

CHAPTER VII

NO NEED FOR PRE-EXISTING CONDITIONS

Rav Moshe Feinstein rules in Even Hoezer Book I end of Chapter 79 that whenever the Rabbinical Court is in potent to force a husband to divorce his wife, the Court annuls his marriage. Otherwise no women, with the exception of very few, would agree to get married to such a man. This position is equally advanced by Rav Eliyohu Klotzkian in Dvar Eliyohu Chapter 48. See also Rav Yitzchok Elchonen Ein Yitzchok Chapter 23: 38, 39, 40, 41, 42. See also Ohel Moshe - Rav Moshe Tzveig Book 2 Chapter 124. See also Meshivas Nefesh from Rav Arye Leib Tzintz Chapter 15. See also Chelkes Yoiev Book I Chapter 24 that the Rabbinical body can determine when a marriage to a woman is impossible to continue and can grant the man permission to marry another woman. Rav Moshe Tzeig in Ohel Moshe Book II Chapter 123 uses the identical criteria to free a woman by annulling her marriage when Bet Din determines that it is an impossible marriage to continue. See also Chidushei Rashbah Gitin 88 and Yevomos 46B, that if the Rabbis would not enforce the Law that a husband is to be coerced to grant his wife a Get - when Halacha demands that he be forced - no woman would get married. She would not take a chance to get into an impossible marriage. See Mehorsham Book 1 Responsa #9 that the enforcement by Bet Din to give a Get is really annulment of the marriage. See Ohr Someach on Rambam Laws of Gitin 2:20 for identical reason for forcing the husband to give a Get. See Mahcik Chapter 63 for same. See also Radvaz Responsa 1228 for same. See also Torah Shel Bal Peh Book 12 pages 37-38 for same.

Thus Igros Moshe Even Hoezer Book 1 Chapter 79 end concludes “that when the Rabbinical body is powerless to force the husband because the civil government does not permit such enforcement, then the annulment becomes operational. No woman, with the exception of very few, would agree to get into a marriage which is impossible for them. Otherwise they never would have consented to marry.” In this sense, this state of affairs that the husband is impossible to tolerate according to the norms of society (see Bet Yoseph Choshan Mishpat 232:6) combined with the impotence of Bet Din, the Rabbinical body, triggers the annulment. Though Rav Feinstein’s cases have pre-existing conditions, the same logic above mentioned, applies to a condition originating after the marriage and not pre-existing. That was the case in the case cited by Rabbeim Simcha in Ohr Zeruah 761. There the husband went blind in both eyes a period of time after the marriage. To say otherwise paralyzes the whole rationale and structure of Rabbinical intervention to extradite a woman from an impossible marriage. “Otherwise women would not marry at all.” The very words of Chidushei Rashba Gitin 88A. The same argument is advanced by Aryeh Leib Tzintz in Meshivas Nefesh Chapter 15, that it is only a question of semantics for a defect in a man originating before or after the marriage. A defect is a defect. The bottom line is that a woman can not live with such a man. The whole argument is really moot. The areas where Bet Din forces a husband to divorce his wife - practically all occur after the marriage. When a woman argues “mo us alai”, my husband disgusts me and she is set free by the Bet Din by forcing the husband to divorce her occurs after the marriage. There need be no pre-existing condition.

Rabbenu Hananel and the Gaonim who state that one who becomes an apostate after the marriage is forced to divorce his wife. If no force can be exercised, then the marriage is annulled. See Avnei Meluim Chapter 44. See Minchos Chinach Chapter 205. They explicitly state that the marriage - kedushin is annulled retroactively. See Otzer Haposkim beginning chapter 17. See Shridei Esh Book 3 Chapter 25.

Yes, there are authorities who disagree. But when it comes to freeing an Agunah from the chains of eternal enslavement to a dead marriage, one is duty bound to rely on even one authority. See Taz Even

Hoezer Chapter 17:15. Even if it is a question of violating a Divine Law the Shach Yereh Dayoh chapter 242 states that you rely on a single opinion only if you are violating a Rabbinical Law, not Divine Law. However, once you raise two or three doubts in a case, even a Divine Law is transformed to a Rabbinical Law. See Aruch Hashulchon Yoreh Dayoh Chapter 110. See Rambam Laws of Tumos Humes 9:12 that even if there is only one doubt the Divine Law becomes Rabbinical. See Sdei Sdei Chemed Section Sfeka - Ohs Samech Klal 10.

In our cases, we raise 20-30 doubts in each Agunah case. We destroy the witnesses as we shall illustrate in every one of our responsa. Therefore, we definitely can rely on minority opinions. In short, we have a cocktail of remedies and grounds that we use to annul the marriages. No two cases are the same. We use 20-30 grounds in each case to set the women free, as shall be illustrated in our responsa written in Hebrew as well as English.

To set the women free, the women have the choice to rely on our position. See Meharsham Book 1 Chapter 9. Those who oppose us have never cited one authority to substantiate their position. They are corrupt (Agudas Yisrael, in the September 1997 Observer, cited case after case of corruption on the part of Bote Din, Rabbinical Courts, that represent right wing orthodoxy. See quote from Rav Moshe Tendler in Yediot Achronot issue December 19, 1997 Mosef Lehashabos. Some Bote Din charge \$300 per hour and charge for dinner time.) and by their own immoral behavior ruled themselves out from being competent to be a Bet Din. All those individuals who condemned us never even spoke to us to understand our position. Their knowledge about us was heresy and newspaper reports. They consequently are in violation of Choshen Mishpat 28:15 and in Ramo Even Hoezer 11:4. Such individuals are therefore incompetent to be witnesses in accordance with Yoreh Dayoh Aruch Hashulchon 119:14 and Choshen Mishpat 34:1,2. Consequently they are incompetent to be judges in accordance with Choshen Mishpat 33:1. Thus all their conclusions about us are null and void. 99% of all Jews support us. Only those individuals who have a vested interest oppose us. Furthermore, these so called "Rabbis" deny the existence of annulments ever made. They are either totally ignorant or lying to the public. If they deny even one letter of the Torah as G-d given, they are considered heretics. If they deny a fundamental tenet of Judaism, they definitely are heretics. The Jerusalem Talmud Sanhedrin 4:2 states that there are 49 facets to the Torah. Otherwise the world can not exist. Denying women relief from an impossible marriage by annulling such a marriage will cause women never to marry, especially where it is 100% permitted by halacha; such denial is heresy.

I received an approbation from Rav Moshe Feinstein on my book Who is A Jew and Who is a Rabbi. Those who oppose us are neither Rabbis nor Jews nor Humans.

This is not a question of modern Orthodoxy being in favor as opposed to those representing the right wing. This is Torah Judaism plain and simple. To say otherwise is denying Judaism. Of course there are opposing views. For every authority we cite, we can equally cite 1000 authorities who oppose. But as we mentioned earlier, we rely on Taz Even Hoezer 17:15; Shuch 242; Aruch Hashulchan Yoreh Dayoh 110 that permits us to rely on the minority opinions to free an Agunah.

On the other hand, the annulment is valid only for the woman, not her husband. He is still considered married to his wife. He can not go free until he gives his wife a conventional Get voluntarily. For him we apply all the strict interpretations of the Law. He was the one who caused the problem. Let him stew. Let him sleep in the bed he preferred. There exists no trying circumstances to invoke the lenient minority opinions for him.

We are not 100% sure. We are one billion percent sure that what we are doing is the word of G-d given at Sinai to Moshe Rabbenu 3500 years ago. The reason our critics oppose us is because we have

upset a money making machine by keeping women chained . Thus these so called Rabbis can charge fees for adjudicating alimony, child support, custody visitation and protection orders. They blackmail women that unless the woman agrees to their jurisdiction on these matters, they will never receive a Get. These proceedings drag on for 5-10-15-20-30 years. This is the length of time the Agunahs languished at the hands of these individuals before they came to us. Let the reader judge. 99% of all Jews agree with us. It is only those who have a vested interest at stake that are opposed. According to Rashbash Responsa (ו) 46, any competent Bet din has jurisdiction on Agunah matters worldwide. We do not have to take into consideration for Agunah matters the fact that other Batei Din function there. See also Yoreh Dayoh 245:22 in Ramo for same. Our Bet Din is exclusively for Agunot- Bet Din Tzedek Lebayat Agunot, Inc.

CHAPTER VIII

Hatoras Agunos Emancipating Chained Women

Maos Alayi מאוס עלי
My husband is detestable to me.

The most powerful weapon in the arsenal of freeing a woman is the above argument (source: Talmud Yerushalmi Ksubos 7:6); A clause appeared in the Ksubah that gave the Rabbis power to coerce a husband to divorce his wife;(Meiri on Ksubos page 268 in new edition; Yabia Omer Volume 3 Responsa 18; Tzitz Eliezer Book 5 Responsa 26.) Even if the clause is missing in the Ksubah, we will constructively read into the Ksubah such an intention as mentioned in Hatorot Agunot Chapters 1-12. (Ramo Yoreh Dayoh Chapter 228:20; Pischei Tsuva Yoreh Dayoh 228:15 there in name of Noda Beyehuda- Kama Yoreh Dayoh; Yoreh Dayoh #68 Noda Beyehudah Tinyono #204; see also Rambam Hilchos Ishus 14:8 Hagoas Maimonidies there.)

The consensus of opinions from the encyclopedia of authorities cited by the Yobia Omer and Tzitz Eliezer is to the effect that in today's society the court must rule that if they neglect to free a woman who pleads " my husband is detestable to me" - Even Hoezer 157:4 Pischei Tsuvo Ibid 157:9

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she will engage in illicit sexual relationship with or without the permission of the court. The fears expressed by the school of Rabbeim Tam that if we dare free such a woman, the marriage institution will be destroyed is over shadowed a million times by the reality that you can not deprive women from sex. You can not order a woman to have sex with a man she despises. Women are not slaves in the words of Rambam Laws of Ishus 14:8, to be forced to have sex with men they despise. It is then not love, but rape. The Rabbinical Court is not to force the woman by specific performance. In the business world if someone makes a contract to perform services for someone else, such as work for him, and reneges on the contract, the court can forbid the contracting party to fulfill his or her contract by prohibiting them from working for anyone else. Then they have a choice to perform the contract or starve.

Rambam, the Gaonim, the Rabbonei Sabroya and the Yerushalmi all maintain that we do not force the woman to have sex with her husband by forbidding forever all relationships with others. On the contrary, we will coerce the husband to grant a Get by all means including flogging, if necessary where this is permitted by Civil Law.

The woman does not have to prove why her husband is detestable for her. See Rambam Ishus 14:8. Later authorities insisted that the woman stipulate reasons why the husband is detestable. This was done in order to discourage women from having a lover and enlisting the Rabbis to extricate them from their husband in order to marry the lover. See Yabiah Omer Book 3 Responsa 18; see Meiri Ksubos Page 268.

However, even if there exists a suspicion that there is another man, and even when the woman stipulates 100 or 1000 reasons, there could always be another man, we will free her. First of all, we do not know if the other man preceded her dissatisfaction with her husband or vice versa. What was first, the chicken or the egg? See Rav Herzog Ohel Yitzchok Book I. The Rabbis insisted that there be a separation between the woman and her husband for at least one year in order to give the parties a chance for reconciliation. If after one year, the woman still insists that she wants a Get, we will force the husband to grant her the Get.

Today we are prohibited by Civil Law from flogging the husband or exerting other force, so we will

annul the marriage. Of course if we can exert every form of other force, in accordance with Civil Law, we will not annul the marriage. Annulments are employed only as a last resort to extricate a woman from a marriage that chains her to a living hell. Otherwise the woman will have illicit sex anyway, nine out of ten women who come to us were living with other men before they came to us, or else they will commit suicide as has been the experience of many women that we heard about or read about in Ho isha.

The bottom line is that no Rabbi can play G-d with another person's life and force a woman to live the rest of her life with a man she detests. You cannot take a club and hit her on the head to have sex with her husband. This is rape, not love. To say otherwise is heresy. It goes against the Talmud Gaonim Rishonim and Achronim. Those who oppose us would appose Moshe Rabbenu if he would come and state the same, which he definitely would.

The argument that "my husband is detestable to me" is so powerful that even if all her other arguments are lies, we will nevertheless free her. That is why we will act as the devil's advocate and represent her husband's position and attack all the woman's arguments. However, when the woman states that under no condition in the world would she return to her husband and live with him, we will then annul her marriage. Thus we will accept her other arguments too; once she has demonstrated beyond the shadow of a doubt that under no circumstances would she return to her husband and have sex with him in the marital setting.

Let all those who oppose us note that they are not opposing us, but they are opposing Klal Yisroel. 85%-90% of all Jews are not Orthodox or not affiliated with any synagogue - Orthodox, Conservative, Reform or Reconstructionist. Of the 10% who are identified as Orthodox, 99% support us. No Agunah deprived of her sexual needs will honor any piece of paper signed by any so called "Rabbis" prohibiting her from having sex. If these so called "Rabbis" insist on opposing us, such an act will serve as the catalyst of severing 99% of Jews from affiliating with the Judaism of these holier than thou revisionists.

Those who support us will unite with the rest of Klal Yisroel in serving G-d in accordance with the Laws given at Sinai 3400 years ago. We will not club those who oppose us to accept our position. Their strategy and position is to line up any one who oppose them and shoot them; if they only could. Otherwise they employ every means legal or not to discredit us. We will go our separate ways. We are not interested in converting those who have a vested interest. We are interested only in strengthening the position of those who support us. Those who oppose us, let them go their own way. Life is too short to engage in polemics that are sterile. We are here to help free women. The red herring of mamzarus thrown by our opponents is discussed in Chapter 2.

CHAPTER IX

COERCION IRRATIONALITY OF THE GROOM

OTHER GROUNDS:

There also exists a school of thought that states that if the wife was forced into the marriage by her parents or guardians, she can later use that fact as a ground for annulment. This factor enters the equation to reinforce the ground of my husband is detestable to me. Many times when the bride is young or not independent, she is swayed by well meaning parents or guardians to contract a disastrous marriage. This argument then can buttress the other arguments. See Yabiah Omer Book 3 Responsa 18; See Otzer

Haposkim beginning Even Hoezer Chapter 42. This is what we mean that the whole marriage is a mistake ab initio. It is not because the girl is young; but because she was pressured to enter such a marriage. See Otzer Haposkim beginning Chapter 42.

Likewise if the woman is forced to marry the man because a member of her family would suffer great financial loss if she does not agree to get married; is considered to have been coerced to get married. These facts are grounds for an annulment. See Otzer haposkim beginning Chapter 42. Likewise if a woman got married because marriage provided a green card to stay in the desired country, USA or Israel, such coercion is grounds for an annulment. See Otzer Haposkim Chapter 42; see Ezras Kohen Rav Avrohom Kook; see Igros Moshe Even Hoezer.

Another ground for annulment is irrationality or abnormality on the part of the husband. A husband does not have to be insane in all respects. If he is insane in all respects at all times then there is no marriage to one insane. See Even Hoezer beginning Chapter 44. Even if he be normal in all respects but in one area of his behavior he acts consistently irrational, the marriage can be annulled. See (Nesivas) Toras Gitin Even Hoezer Chaper 121:4; see Igros Moshe Even Hoezer Book 3 Responsa #45,46.

The degree of irrationality is measured by the inability of the wife to continue in the relationship. If the wife can continue to have marital relations even though the husband is irrational in one or more areas, then we do not annul the marriage. It is a question of tolerance on the part of the wife. It is not only subjective, but the subjective judgement of the Rabbinical court is factored in to determine if the woman would agree to remain married to such a man. If few if any women would agree to remain married, then we annul the marriage. See Ohel Moshe Vol. II Responsa 23. This is based on Chelkes Yoav Responsa 24 and Otzer Haposkim Even Hoezer Chapter I.

Again the test employed is if it is impossible to have marital relations and continue a married life we declare the woman insane and permit the man to marry another with or without 100 Rabbis or grant the husband a Get for the wife.

In the case of the woman, we will annul the marriage.

CHAPTER X

IRRELIGIOUS ON PART OF ONE OF THE SPOUSES

Such a marriage is at most Rabbinical. The majority of authorities disagree, but to free an Agunah we will use the above as grounds for annulment. See Minchas Chinuch Mitzvoh 203; Shridei Esh Volume 3:25; Avnei Meluma 44; Otzer Haposkim beginning Chapter 17; and others cited by Even Hoezer 44 in Tur. See Otzer Haposkim on Chapter 44 re: rumor for encyclopedia of authorities who annul his marriage. Rav Aaron Volkin expands the definition of

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to cover one not observant. Thus if the husband does not observe the Sabbath, kosher laws, and the purity laws of nida, marriage to him would be at most Rabbinical according to many authorities. Some authorities hold that even if he becomes irreligious after the marriage, the marriage is annulled. See Bach Even Hoezer 157:5; also Tur Even Hoezer 44 cites authorities that the marriage to a

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irreligious person is not binding by Divine Law. It is only at most Rabbinical. See Shridei Esh Book III Responsa 25 Page 73; Responsa Mehram Mintz #105 cited by Shridei Esh III:25 page 71. Others hold only if he was irreligious before the marriage. Tsuvos Maimonedes Laws of Ishus #29.

The reason given is that no Jewish religious woman will agree to remain married to such a man

דאדעתא דהכי לא התקדשה

She did not agree to such circumstances that the husband remain irreligious. Even if a woman agrees to be married to a religious man whose brother is not physically well

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she would never agree to remain married if the brother is irreligious. She would never have taken a chance to be at his mercy if her husband dies without children. She then would be forced to marry her brother-in-law or be freed by chlitzo. If he refuses he is an Agunah -chained. If this did occur we will state that the marriage to her husband is annulled. Consequently, she need not marry the brother-in-law or need his chalitzo - a process that frees her.

Shridei Esh Vol. III Responsa 25 cites authorities that if the identical defect - irreligious or

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physically ill occurs with the husband before or after the marriage, the above cited authorities would annul the marriage. Some authorities hold that being irreligious is grounds for divorce or annulment only if the irreligious party forced the other spouse to violate Jewish Law, such as cooking non-kosher food and not informing the spouse about this; or bringing in non-kosher food and the spouse not knowing, eats such food. Likewise, forcing the spouse to have sex when she is in the state of Nidah. Vice versa, the wife not telling the husband that she is Nidah and the husband having sex with her. See Even Hoezer 115 and Even Hoezer 154.

Other authorities hold that even if the religious party is not deceived or forced, the irreligiosity of the spouse is sufficient to prevent a Divine marriage. Even Hoezer 115 and 154; Otzer Haposkim on Chapter 44; Minchas Chinuch Mitzvoh 203; Avnei Meluim Chapter 44; Otzer Haposkim beginning Chapter 17. We are not about to annul marriages where one spouse is irreligious but in those cases that a woman is an Agunah we will use the irreligiosity of the husband as another ground to free the woman - by annulling the marriage. Certainly, as far as the husband is concerned, when he wants the divorce, we will insist that he give a Get. We will not annul the marriage for him. We will be strict and follow the opinions

of every authority.

Even if we exclude someone not observant in ritual matters however, one who is evil in interpersonal matters, in his dealings with his wife, is covered by Rav Volkin, the Zkan Aaron. Again we will follow our principle that Bet Din is powerless to coerce the husband to divorce so we annul the marriage. When one is evil towards his wife as defined in prior chapter, Bet Din would coerce him to divorce his wife. Since today Bet Din is impotent, such impotence in conjunction with the husband's impossible behavior or other impossible conditions or defects on the part of the husband, trigger the annulment. A person cannot claim ignorance of basic human behavior. Rambam Laws of Kings 10:1 - Ignorance of the Law (Basic human law - not to kill, rape, steal) is no excuse.. He should have learned. Such a person should have learned not to violate another's civil rights. He or she is punished even if they use as a defense ignorance. Ignorance of basic decency is no excuse.

So too, when a husband pleads ignorance of his vile behavior toward his wife, it is not acceptable. We will annul his marriage. In all cases that Bet Din is empowered by Halacha to coerce the husband in our day and only when we no longer can use force, we will annul the marriage.

If the wife never observed the laws requiring her to dip in the Mikvah at the conclusion of her menstrual period and waiting period of seven clean days, then according to some authorities her marriage is not Divine only Rabbinical at most. The reason is

אין אסור חל על אסור

The prohibition of being a married woman and forbidden to have relations with other men cannot take effect since she is forbidden anyway, since she is a Nidah. Unless a woman dips in the Mikvah after the lapse of twelve days from the beginning of her bleeding, she is deemed a Nidah. See Shridei Esh Book 3 Responsa 31 page 92, Responsa Achi Ezer 34 subparagraph 11 page 84 for identical reasoning. If the woman went swimming in the ocean and dipped having all her hair below water, then she will be deemed as purifying herself. Then the prohibition of a married woman applies. However, an observant person must be a witness that not even one hair remained above water. Unless this is done, she remains in her Nidah state. Pischei Tsurvo on Even Hoezer 115. We will not annul marriages that are sound to break up families. We will rely on the strict opinions of all the authorities. It is only when a marriage is dead and the husband refused to give the wife a Get, that we will grab every lifeline to free her. Otherwise the woman will give up on Halacha and begin having sexual liaisons with other men. Nine out of ten of the women who came to use already are living with other men. Many women commit suicide. See article of Loisha 02/23/98. Even if it is only a doubt of saving someone's life, one is permitted to violate all the Laws of the Torah. Therefore each Agunah is in the category of Sofek Pekuach Nefesh. A doubt exists that such a woman will go astray or commit suicide. One is permitted to violate the Sabbath to save such a woman. See Aruch Hashulchan Orech Chaim end of Chapter 306 to save someone from going astray and see Orech Chaim Mishnei Brura end of 306 for saving someone from going astray.

ANNULMENTS

A marriage of man who violates the Sabbath publically or one who becomes or acts like an abnormal person years into the marriage.

One of the Snifim adjuncts that our Bet Din, Rabbinical Court, uses to annul a marriage is the following: The Tur Even Hoezer 44 cites the opinion of Gaonim that one who violates the Sabbath publically is deemed as a non-Jew. As such he cannot contract a marriage. Even if he contracted a

marriage, the marriage is deemed null and void. In the contingency no Get can be obtained from him, the Rabbinical Court can use such fact, that the husband violates the Sabbath publically, to annul the marriage, in addition to other factors. Even if the man was religious and then becomes one who violates the Sabbath publically, the court still can annul the marriage. The reasoning is based on Rashi to Yevomos 49. If such a man ab initio wanted to get married, the Rabbis would refuse. Even if he contracted a Halachic marriage, the opinions differ if the marriage is null and void post facto, or at the most if it is a marriage having Rabbinical status only. See Meharshum Levushei Mordecai Even Hoezer Shridei Esh Book 3 Responsa #25.

Nevertheless, the literature citing the Rishonim as well as in Aruch Hashulchan Even Hoezer 140:19 state that we will have the mumor - the Sabbath violator - give a Get. The question is posed: If the Mumor cannot contract a Halachic marriage because he is like a non-Jew, how can he then contract the Get - the Jewish divorce? The answer given is that by the giving of the Get, the marriage retroactively is annulled. See Minchos Yitzchok Book 10 Responsa 126. However, Minchos Chinuch Mitzvoh 203 has another theory. Basing himself on Rashi Yevomos 49, Rashi claims that the marriage explodes. Any marriage that ab initio cannot be contracted, even after it is contracted by a religious man who later, in the course of the marriage, becomes irreligious (Sabbath violator) publically, such marriage explodes. Thus, argues the Minchos Chinuch a solution can be found to annul the marriages of women who are unable to acquire a

Get from a husband who becomes a Sabbath violator publically during the course of the marriage.

Meharsham, though he considers such an option in Book 2 Responsa 110,111, does not feel comfortable in endorsing this procedure unless, in addition to this adjunct other defects are discovered that will defeat the marriage. See Otzer Haposkim #10 Chapter 17:1 who cites Baer Haitiv and Responsa Mahri Asad Book 2:4 who discusses why the wife of the prophet Elijah who ascended to Heaven is permitted to get married. She never received a Jewish divorce. The answer he offers is that only "the wife of your friend is forbidden to you.

אל תחמוד אשת רעך

Exodus 20:14

"לא תחמוד בית רעך לא תחמוד אשת רעך"

"You shall not covet your friend's wife." This automatically excludes the wife of an angel. If a man dies there is a possibility he will be resurrected. A miracle can occur and he will come to life as happened in Russia recently that a man regained consciousness after seven years being in a coma and being declared brain dead.

The Minchos Chinuch Mitzvoh 203 explains that any time a marriage can't take effect like that of an angel to a human, even if there was a valid marriage like in the case of Elijah the prophet; once he was transformed into an angel, his former marriage explodes and is annulled. If we can obtain a Get from such a husband, we will. Otherwise the marriage is annulled. The same reasoning applies to a man who becomes abnormal - crazy - although at the time of the wedding he was normal. See Psicho Kollelim Orech Chayim from Pri Megodim Part II:1 page 8 re a shoteh or abnormal person. See Even Hoezer 44:1,2. See Tvrech Gittin 121:5 author of the Nesivas Chaver Daas.

Such a person has the status of a non-Jew. Marriage can't be contracted with him. In accordance with above reasoning, even if he was normal at time of the marriage and then became abnormal, the former marriage explodes and can be annulled. By giving the wife a Get Zikun, even though in comparison to a Get given by the husband voluntarily, it is defective. Never-the-less, it is sufficient. It is the same as when the mumor gives a Get and we will annul the marriage retroactively. See Shredei Esh Book 3:25 Mashiv

Dovar #79. See My Responsa Hatorot Agunot Roots Chapter 1- re Get Ziku.

CHAPTER XI
OTHER STRATEGIES USED
TO ANNUL MARRIAGES

Kiddushin with a ring is Rabbinical. The position of Rambam Sefer Hamitzvoh Mitzvoh 2 is that all Laws of the Torah derived from the 13 Principles are Rabbinical in character. Rambam in Laws is Ishuos 1:3 states that since betrothal by giving money (a ring) is derived from the 13 principles it is only Rabbinical (Ksubos 3a). Rabbis of Rashi advance an identical position. Rashi dissents however, in the case at hand (Ksubos 3a) where the Rabbis annulled ab initio the marriage of a man who conditions his divorce if he does not come within a definite time span. The man is prevented from coming because the bridge collapsed. The divorce, by Divine Law, is not valid. The Rabbis annulled the marriage never the less. Tosfos explains because of

הפקר בית דין הפקר

Rabbis have the right to forfeit retroactively the money given by the groom to his bride. They forfeit ab initio his ownership. Thus, he did not give his bride anything that belongs to him. Therefore, the marriage is retroactively annulled.

Shev Yaakov cites why Pischei Tsuvoh Even Hoezer end of chapter 42 rules like Rambam. He uses Rambam's ruling in conjunction with other rulings that are in dispute to annul a marriage and free an Agunah. We too, use Rambam and Rabbis of Rashi position that all marriages where a ring is given is only Rabbinical. Thus all betrothals today are no more than Rabbinical. We employ Rambam and Rabbis of Rashi thesis as well as the thesis stated by Rab Feldblum in conjunction with other foundations previously stated to free women imprisoned in impossible marriages. Likewise, if the groom did not own the ring, but took the ring from a relative without the relative's permission, the marriage is not valid. A ring stolen, borrowed, never acquired by the groom according to Halacha, makes such a marriage invalid. If the ring was purchased by the bride's or groom's family and the groom never took possession of the ring in accordance with Halacha in front of two witnesses, competent according to Halacha, the marriage is not valid. Likewise, if the ring was borrowed and the parties, the lender and the borrower, do not comply with the requirements of Halacha, the marriage is not valid. Each case is judged on its own merits.

Pre-existing conditions and conditions developing
after the marriage. The rationale for Get Ziku

In previous chapters, we discussed the Talmud Bavali Bava Metziah 104 as well as Yerushalmi Ksubos 4:9 that Hillel the Elder read into the Ksubos of the real intention of the parties. If there existed a time frame between the Kedushin - Betrothal - the giving of the ring in the presence of two competent witnesses, and the Nesuin - the recital of Seven Benedictions, the preparing and giving of the Ksubah all under the Chupah; then the marriage takes effect only after the Nesuin. Prior to the Nesuin, the woman is in the status of Pensiyah - single. She is not forbidden to any other man. She can legally marry other men. This intention was constructively read, even if omitted, into the Ksubah (Tosphos Bava Metziah 104). Thus, if the woman elects out of her own free will to marry other men, she has the right to do so.

What happens if she is forced or induced by fraud, blackmail, or by non-disclosure of pre-existing conditions to marry another man? Then the Rabbis annulled the marriage of the other man. See Bavali Bava Basra 110, Bavali Yevomos 45a. In the cases cited by the Talmud, Bava Basra 48B, Bavali Yevomos 110A, one woman was forced to marry the other man against her better judgement. The woman cited by Yevomos 110A was the child bride of a man called Narash. Such a marriage was no more than Rabbinical. After she became 12 ½ years, before he had a chance to marry her again and have a Divine marriage, another man snatched her and married her. The marriage of the second man was Divine. However, the Rabbis annulled the marriage. The reason given was that the second man acted out of order, unethically. Therefore, the Rabbis reciprocated and annulled the marriage. In that case, the bride did not want the marriage but was forced to accept the ring.

A similar situation is the case of Bavali Bava Basra 48B, where an adult woman was forced by a man to accept a ring in marriage. Again, the Rabbis annulled the marriage. Tosphos Bava Basra 48B says that in this

ד"ה תינך דקדוש בכספא

instance the man forced the woman to accept the ring and be betrothed to him. He knew full well that such conduct is unacceptable. Therefore, he acted on his own, not in accordance with the Laws of Moses and Israel. Consequently, the Rabbis did not have the usual key to annul this marriage. When there is no defect in the making of the marriage, the man recites the formula - I marry you in accordance with the Laws of Moses and Israel. So he agrees to be bound by the determination of the Rabbis to annul his marriage if something goes wrong after the marriage is in effect, that is conditions that did not exist before the marriage. Then the power that the Rabbis have derives from the principle

כל המקדש על דעתה דרבנן מקדש והפקיעו חכמים
הקדושין מיניה מטעם הפקר בית דין הפקר - תופס

או מטעם דקדושי כם מדרבנן

Everyone who betroths a woman does so on the understanding that such betrothal be acceptable to the Rabbis. When the Rabbis decide to annul the marriage (for causes that Bet Din have the power to annul), then the Rabbis annul the marriage and declare the ring or money given as not belonging to the husband. Consequently, the woman never received anything from the man. The betrothal then is annulled (Tosphos Ksubos 3a) or they declare all Kedushin made by giving a ring to be only Rabbinical. Rabbis have the power to declare Rabbinical betrothal marriage null and void (Tosphos Ksubos 3a).

ד"ה תינך דקדוש בכספא

What happens where the man commits an outrage by the very act of betrothal? He defies the Rabbis from the start and never agrees to place his marriage under the jurisdiction of the Rabbis. Then declares Tosphos

Bava Basra 48B

ד"ה תינך דקדוש בכספא

that the Torah confers emergency powers to the Rabbis to annul even a Divine marriage.

יש כח ביד חכמים לעקור דבר מן התורה

(Rambam Yaad Hachazaka Laws of Mamrim 2:4) In emergency situations, the Rabbis can declare a Divinely ordained marriage - null and void.

This is similar to Elijah at Mr. Carmel who invoked similar temporary emergency powers

הוראת שעה

as a one time measure to permit bringing sacrifices outside of the Temple in Jerusalem. See Rambam Maimonides Laws of Mamrim 2:4.¹

Similarly, Rabbis today have such powers to save the live of a chained woman who would either go astray and have sexual liaisons with other men and abandon Orthodox Judaism (Orech Chayim 306:14; Talmud Yoma 83a; Shulchan Aruch Orech Chayim 329:3-4; Rambam Yaad Hakazaka "Laws of Shabbos" 2:18) or commit suicide. Thus to save any life one is permitted to violate the entire Torah (Talmud Yoma 83a; Shulchan Aruch Orech Chayim 329:3-4; Rambam Yaad Hakazaka "Laws of Shabbos" 2:18). Thus when a man coerces a woman to marry him, the Rabbis can invoke their power to annul even a Divinely ordained marriage. Of course, if other reasons exist, such as fraud or misrepresentation, such additional reasons, add their weight to annul the marriage. Such power is invoked for circumstances and defects of the husband existing prior to the wedding. Circumstances and defects arising after the marriage trigger the annulment because the husband has given the Rabbis the power to annul his marriage when he does not meet the standard of a Jewish husband - whenever Bet Din can force him to divorce his wife.

GET ZIKU

However, the Rabbis hesitated to invoke the annulment without some additional procedure.

Example, when a husband is missing and one witness declares he is dead, then the Rabbis annulled the marriage (Rashi Shabbos 105), when a man is lost at sea

מים שאין להם סוף

water that has no visible end - and there exists no additional circumstances that he died; the boat broke down in shark infested waters; a fire raged in the boat. Thus, even if he was saved when the boat capsized he still was devoured by the sharks or burned by the fire. If he would be alive, he would have gotten in touch with his family by phone or telegraph. Missing a witness that testifies that he drowned or was killed by a fire or sharks, the wife can't remarry. So too, the Rabbis annulled marriages only if there was some kind of Get even a forced Get - that technically is null. Thus we give a Get Ziku even if it be void because it lacks the direct consent of the husband; it never the less is sufficient to serve as a Snif - and adjunct to annul the marriage.

We rely on the Dvar Eliyohu (Rav Eliyohu Klotzkin) that in the contingency where it is totally

¹ Talmud Sanhedrin 46 - Rabbis have the power to punish people and invoke other powers such as forfeiting property outside of boundaries of Torah Law Choshen Mishpat 2:1. See Tur Choshen Mishpat 2:1; Darkei Moshe 2:4; Drishe Prisha, Bach, Bris Yoseph on Tur there.

beneficial for the husband, the Bet Din can represent him and substitute itself for him, to give the wife a Get,

מזכין גט בשבילו

even when he voices his total opposition. See Rashba 23B, Rashbam Bava Basra 138 Kedushin. See Otzer Haposkim Volume I 1:10 Responsa Eretz Tzvi Machne Efrayim

הלכות זכיה

Laws of Acquisition. See Ran for other authorities Kedushin 45 that in case of Mitzvochs between man and G-d, as opposed to purely monetary matters, the Bet Din can substitute and assume the identity of the husband. This is basically the meaning of forcing the husband until he agrees. You can force him until you kill him or he agrees. What kind of assent is this? The answer is that the Rabbis have the power of annulling the marriage. In the countries where the Rabbis have power, like in Israel, the husband is imprisoned. In other countries, they substitute for him. See Mahrik #63 Radvaz Rashbva Ohr Someach on Rambam Laws of Divorce 2:20. See Torah Shel Baal Peh Volume 12 page 38 Rav Shaul Yisroeli. The reasoning is that in order to annul the marriage, the annulment must go through the format of a divorce. That is why the Bet Din substitutes itself for the husband

ומזכום גט בשבילו

since it is ultimately beneficial for him. See Chapter one for greater elaboration.

CHAPTER 12
PROPOSED PRENUPTIAL

AGREEMENT

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

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

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

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

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

Pilegish formula employed by Ramban, Raavid, Rav Yaakov

Emdin, and Yaan Shel Shlomo and cited by Ramo Even Hoezer

26:1.

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

Furthermore, according to Halacha, even

the possible flaws in

the proposals at most creates

Sofek Kedushin-doubtful marriage.

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

When the doubts existing are multiplied, you now have, at worst, Rabbinical doubt taken to four places. Under conditions of stress, one can rely on lenient rulings even ab initio. (See Igros Moshe Rav Feinstein, Vol. 6, Resp. No. 83:3. When more than one doubt exists, then we can, ab initio, permit a remarriage, and the original marriage is null and void when it is impossible for the woman to obtain a Get.

See also Responsa Basis Ov, Vol. 7, Resp. No. 11:4, middle.) This is especially true when the issue involves freeing a woman from the tremendous burden of imprisonment as a living Aguna. See Taz Even Hoezer, Chapter 17:15. We rely even on one Posek giving lenient ruling, under such circumstances. We thus rely on Rambam, rather than Rashba, and the doubts are Rabbinical, not Deuraisa,-G-d-Given. In that manner, the respect and ideals of Torah will be advanced In the path blazed by Rav Moshe Feinstein, Rav Henkin, Rav Kook, Rav Herzog, GRO, Chasam Sofer, Noda BeYehuda, Rav Akiva Eiger, Orech HaShulchan, Chofetz Chaim, and millions of Sages for the past 3,400 years, from the day G-d gave us the living Torah to today. The Messiah will come to redeem Israel from

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

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

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