohel Moshe Volume 2 Responsa #123; Chelkos Yo'ev Volume I #24.

In all the cases, the failure of the Bet Din to enforce the marriage contract precipitated the annulment of the marriage. No woman in the world, with the exception of an insignificant few, would agree to enter a marriage that would be a living hell without any exit. Never mind that Rabbis are not

annulling the marriages today and women know this fact. The woman is not forfeiting her rights because the Rabbis are not fulfilling their duty. The Rabbis are violating Halacha. As far as Halacha is concerned, there never was a marriage. This has nothing to do with feminists who question the validity of the marriage institution. In my other writings, I dismissed on moral and Halachic ground such a position as being irrelevant. What is relevant is that when a woman is in trouble with her marriage, the court will extricate her by annulling the marriage when the court is unable because of Civil Law to beat the husband to give the wife a Get. Otherwise no woman in the world with the exception of an insignificant number would ever have a Halachic marriage. Rashba Gittin 88A. This is in addition to the power given to every court to annul marriages by changing the character of the ring given to the woman by the groom at the marriage to a gift. See Chasam Soffer Even Hoezer #107, 108. See Tur Choshen Mishpat 2:5; Rambam Laws Sanehria 24:6; Aruch Hashulchan Sanehrish 63:10; Hachuka Leyisroel se pe Hatoch Volume 2 page 154.

Otherwise the entire marriage institution, in accordance with Halacha, will disappear. It meets the requirements stipulated in Tur, Choshen Mishpat 2:, and Orech Hashulchan Choshen Mishpat 2. When Bet Din will intervene even after the Sanhedrin no longer exists today. Agunah problems are common and are critical to the well being of the wife for the Bet Din to intervene. Otherwise she is like a caged animal. This is Pidyan Shevuyim, freeing a captive from eternal imprisonment. In this way we will save Judaism and Torah, the Messiah will come, and the Bet Hamikdosh will be built in our day. When a man and woman get married they involve the Bet Din. This is similar

על מנת שירצה אבא או על מנת שלא ימחה אבא

on the condition that my father will say yes to the marriage;

בית שמואל

Bais Shmuel Even Hoezer 38:20. that the father has time forever to say yes; that he approves of the marriage of his son.

והיינו שיטת שאר הפוסקים דסל" דלא קאי התנאו על שעת מחילה וסל" כל תנאי שהוא בקום ועשה ולא קבע

זמן הרי זמנו לעולם וכו

This position is confirmed by the Chelkos Mehokek Even Hoezer 38:14.

דכל תנאי התלוי בקום ועשה ולא קבע לו זמן הוא

לעולם ואפילו אמר בתחילה לא

Also if he makes a condition that it should not be a marriage if my father says no. It should be a marriage only if my father does not say no. Ramban Rashba Ran hold that the father retains the option forever to veto the marriage. See Aruch Hashulchan Even Hoezer 38:61 interpretation

ואם אמר על מנת שלו ימחה אפילו נתרצה האב תחלה

כששמע אינה מקודשת וודאי שמא ומחה עוד ואם

מיחה נתבטלו הקדושן מיד וכו. אבל על מנת שלא

ימחה הוה התנאי בשב ואל תעשה וכל תנאי דשב ואל

תעשה כל זמן שנעשה המעשה נתבטל התנאי כל שלא

קבע זמן לתנאו וכו ובעל מנת שלא ימחה כשנתרצה

תחלה שאמרנו שביכלתו למחות ולבטל הקדושין לפי

שהרצוי שלו אינו נוגע להתנא כמו בע"מ שיאמו הן

שאינן חוששין במה שלא נתרצה תחלה דאנו צריכים

לראת לשון התנאי ומתי שיתקיים לשון כשהתנאי

בקום ועשה או

כשהתנאי הוא

מתי שיתקשר לשון התנאי כשחתנאי בשב ואל תעשה

והוא עקרו אז הוי קיום התנאי או בטול התנאי ואין
חוששין מה שהיה לפני זה ומה שיהיה אחרי כך. עכ"ל

Also every Bet Din has the power to change the character of the ring given at the wedding to become a gift by expropriation

הפקר.

See Responsa Chayim Vesholom Volume II #26 cited by Otzer Haposkim on Even Hoezer #21. See also Dvar Eliyahu #55. See Responsa Rosh Klal #35:1. See Nave Sholom R.A. Chazon 49B, "Even if the couple lived together the court can retroactively expropriate the money and change its character to a gift instead of the money given to acquire the wife." See Chasam Soffer Even Hoezer #107,#108. Bet Din can expropriate Kedushin made without parental consent. See Bais Yosef Even Hoezer end 28 cites Rashba who cites Rav Shrira Goan that he expropriated money of marriage and made it a gift on above conditions. Also Rav Chai Goan did the same.

See Rashba #551 that if Bet Din stipulated that the marriage ring is expropriated, the kedushin is annulled, and that Ramban agreed to this formula. The Responsa Chayim Vesholom Volume II Responsa #26 cites Tur Choshen Mishpat Chapter 2 that Bet Din has power to expropriate money. This power is extended to expropriate the money or the wedding ring and change its character to a gift. This can be done even if the couple already are living together Nave Sholom 49B. See also Responsa Tashbaz #133 for same cited by Pesach Hagilyon Even Hoezer; Rav Akiva Eiger Hasholom 28:21 in Ramo; Hagoas Rav Akiva Eiger Even Hoezer 28:15.

There is an obvious distinction from the cases cited by Ramo Even Hoezer 28:21, Otzer Haposkim Ibid, and Tashbatz #133. In those cases the Rabbinical Court and Community wanted to restrict the Halachic marriage to meet requirements not necessary in normative marriages: One can have a Halachic marriage even if ten men are not present. True, the seven benedictions can't be recited, but according to the Talmud the marriage is effective. The same is true if there does not exist consent for the marriage on the part of the parents, family of the bride, the Rabbi, or the Civil Government. It is only because the community and the Rabbis felt that it was against public policy to permit a marriage taking place that there were not ten Jewish males present all the blessings could not be recited.

כלה בלי ברכה אסורה לבעלה כנדה

According to some authorities, if all the blessings are not recited, the bride is prohibited to the groom as a Nidah. However, even if the bride is a nidah and a marriage took place, the marriage post facto is effective even according to the opinion of Rambam who prohibits ab initio the marriage. Likewise, even if no blessings are recited post facto the marriage is effective. Likewise, according to Halacha even if there does not exist the consent to the parents, family, Rabbi, or Civil Authorities, the marriage is effective. However, since contemporary experience made such consent mandatory, the Rabbis were forced to innovate. Therefore they convened a conference of the Elders of the community together with the Rabbis and expropriated all the money or property to be given in the future by the groom to the bride who violated the requirements above mentioned.

However, in the situations where Rabbis are instructed by Halacha to force the husband to grant his wife a Get and he refuses, they will beat him until he complies. Where Civil Law makes beatings illegal, the Rabbis will annul the marriage as we have elaborated. Part of the annulment process is expropriating the money or property given by the groom to the bride as the acquisition price for acquiring her to become his wife. The ring, if that is what is used, becomes a gift. Therefore, there is no property given to the bride and no Halachic marriage. This expropriation can be done retroactively. See Talmud Ksubbos 2B, 3A. See also Talmud Yevomos 90B; Gittin 33A and 73A; Bova Basra 48B. Also Hachuke Leyisroel Al Pi

Hatorah. The Talmud states that if the Rabbis annul the marriage where property is given to acquire the bride, such property is expropriated. Even if the marriage becomes effective by living together, the Rabbis are empowered to change the acquisition of living together to fornication if necessary. In effect, there will exist a Pilegsh (Mistress) relationship, not fornication, according to many authorities cited in Even Hoezer Chapter 26:1. See Otzer Haposkim Ibid that it is permitted according to some authorities. See Chapter 12 for greater elaboration. See Meshivas Nefesh Responsa #15 end from Rav Aryeh Leib Tzintz that even Rambam who prohibits any sexual liaisons other than Halachic marriage; however if the Rabbis annul a marriage, there exists no prohibitions. The couple were not engaged in fornication. As long as they lived together it was with the intent of Halachic marriage. Only as a result of the action of the Rabbis is an annulment retroactively effective. It is the Rabbis who cause the change of status from Halachic marriage to pelegsh (mistress) status. The couple is not in violation of any law since they themselves did not effect the annulment. You violate a law only if you yourself commit the act. Here the Rabbis are the ones who performed the act of annulment. Thus Rabbis are empowered to retroactively expropriate the ring and change its character to a gift.

CHAPTER VI

Problem: Rav Moshe Feinstein in published Responsa discusses “Bitul Kedushin” - The nullification of Halachic marriage, not annulments. In all cases that he mentions, there are pre-existing conditions. Similarly, Rav Yitzchok Elchonon Spector also discusses pre-existent conditions.

Responsa: Rav Moshe Feinstein in Igros Moshe Book I Even Hoezer 79 at the end, discusses the case of a woman whose husband is impotent. Rav Feinstein rules that there is a Mekach Tout,

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a defect in the contract of marriage. The woman ended up with a man who is impotent and cannot have an erection. In short he is not a man. Everyone knows why a bride enters the chuppah and gets married. She wants to have sex legally in the state of matrimony. Would she have known that this man cannot have an erection, she never would have agreed to bind herself as a married woman, forbidden by Jewish Law to have another liaison with a man that can fulfill her sexual needs.

Rav Moshe Feinstein did annul this marriage. The reasons were:

1. מקח טעות -

fraud in the making of the contract by concealing the fact that the husband is impotent and could not have an erection.

2. Whenever the Rabbinical Court is unable to force a husband to voluntarily divorce his wife because it is against the law of the land, then the marriage is annulled. The reason is that in those instances that Halacha dictates that a husband can be forced to divorce his wife, he is flogged or other means are employed to force him to comply. When the court cannot use any force, then the marriage is annulled. No woman with the exception of very few would agree to remain married under such circumstances. In Prologue Chapter I, the sources for this ruling were cited.

Thus, Rav Feinstein states there exists at least two grounds - distinct from each other - to annul the marriage. Rav Feinstein in Book I Responsa 79 discusses the case of the husband who is impotent.

Other Responsa in Book I, as well as other Books, discuss the cases where the husband has been adjudicated as mentally ill and did not disclose this information to the wife. Other Responsa discuss the case where the husband is bi-sexual or else he is on drugs. In all these cases, Rav Feinstein annuls the

marriage for the two main reasons cited earlier. It is true that in these cases the conditions were pre-existing. But even if the condition developed after the marriage, Rav Feinstein would definitely agree to annul the marriage. It is because of the second reason cited by Rav Feinstein. Wherever Bet Din is powerless to coerce the husband, Bet Din is empowered to annul the marriage. We cited in Chapter I of the prologue Responsa Meharsham I:9 that claims that the weapon the Bet Din has today to coerce husbands to give a Get, is in reality nothing other than annulment.

שליחותיהו עבדין

It was only at the time that the Sanhedrin existed in Jerusalem that other Rabbinical courts derived their power as delegates from the Supreme Sanhedrin at the Temple Mount in Jerusalem. With the destruction of the Temple in 70 AD and abolition of the Sanhedrin in the year approximately 400 AD, all Rabbinical Courts no longer have any Divine authority to exercise any religious functions. Any religious functions such as the proclamation of the New Months that herald the holidays are all no more than Rabbinical.

שליחותיהו עבדין

The Rabbinical Courts are today functioning from Rabbinical, not Divine, powers - deriving from the authority of the last existing Sanhedrin.... See Sefer Hamitzvos Rambam and Ramban on Mitzvah of Proclaiming New Month. Thus all enforcement powers of Rabbinical Courts today in matters is only Rabbinical not Divine. See Choshen Mishpat Chapter I and Choshen Mishpat and Aruch Hashulchan. Thus forcing a husband to give a Get derives from the power to annul the marriage and this is a Rabbinical power. Where the husband can't be coerced the court can directly annul the marriage. The Talmud Bavali Bava Metziyah 104, Tosephita 4:9, Jerusalem Talmud Ksubos 4:8, Jerusalem Talmud Yevamos 15:3, records a case that is a source for our thesis.

It was a custom in Talmudic times to have the Kedushim, a period of time before the actual chuppah. The Kedushim forbids the woman for everyone. She was considered married. If she would have relations with another man, she was considered an adulteress subject to capital punishment. Any children from the second man would be illegitimate. She was forbidden to her husband until they had a chuppah and recited the seven benedictions and the Ksubah was prepared and given to the wife. Ancient Jewish custom placed a terrible strain on all Jewish woman. There were Jewish women who could not bear the nervous strain and violated their vows. Either they had sex with another man before the chuppah or married the second man. They could have had a marriage with the second man by intercourse only where the Kedushin betrothal and Nesurim - marriage were combined by the single act of intercourse. See Even Hoezer Chapter 33, Aruch Hashulchan. Or they could have had an illicit non-binding relationship, such as Pilegish, mentioned by Talmud Bavali and cited as acceptable by Ramban and Rosh. See Even Hoezer Chapter 26; Otzer Haposkim.

Be it as it may, Hillel the Elder was asked to rule on the status of these women who either had sex or were married to a second man prior to the date of the chuppah. Hillel the Elder ruled that all the Ksubos stated that even though the Kedushin preceded the chuppah, nevertheless the Kedushin did not take effect until the chuppah occurred. If this clause was missing, the Ksuba was constructively interpreted as having such a clause. So rules Tosfos Bava Metziyah 104; so rules Korbon Hoeida on Yerushalmi Ksubos 4:8; so rules Ritvah; so rules Meiri on Ksubos page 268 regarding the clause in the Ksuba that a woman could state, "my husband is detestable to me" and the Rabbis would coerce the husband to divorce his wife. See Jerusalem Talmud 7:6 (end). Meiri interprets this law that even if the clause is missing, the Rabbis would constructively insert such clause and the Rabbis would force the husband to divorce his wife. This law was followed by Rabbanei Sarroeya following the Talmud, by the Gaonim, Rishonim, and Achronim. See

Ramban Ishos 14:8; Yabia Omer Book III Responsa 18; Tzitz Eliezer Book 5 Responsa 26; Ramo Yoreh Dayoh 228:20. This is the law we follow today.

Thus Tosphos, Ritvoh and Meiri state that the court can constructively read into the Ksuba the intention of the woman prior to agreeing to enter into a marriage. In Bova Metziah 104, the intention of the Kedushin was that it should take effect only after the chuppah. Prior to the chuppah, the woman's status is single, Pnuyoh, not married even though the man gave her a ring in front of two competent witnesses. Thus, if she had sex with another man she did not commit adultery and children from the second man are not illegitimate. So too reasons Rav Yudelovitz in Bais Ov Volume 7 Responsa 28 subparagraph 2, 3 that a woman trapped in an intolerable marriage can argue that she never intended to contract such a marriage. "If the Rabbis decide that few if any women would agree to continue living with such a man, there was no marriage ab initio..." It does not matter if the condition is prior existing or not. See Ksubos 3A that the court annuls a marriage 30-40 years later when they deem it necessary. There the husband makes a condition that the Get is given providing he does not return 30 days or another time frame. If he does not return because of an accident, the bridge is destroyed and he is prevented from returning, the Get is voided because of the accident. However the Rabbis annulled the marriage. Tosphos says that the Rabbis were empowered to forfeit the money of the Kedushin

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and retroactively remove it from the husband and it never belonged to him. Consequently, the ring given at the instant of betrothal was not his but the woman found herself in possession of a ring without any owner. Therefore she never was married. This could have occurred 20,30,40 years after the marriage.

This law can be extended to cover all situations where the Bet Din rules that the husband must give a Get. But Bet Din is powerless to enforce the giving of a Get. Then Bet Din will annul the marriage. To say otherwise and limit this rule to cases of impotency on part of husband is to destroy the power of the Rabbinical Court. See Choshen Mishpot Chapter 2 and Chosam Soffer Even Hoezer 107 and 108 that the Rabbinical Court today has power to forfeit other people's money if need be to enforce laws of Torah. See Hachukoh Leyisroel Al Pi Hatorah Hatzohot Tekonot Yerusho by Rav Yitzchok Isaac Herzog Vol. II, pp. 2-25; 154-155. Otherwise no woman would agree to marry today since marriage represents an impossible burden if she can not be helped by the Rabbinical Court. See Ohel Moshe Volume 2 Chapter 123 for similar reasoning.

Ohr Zoruah 765 cites Rabbeim Simcha that a husband went blind in both eyes one year after the marriage. Rabbeim Simcha annulled the marriage though the blindness occurred one year after the marriage since the wife would never had agreed to such a marriage if she would have known about it before she married. Rabbeim Simcha calls this condition of blindness

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a mistake in the making of the marriage contract.

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mistake in the making of the marriage contract does not have to be before the marriage. See Rav Arye Leib Tzing in Meshivas Nefesh Chapter 15. Even if the intolerable condition arose after the marriage it is still considered a mistake in the making of the marriage contract. The marriage is a partnership. Just like in a regular partnership, each of the partners must not be bankrupt, otherwise the partnership is voided. So too in a marriage, the husband can not be in violation of an offense that the Rabbinical Court can force him to divorce his wife (such as abandonment, husband on drugs, alcohol, gambling; beats his wife; sex pervert; any condition that society today does not tolerate). See Bais Yosef Choshen Mishpot 232:6. If he is and the court is impotent to enforce its decree, the marriage is annulled ab initio. Thus any condition existing

prior to the marriage or developed after the marriage is consummated can trigger grounds for annulment. We apply a cocktail of remedies - 20-30 different grounds to destroy the competence of the witnesses in addition to other halachic grounds that prove beyond a shadow of a doubt that there never was a marriage.

Another insight, separate and apart from what was written earlier on annulments: In time many, in accordance with Bais Ov Volume 7: Responsa 28 subparagraph 2,3, we can deduce that whenever the husband is adjudicated as having violated a fundamental pillar of marriage, the marriage is ab initio annulled. This is similar to a prenuptial agreement that is recorded in Even Hoezer 157:4 that provides for the ab initio annulment of a marriage in the case that the husband dies without having any children. Jewish Law provides that if there are brothers alive of the deceased husband, the wife must either marry one of the brothers or get released by the process of Chlitzta. What happens if the brother is not willing to release his sister-in-law? Then the widow is unable to remarry anyone else. In western countries, marrying the brother is discouraged. So the widow is an Agunah - chained. However, if the brother is not religious, or not normal, or has disappeared, then it was customary to prepare a prenuptial agreement that in such a contingency the marriage to her deceased husband was ab initio null and void. What happens if such a prenuptial agreement was not prepared? Then there are many authorities who want to annul the marriage to the deceased husband by constructive contract. No woman would have agreed to marry would she have known that she would end up at the mercy of a brother-in-law who is irreligious, or abnormal, or who is missing. (A detailed explanation appears in a separate chapter 3,5.) What we are doing is applying the same logic for the husband rather than the brother-in-law. We have prepared a prenuptial agreement prior to the woman getting married (Chapter 12). Likewise we have prepared an agreement of a conditional Get for the woman who is already married (Chapter 12). The husband refusing to appear before a Rabbinical Court after three summons or refusing to obey the order of the Court to divorce his wife, would trigger an automatic annulment of the marriage. In those instances where there exists no prenuptial agreement or there is no conditional Get, the Rabbinical Court is empowered to constructively read into the marriage contract as though a prenuptial agreement was in effect and ab initio annul the marriage. This is similar to the model used by Rav Yudelovitz in Bais Ov Book 7 of Responsa 28 subparagraph 2,3 from Bevalim Bava Metziah 104 where the woman had sex with another man between the waiting period of the betrothal and the wedding. There Hillel the Elder read into the Ksubah - marriage contract- that the marriage takes effect only after there is a wedding. Rav Yudelovitz read into the marriage contract that it is valid only if the husband is not impotent.

We extend the area of defect on the part of the husband to cover all instances judged by the Rabbinical Court as justification that we coerce the husband to grant a Get. Whenever Bet Din is impotent to force we will annul the marriage. The reasons we cited earlier. We have a cocktail of methods and principles during which we destroy the competence of the witnesses to be Halachic witnesses, as well as a myriad of other techniques. Each case is different.