

CHAPTER 18

REMOVING THE STIGMA OF MAMZAROT - ILLEGITIMACY -EVEN AGAINST DNA TESTING

[All factual situations have been altered to protect the privacy of the actual litigants]

M. claims that his wife committed adultery. He claims that the son that was born is not his, but he is the son of his wife's adulterous relationship. A few years after the son was born, M. had an DNA test performed. His worst fears were realized. The DNA of the boy did not match his DNA. M. nevertheless loves the boy very much and even if the boy is not his, he is interested in adopting the boy. M. suspects that his wife had relations with a particular man she met at that time. She met this man shortly before she got pregnant. He suspects she had a lover the year after she gave birth. The couple ceased having relations two years ago. The couple received a regular Get.

Question 1: Is the boy a mamzer - is he illegitimate?

Question 2: Do we follow the results of the DNA testing that clearly does not match M.'s DNA?

Since the child was conceived when the woman was still married, the child would be a mamzer, or can we find a loophole?

Question 3: Is the boy nevertheless considered the son of M. since his wife was still living with him even if she did, in fact, have relations with another man? Is it possible that the boy may have been conceived by his mother's egg being fertilized by the sperm from the husband and lover? For unexplained reasons the DNA of the boy does not match the DNA of M. although his sperm also was instrumental in getting his wife pregnant.

Response

The area of DNA testing is very new . Science today has limited knowledge of the dynamics of what controls that the DNA of a child match the DNA of another adult, especially the father. There exist many unknown variables and unresolved mysteries regarding the entire field of DNA testing and matching. There are further questions as to the reliability and accuracy of the test. How scrupulous and honest were the individuals performing the test? What evidence exists that the DNA from the child and the DNA of the father were actually used? Perhaps the person performing the test was aware that M. suspected his wife of infidelity and falsely agreed to support his unfounded suspicions by corrupting the evidence. Who is vouching that the test was honestly and accurately made? It is a fact that M. did have relations all the time prior to the conception and until the birth. She had relations all the time with M., her husband, so she could have become pregnant from her husband only or her husband and her lover. For unexplained reasons, we don't know if the DNA matches the lover or not since the lover was not identified and not tested, though her husband's sperm also got her pregnant. As a matter of fact, the majority of sperm belonged to her husband since she was married to him. We do not know the reason why the DNA did not match.

Halachic Analysis:

DNA testing did not exist at the time the Torah was given. The overwhelming majority of Rabbinical authorities do not give any weight for Halachic matters to the evidence of DNA. See Nishmas Avrohom Hilchos Refuah by Avrohom Ben Avrohom Soffer Even Hoezer beginning Chapter 4. Rav Herzog, the Ohel Yitzchok, is counted among the minority of authorities who recognize DNA evidence. See Hachuko Leyisroel Even Hoezer Volume ____. A case similar to our case is cited by Bais Avrohom Even Hoezer Chapter 4. The Rabbinical Court of Tel Aviv Jaffa found itself in a dilemma. In a similar situation, the DNA evidence pointed to a man other than the husband as the father. The court explained it's dilemma. The majority of times DNA evidence is reliable so we should follow the conclusion that the father of the child who matched the child's DNA is not the husband.

On the other hand, the majority of times, the wife had relations with the husband since she is married to him. Consequently, we should follow this majority and claim that the child's father is the husband. The dilemma was which majority do we follow?

According to Rav Eliezer Waldenberg, the Tzitz Eliezer and Rav Shlomo Aurenbach, we do not recognize modern scientific evidence that would, in effect, over-rule Halachic precedents. Thus, we will accept the directive that the majority of times that relations occurred with the husband.

Therefore, she got pregnant from the husband.

(Rov Beilus Achrei Habaal) See Even Hoezer 4:15.

Furthermore, even if we concede that she could have gotten pregnant from another man, who says that the other man is Jewish? If the other man is not Jewish, the child is not a mamzer. See Even Hoezer Chapter 4:19. Thus we have a Sfek Sfeka - numerous doubts. It is only when we are 100% certain that the father of the child was a Jew, other than her husband, does the child become a mamzer, and only if this fact is publicized. See Chapter 2 of my book, Hatorot Agunot.

See my essay "A Rejoinder to Dayan Berkowitz." See Bais Shmuel Even Hoezer 4:43.

The DNA testing can be scientific reality. However, Halacha operates in a unique universe.

Unless it is proven beyond a shadow of a doubt, using evidence acceptable to Halacha, the child remains legitimate. One is innocent unless proven guilty. See Magid Mishne on Rambam Isuree

Izroh Chapter 20:1 for this principle. See also Even Hoezer 4:14, see Even Hoezer 11:4, and Pischei Tsuvoh 11:15,16,17,18, that the proof is upon the one who questions the legitimacy of the child. Unless and until the other side produces proof to the contrary, the child remains legitimate.

By default, the child remains legitimate. The Torah permits using a hypothesis of fantasy to legitimize the child. We will say that if a woman got pregnant while her husband was away in China for over 12 months, that he flew in on a magic carpet, employing Kabbalistic powers, using G-d's name. We will say that the husband got her pregnant, not a man not her husband, and thus the child is not a mamzer.

Rav Moshe Feinstein in Igros Moshe Even Hoezer Volume 3 Responsa #9 uses a far fetched scenario and legitimizes a child born to a woman remarried civilly but lacking a Get. He posits that she reconciled with her first husband, had relations with him and got pregnant, though she was married to man #2. Rav Feinstein has a case where husband #1 was in a home for the chronically ill. The wife visited him. It is then that she could have had relations with him and become pregnant.

Rav Avodya Yosef cites a case that he removed the stigma of Mamzarut. A couple had a civil divorce, but the husband never gave the wife a Get-Jewish divorce. The wife, nevertheless, remarried, civilly. She got pregnant and had a child. Technically since she had no Get, the child would be a Mamzer-illegitimate. Rav Avodya Yosef is, however, determined to remove this stigma. The first husband visited the home of his former wife in order to see their children. Rav Ovadye Yosef reasons that in order to save the new child from the stigma of mamzarus, we will accept the far fetched possibility that the father of the child is husband number 1. The Halachic principle is that the majority of times a woman would agree to get pregnant is only if the resulting child will not be stigmatized as a Mamzer. Thus, if she decides to have another child, she will have relations with her first husband, not using protection. If she has relations with her new husband,

she will use protection before or after having relations. Thus we will claim that the father of the new child is the first husband. (Yabioh Omer Volume 7: Responsa #6). Never mind that she committed adultery in the eyes of the civil authorities since she is married to man #2. Or else, she had relations with a non-Jew. If she gets pregnant from a non Jew while she is still Halachically married to a Jew, the child is not a Mamzer. (Even Hoezer 4:19).

Thus, there exists multiple doubts

ספק ספקה

and no proof exists that the child is a Mamzer. Since no proof exists, by default, the child is legitimate. Since we did not test the wife, there exists a possibility that she is, in fact, not the mother, that the baby was switched in the hospital at birth. Consequently, the child is not a Mamzer - illegitimate. Also there is the possibility that the wife got pregnant from artificial insemination. Therefore the child is not a Mamzer. In addition to the above, we are going to annul the marriage ab initio on the basis of fraud. The husband never would have married a woman who is so promiscuous that she got pregnant from a stranger. She admitted she committed adultery. The DNA testing is circumstantial evidence that she is telling the truth (Even Hoezer 115:6 Ramo). We can assume that the promiscuity of the wife occurred immediately after the wedding not only when she got pregnant. Therefore it is Mekach Tout - a mistake in the making of the marriage. The marriage is therefore null and void. There was no marriage ab initio when she committed adultery and got pregnant, even if the father be another Jew, not the husband. She never had a halachic marriage. See Chapter 4 of my book Hatorot Agunot. We will apply all 20-30 strategies listed in my book Hatorot Agunot Chapters 1-12. Likewise, the wife can claim Mekach Tout - mistake in the making of the marriage. She would never had married him if she knew that he was such a suspicious character, accusing her of infidelity with every man that she met, even if that man was married and had children. No woman wants to marry or remain married to such an obsessive and suspicious individual. That is the reason she stopped having relations with her husband after the child was born because she did not want to spend her life

with him. Her marriage was the worst mistake of her life. If she could only turn the clock backward and annul this marriage, she definitely would.

Our Bet Din will do it for her and for him. The litigants supplied our Bet Din with details of their married life and their interrelationship. It was one million percent from the data supplied that each one felt that they got what they did not bargain for. Would they have known at the time they got married, what they found out later, they would never have gotten married to each other.

Based on the extensive writings in my book Hatorot Agunot Chapters 1-12, as well as other Responsa to appear in additional volumes, the Bet Din was satisfied that there was a Mekach Tout - mistake in the making of the marriage and we annulled the marriage. Thus, this fact was an adjunct to the Halachic reasoning that the child is one million percent legitimate.

Another Sniff-adjunct for the annulment is the following: the husband did not abuse the wife physically or emotionally. He acted as a Jewish husband must behave over the past 4000 years. Rather than appreciate such a wonderful husband, the wife committed infidelity and walked out after 10 years of marriage. Would the husband have known of such behavior, that was always existent, Kan Nimitzo Kan Hoya (see Chapter 4 of Hatorot Agunot), he never would have agreed to get married. It was a mistake in the marriage. Furthermore, the wife admitted that she had an adulterous relationship. According to the Ran, end of Nedorim, when a wife admits that she had an adulterous relationship, we do not believe her. There is a possibility that she is lying. Thus, if she got pregnant it is the child from the husband. If she is telling the truth, then we will annul the marriage ab initio. So when she got pregnant, she was not a married woman and the child is not a Mamzer. She is permitted to go back to the husband since she was not a married woman at the time of the alleged adultery. She had relations with her lover as a single woman. If she was in fact lying and had no lover, then she certainly is permitted to go back. See Even Hoezer 115:6 for a similar ruling.

Another adjunct to annul the marriage is the fact that the witnesses to the marriage do not remember the precise date of the marriage. Thus the marriage is annulled. See Igros Moshe Even

Hoezer Volume 4 Responsa #20. The witnesses to the Halachic marriage must testify. If they fail to testify or their whereabouts are unknown, there is no Halachic marriage. See Yabeoh Omer Volume 3 Responsa #8. He brings encyclopedic evidence that the witnesses must remember the precise Hebrew date and the place where the Halachic marriage took place. If they fail to remember, the marriage is nullified retroactively. See Bais Shmuel Even Hoezer 17:63 for the same. In our case, the witnesses did not remember the precise date of the marriage. Therefore there is, ipso facto, no marriage. Furthermore, the Talmud states that one of the reasons women get married is because of “Tov Lemaisir Tan Du Melemasiv Armelesa “. “A woman prefers to marry any man rather than remain a spinster”. The Talmud states that one reason is because once she is married, if she desires to have an affair and get pregnant, she can always claim that she got pregnant from her husband and no one will suspect she has a lover. Obviously, the Talmud is not advocating adultery. An adultress was stoned when the Temple existed and there were two witnesses who saw the actual act. The adulterous couple, after receiving a warning, receive capital punishment. Nowadays, the woman is forbidden to remain with her husband and the resulting child is a Mamzer - illegitimate. See Even Hoezer 4:13, 17:1 and 20:1 Ramo. However, the Rabbis of the Talmud discussed the psychology of many women, the most promiscuous, that once she is married, marriage affords an opportunity to have an illegitimate child and pass him or her off as her husband’s child. Now, when a husband robs his wife of this opportunity by having DNA testing, the wife can argue Mekach Tout, the marriage is a mistake. I never intended to marry such a man. True, for her more decent sisters there is no need for such a privilege. But for the promiscuous wife having a policeman over your head all the time is unbearable. She would never have agreed to get married under such a condition. The Talmud, beginning of Sotah, cites a case of a man who locked up his wife to make sure she have no lovers. The Rabbis of the Talmud forced him to divorce her. Even a decent women would never agree to have a DNA test every time she gave birth. What if the DNA test is defective, is she to be branded as a prostitute and her child a Mamzer? At the time of Moses and the Talmud, they did not have DNA tests. The majority of

Rabbis in Israel, Rav Eliezer Waldenberg and Rav Auerback do not approve of DNA testing. See Nishmos Avrohom Even Hoezer Chapter 4 beginning. The woman can argue Kim Li - I rule like those authorities that do not accept, in evidence, DNA testing. Aruch Hashulchan Yoreh Dayoh and Rav Moshe Feinstein do not require one to use a microscope to inspect lettuce for microscopic worms. Neither is it necessary to inspect Mezuzah, Tefillin and a Sefer Torah by using a microscope or a computer for cracks in the letters. Only such cracks that are visible by the naked eye are considered to render unfit the Mezuzah, Tefillin, or Sefer Torah. The reason is, that only such forms of evidence that were available at the time of Moses and Rabbis of the Talmud, are admitted. Evidence not available -it was not scientifically discovered -at the time of Moses and the Rabbis of the Talmud is not admitted. So too, DNA testing was not available at the time of the Talmud and Moses .

The woman can argue, “I would never have agreed to get married if every time I give birth my husband would force my child, myself and him to submit to DNA testing. I did not bargain for such treatment.” The husband took the child on his own, against the expressed will of the mother to have the child tested . This is grounds for annulment - as Mekach Tout, a mistake in the making of the marriage. Furthermore, an individual who experiences such fears that his wife is committing adultery with every man -as the husband suspects-has a serious problem and needs therapy. Such behavior is grounds for annulment.

As I have shown from the vantage point of either spouse , each one feels that they made a serious error in entering the marriage ab initio. They both feel they were cheated.Thus there exists a classic case of Mekach Tout-a mistake in the making of the marriage. This is another adjunct to remove the stigma of mamzarut-illegitimacy . Even if the mother got pregnant from another Jew - not her husband -she was never married at that time. Her marriage was annulled by our

Rabbinical Court. Chapter 19

**MOUS ALAI-MY HUSBAND DISGUSTS ME
MEKACH TOUT -THE MARRIAGE IS A MISTAKE**

Mous Alai-My husband disgusts me.

My father- in law created a living hell for me during the entire marriage . I love my wife, but never in a million years would I have married her if I would have known that part of the package was her father.

FACTS [All factual situations have been altered to protect the privacy of the actual litigants]

I was approached by the father of the wife. The father talked to me on numerous occasions on the telephone and faxed me numerous documents that all painted his son in law as a monster and an idiot, who refused to give his daughter a Get -Jewish divorce, now that she no longer wanted him . The father in law had nothing but contempt , derision and hatred for his son in law.

It is obvious from documentation in my possession, as well as from circumstantial evidence that the father -in law poisoned his daughter toward her husband. The daughter is very soft , trusting and believes in her father as though he is god or his prophet. Certainly he has the only phone to G-d. It is obvious that the wife's father has exploited her trust to alienate her from her husband. The father considers his son in law as a rival to the unquestioning fidelity and trust that his daughter has for him.

When the wife came before our Bet din she confirmed that her husband was a saint. He never beat her, he never insulted her, he never abused her physically or mentally, he never used any chemical substances, never drank, gambled, cheated with other women , and never watched pornography. He was a wonderful husband and father. But she can not oppose her father.Father knows best. If she does not understand why her father opposes her husband, she must defer to her father. After all she must respect her father. That is how she was raised since infancy. However although her husband worked , he nevertheless did not bring in the money that the wife was used to- what her father earns. The couple have several children.

In the last two years the wife refused to have any further sexual relations and forced the husband to sleep in an other bedroom. Lately the wife obtained a court order that evicted the husband from the family home. The husband claims that he is able and willing to support his

wife and children and will take his wife back, providing she leaves her father . Her father is intolerable and the marriage is a Mekach Tout - a mistake.

The wife refuses to return and claims she no longer loves her husband and wants a Get, that the husband refuses to grant.

Decision -JURISDICTION

Our bet Din has jurisdiction since the wife came to our Bet Din. Her father approached me and spent hours on the telephone and sent me documentation, begging me to annul the marriage of his daughter. The husband phoned me and, likewise , spent hours on the telephone informing me of his position and claims that he considered his marriage a Mekach Tout-a mistake. Thus under the provisions of Shulchan Aruch Choshen Mishpot Shach 3:10 and Aruch Hashulchon Choshen Mishpot 3:6, I have jurisdiction. Furthermore in any agunah case any Bet din is authorized and has jurisdiction any place in the world to free the agunah. See Rashbash

Responsa #46.

Decision

From the wife's perception the husband is MOUS ALI- disgusting to her. That is sufficient ground to have her marriage annulled. Would we have the power by civil law we would beat the husband until he would grant his wife a Get. See Rambam Ishos 14: 8 and Rambam Gairushen 2:20, Magid Mishne , Kesef Mishne, Hagoah Maimonides and Ohr Somayeyach Ibid. See Responsa Meharsham book 1 # 9 . Every time that we force a husband to give a Get , it is essentially an annulment. WHEN WE ARE NOT PERMITTED BY CIVIL LAW TO BEAT THE HUSBAND, THEN WE WILL ANNUL THE MARRIAGE. See Responsa Igros Moshe Even Hoezer Book 1 # 79. Responsa Dvar Eliyohu # 48. See Responsa Ohel Moshe Rav Moshe Tzeig book 2 # 123:8. See my book The War Against the Jews Hatorot Agunot –Sexual freedom from a dead marriage-in accordance with Halacha chapter 1-Roots. Forcing the husband to give a Get-when Halacha dictates that he is required to give a Get - is essentially for his benefit; even if the wife has no valid ground to dissolve the marriage other than Mous Alai -my husband is disgusting

to me. If the husband is a saint and nevertheless the wife does not want him, then the marriage is Mekach Tout - a mistake from the perspective of the husband. What more is he to do? In the case at hand this interpretation was confirmed by the husband. In fact the husband expressed his approval of the annulment on the basis of Mekach Tout - a mistake . He approved and authorized the giving of the Get since I clearly told him that in every annulment we always write , sign and give a Get to the wife. Even those individuals who question my basis for annulling marriages will agree that in this instance there is a valid Get. We wrote and gave another Get after the husband authorized us to do so. See Igros Moshe Even Hoezer volume 1 Responsa # 117,118.

Even if the husband is not permitted to remarry the wife, nevertheless, the marriage is dissolved. If the wife agree to return to him then they can have a conditional marriage. If the annulment was valid, the marriage never occurred. Then even if he be 100% a Kohen , he is permitted to marry his x-wife. If the annulment was not valid , but there was a valid Get then they will live together on the basis of pilegsh-mistress. See Chapter 12 of my book. A kohen is not permitted to marry a divorcee. However if they live together without marriage there exist no violation. See Rambam Isurei Bioh 15:1;see commentaries Magid

Mishne , Kesef Mishne; Responsa Melamed Lehoel Even Hoezer # 8, citing Nodeh Beyehudah 327. We will rule like those authorities who permit Pilegsh even for a commoner , not only for a King. See Responsa Shalet Yavetz book 2 #15, Mehram Padvu#19 Resposa Rashbah attributed to Ramban #284.

From the perspective of the husband the marriage is a Mekach Tout -a mistake. See my book **The War Against the Jews -Hatorot Agunot Sexual Freedom from a dead marriage -in accordance with Halacha.** for a detailed analysis for all the sources of the annulment process.

Our Rabbinical court wrote a Get ,had it signed and given to the wife , substituting for the husband as described in great detail in chapter 1{ROOTS} of my book and the other chapters. The second time we wrote a Get, with the authorization of the husband ,we substituted for the wife ,we-accepted the Get on her behalf since it is for her benefit.

The husband expressly agreed to the annulment and the giving of the Get for him. He can not accept giving of a Get without an annulment since he is a Kohen and would be forbidden to remarry his wife -would she agree to return to him- once he gave her a Get absent the annulment features. Both the husband and wife are now free to remarry other individuals.

It is further the judgement of this court that the the x- husband go to a Din Torah to a Rabbinical Court and seek compensation for the damages he suffered. He should receive a letter permitting him to go into civil court to enforce the damages award. He should go into court and sue for custody of his children ,whatever his attorney advises.

We annulled the marriage for all the reasons previously cited. At the same breath we want to show all meddling parents that there exists a price to pay for breaking up the marriage of their children. They do not own their children and certainly not their son in laws or daughter in laws. The above judgement is based on the authority of Aruch Hashulchon Choshen Mishpot chapter 2, and 15.

Our Bet Din -Rabbinical Court is qualified to rule on matters of custody , support , damages suffered by the husband such as alienation of affections and slander. We will first set the agunah free and then we will separately rule on money matters and custody of the children. We will either have the parties sign an arbitration agreement that can be enforced in the courts or will give permission to the winning party to go to court after we have rendered our decision. This is a far cry from the existing Rabbinical courts who make the wife a hostage that she must accept the decision of the court otherwise she will never receive her Get.

Just because we set the wife free in a dead marriage does not mean that the wife and her family win all the custody and financial matters. It is very possible that they are the greatest culprits and have exploited and abused the husband. Truth Equity and Justice with no self interest are strictly enforced. We have had cases where the x -father in law of the Agunah we set free once we ruled against him on financial matters refused to pay us our fee. Our reward is that we can face ourselves that we are honest and

will not be intimidated. It is a good idea to collect the fee up front and not rely upon the goodwill and promises of future payment and the wealth of the agunah's family to compensate you later. Such individuals can be notorious to exploit your trust of them. They can try to force you to be in their good graces to violate Halacha when it is to their benefit as in the case of ruling or taking action that can benefit their x-son in law. It is known as getting double mileage; or squeezing the lemon dry. By not paying your employee until a future date, you ensure that he remain in your good graces. Or else you won't pay him. When you protest that you are not an employee and they are not your client, such protests fall on deaf ears. You are dealing with individuals who are above all law. They exploit laws to their advantage. The laws as well as any one else-all human beings - are to be used. There is nothing that they have to pay back.

Either you do it free or get paid up front. The way the family of the agunah behaves toward the rabbis is probably the way they behaved toward the x-husband. See chapter 4 of my book Hatorot Agunot. This supposition can serve as circumstantial evidence to rule in favor of the husband, in addition to other evidence. If they behave decently toward the rabbis, they still could have made hell on earth to the x-husband. But all it means is that there does not exist circumstantial evidence that they mistreated the x-husband.

As accommodating as we are to the wife to enable her to go free we will equally be the greatest vigilantes to soften the financial burden of the husband and ensure that his children not be kidnaped or estranged from him. We will award to the husband sole or shared custody when we are convinced that such a move is in the best interest of the children. All custody awards as well as support are ambulatory and can be changed under different circumstances.

Signed

Rabbi Moshe Morgenstern

CHAPTER 20

WHO IS A KOHEN WHO IS A GERUSHA - A DIVORCEE?

-Note : All the facts have been changed in order to protect the identity of the actual parties-

lyr 4 5760

Shalom Ubracha!

Mazel Tov on the marriage! May their union be one blessed by heaven and may health, happiness and children accompany their marriage.

I will now address the questions posed to me regarding the fact that your daughter was married over 15 years ago, which union was terminated by a Get. The groom held himself out as a Kohen. In ordinary circumstances one obviously would not consider such a matter further since a Kohen is forbidden to marry a Gerusha - a divorcee. However, in your case, you outlined the very special circumstances involved, the pain and suffering that would occur if such a union would be forbidden.

It is obvious that pain and suffering cannot overrule Torah Law, and that if your daughter is really Halachically a Gerusha-divorcee-and the groom is really a Kohen, it is forbidden for them to marry. However, since the very serious situation exists that would result in great pain and suffering to all the parties concerned, it is mandatory upon us to investigate if your daughter is really a Gerusha or not. Is her first marriage Halachically valid? If we can determine that her first marriage is not Halachically valid

then the Get she received subsequent, is meaningless. The man who gave her a Get, gave a Get to a woman to whom he was not Halachically married. Consequently, she never was a Gerusha-divorcee and can marry a Kohen.

Furthermore, we have to determine that the groom, in fact, is a Kohen. The fact that he holds himself out as a Kohen does not make him for a Kohen. He must prove that he is a Kohen. Until such time that he does not prove that he is a Kohen, he is not Halachically a Kohen. He then can get married to a woman even if she be a Gerushe, a divorcee.

I have established beyond a shadow of a doubt that your daughter's first relationship fails to meet the requirements for a Halachic marriage. I have equally established beyond a shadow of doubt that the groom fails to meet the requirements to link his heritage as a Kohen. The details I have elaborated in a separate Responsa. I therefore declare that your daughter's status is Pneyoh-never married. Her relationship was Pilegish not Kedushin. Consequently, she is permitted to presently marry a Kohen. She is not a Gerusha. A Gerusha is forbidden to a Kohen. Your daughter was never Halachically married so she could not have gotten a Get and become a Gerusha. The groom likewise was never a Kohen so he could even marry a Gerusha if your daughter was one, that she is not. Mazel Tov, Mazel Tov, Mazel Tov.

Sources:

In order for a marriage to be Halachically valid, witnesses must exist and testify without reference to records before a Bet Din to the exact day, hour, and place where the marriage occurred. Otherwise, there is no Halachic marriage. After 15 years, no witness remembers such information even if they can be located, which they cannot. See Igros Moshe Even Hoezer Book 4 Responsa #20; Yobiah Omer Vol. 3 #8; Bais Shmuel Even Hoezer 17:63.

Failing to establish that a Halachic Marriage existed-in effect- your daughter is deemed a Pneyoh and is permitted to marry a Kohen. Furthermore, the overwhelming majority of Gitin given in our day and age are, in reality, annulments. Most Gitin, practically all, are written by a Sofer using the script employed when writing a Sefer Torah. A mistake in the writing of any letter in the Get can render the Get null and void. There exists ten different ways that every letter can be corrupted. Thus we require two competent witnesses that no errors were made by the Sofer. See Taz Even Hoezer 130:14 and Bais

Shmuel Even Hoezer 130:25, 26, 27. See Aruch Hashulchon Even Hoezer 125:14,22,23,24,25,26; Aruch Hashulchon Drech Chayim 32:13,14,31- 41; 36:1-26. See Encyclopedia Hilchodit Chasdei Dovid pp. 230-249 for illustrations of various examples that any letter can become corrupted and render the Get invalid.

Rav Rackman testified that in his 70 years in the Rabbinat he has witnessed the giving of numerous Gittin and he has not met one Rav who officiated at the giving of a Get who could even sign his name using the lettering employed by Sofrim- scribes- writing the Get. Certainly the Rav cannot testify if the Sofer-scribe- did not err. Witnesses to the Get can't testify if the writing of the Sofer-scribe- was valid or not. Thus, there exists a doubt if the Get was valid or not. Since there are no witnesses, the Get would be invalid. When Gittin were given to the divorcee, she could, at a later date, show this Get to many Rabbis who do know if the writing of the Sofer is valid or not. The testimony of the Sofer who originally wrote the Get could be verified by third independent parties. Even then, according to Kesef Mishna Gerushin 1:23, if no witnesses exist at the time of giving the Get - not the signing of the Get - who can testify that the Get is valid, there is no Get. See Aruch Hashulchon Even Hoezer 130:42 who also supports such a position. If the witnesses who testify that the Get was given to the wife are not able to read the Get , then the Get is considered invalid.

If that is the case, why did the Ramo in Seder Haget Even Hoezer 154:86 rule that now

days the woman divorcee is not given the Get, only a certificate after the divorce? We can not even verify that a valid Get was written. Even those Poskim-authorities- who over rule the Kesif Mishna Garushin 1:23, like the Taz Even Hoezer 130:14, nevertheless, require that the Get be verified that it was written in accordance with Jewish Law by third party independent sources. It is necessary that there be at least two witnesses. Assuming that the scribe is counted as one witness that he prepared the script properly but in the overwhelming number of cases the rabbi officiating can not even sign his name with the script used to write a Sefer Torah- the Torah scroll used in congregations- that is employed by the Sofrim -scribes to write a Get. How then can he testify that the Soffer prepared the Get properly and did not err ? As mentioned there exists ten different errors for each letter of the alphabet that could invalidate the Get. If a Sefer Torah - the scroll of the Torah used in the synagogue prepared by the same Soffer was not written correctly there are no severe consequences. At most the members of the congregation have recited a blessing in vain when they are called up for the reading of the Sefer Torah. They would not have fulfilled their obligation of hearing the reading of the Torah. However there would not result any illegitimate children. In the case of a Get where the letters are not written properly the Get is invalid. Any resulting children from man #2 are considered illegitimate. See Aruch Hashulchon Even Hoezer 130:58 that rules that if there is another witness in addition to the scribe post facto if the divorcee remarries she does not have to leave husband # 2. Any children she has with him are considered legitimate. But in most cases there does not exist any witness, in addition to the scribe who can verify that the script of the scribe was accurate in accordance with Jewish Law. Why then are all the Gitten -Jewish Divorces valid?

The answer is that the Ramo was fully aware that the situation could develop that witnesses would be lacking to verify the validity of Gittin if the Sofer wrote it correctly.

The Ramo, likewise, was aware of the numerous instances that a Get is void, even post facto, because certain laws would not be observed. He, therefore, annulled for posterity the marriages of all such women. Furthermore, it is forbidden under penalty of excommunication to cast doubt on any Get- Cherem Rabbenu Gurushin. See Mordecai end of Laws Gittin cited by Baer Hagola #100 Even Hoezer 154:22 Bais Yosef and Ramo.

This is similar to the annulment of all marriages that Magid Mishne Gerushin 1:13 explains the law that a woman is believed to remarry on her statement that the husband died in a foreign country when both were abroad. Even though two witnesses are necessary to change the status of a married woman to single. Nevertheless, the Rabbis believe her statement. The reason the Rabbis have the power to annul marriages. Similarly, Ramo in Seder Haget Even Hoezer 154:86 who stated that a divorcee is not given the original Get to show to other Rabbis, relied upon the principle of Haf Koet Kedushin - annulment of the marriage if and when the Get in reality is null and void. With the exception of the Gittin given by Rav Moshe Feinstein, Rav Piekarski, and Sages of their caliber, all Gittin today are in reality annulments. Consequently in the case of your daughter, this fact is an additional sniff adjunct that even if she was married, the very fact of receiving the Get is an annulment. This is similar to Responsa Minchos Yitzchok Book 10 Responsa #126 who ruled that the very fact that a woman receives a Get from a husband who is not observant, in effect, annuls her previous marriage. According to Rabbis cited by Tur Even Hoezer 44 a non observant Jew- non Sabbath observer Jew can not contract any Halachic marriage or divorce. If such a husband does give a Get it is an annulment. The same principles apply in your case. Applying all the above findings to our case your daughter is permitted to marry the groom because to rule differently would cause unbearable grief and hardship. Furthermore, the groom must prove his status as a Kohen, which he can not do. The overwhelming number of Kohanim today are not Kohanim. There has been

intermarriage between Kohanim and other Jews. Anyone can call himself a Kohen. See Responsa Mehreshdam who permitted a Kohen to marry a woman who was captured by non-Jews and probably was raped. A Kohen is forbidden to marry or remain married to a woman who had relations with a non-Jew even if she is raped. Mehreshdam ruled that the overwhelming majority of people holding themselves out as Kohanim are not Kohanim. Consequently, he permitted this man to marry a woman that was captured and probably raped by non-Jews. See also Responsa Drishas Zion Rav Tzvi Hersh Kalisher page 140 who cites a responsa from his Rebbe, Rav Akiva Eiger citing Mahrshal - Rav Shlomo Luria- Bava Kama 85, that Kohanim cannot bring korbonos - animal sacrifices in a rebuilt holy temple today because we cannot identify who are the real Kohanim since most people today claiming to be Kohanim cannot identify their ancestry. The overwhelming number of Kohanim have intermarried with ordinary Jews. The same ruling is made by Tzitz Eliezer Book 10 Responsa 1:2:3 who claims that no Bais Hamikdosh-Holy Temple- can be built because Kohanim cannot identify their ancestry as Kohanim. Without the services of Kohanim no Karbonus -animal sacrifices can be brought and consequently the Bais Hamikdosh can not serve its purpose. Rav Moshe Feinstein ruled the same, that a man claiming to be a Kohen can marry a convert because he cannot prove his ancestry as coming from Kohanim. Without definite proof he is not a Kohen. See also Igros Moshe Even Hoezer part 4 Responsa #20 where Rav Moshe Feinstein applies similar logic that failing to produce two authentic witnesses that testify to the exact date and place that a woman got married in accordance with Halacha, there is no proof of a Halachic marriage. If such a woman remarries and has children from man # 2 the children are not Mamzarim -they are not illegitimate. In my book Hatorot Agunt , I prove that not only are the children not illegitimate, but the woman -the Agunah can remarry when the husband refuses to give her a Get. See Bais Efrayim Even Hoezer Responsa 122 citing Meharshdam Responsa #

235 and Shvut Yaakov Part 1 # 93 and Chachmei Luzim cited by Responsa Mahrit #18. See Chelkos Yaakov Even Hoezer Responsa # 33 and #40 . All the above mentioned authorities rule the same as I have indicated. The Chelkos Yaakov bases himself on Nodah Beyehudah Kama Responsa # 38. Unless we have proof given by two witnesses that a woman is a married woman or that the man is definitely a Kohen by default she is not considered married. If she claims that she is not married or had a Get or her husband died we will believe her. Since there exists no independent source that inform us about the status of the woman as married or the man that he is a Kohen other than himself we will believe the woman when she states that she is free because her first marriage was not Halachically valid. See Aruch Hashulchon Even Hoezer 17:5 and 152:5 who rules the same. The woman is believed that her husband gave her a Get even though he contradicts this testimony and denies that he gave her a Get. Likewise if both come from another city she is believed even if the husband agrees with her . Under normal circumstances both are not believed since she does not possess a certificate from the Rabbis who officiate at the giving of the Get.If it is true that the husband voluntarily gave her a Get , let him give her another get again. Of course if he refuses we will find a legal dispensation in accordance with Halacha-Jewish Law. However if both come from an other city and we do not even know that they were married in the first place only from their own testimony , we will believe them that they are divorced. Likewise, we will not assume that the man is a definitely a Kohen to prohibit him from marrying a Grusha-divorcee where other factors exist that cast doubt that this woman ever had a Halachic wedding in the first place. Consequently the Get she received is meaningless since she was considered a Pnuyoh -single all the time. The fact that she may have had a civil marriage or held herself out as a married woman does not make her Halachically married. See Responsa Machnei Efrayim Even Hoezer #1 . See My Book Hatorot Agunot The Agunah Rabbi is right-Chapter 13 and Chapter 15-regarding

Conversions. . Unless we possess definite proof that he is a Kohen by default he is not a Kohen. See my book Haterot Agunot Chapter 4. By default we will assume that a person is what we see now at the present. He is an ordinary Yisroel, not a Kohen. One must prove that he is a Kohen before he can be put in that status. All Kohanim today are considered Kohanei Chazaka. Since they bless Jews at services we assume only for limited matters that they are Kohanim. Many such “Kohanim” refuse to eat Trumah or Maaser or take Challah and return the five dollars given to them at the redemption of a first born male. The reason is because they are not Kohanim unless they can prove that they are Kohanim. Also, so called Kohanim go to medical school where they must take courses in anatomy and they dissect cadavers, Jewish and Non-Jewish. They enter hospitals where patients die. They have operations where organs from a deceased are transplanted into them. The reason is that they are not deemed Kohanim unless proven to be. In cases of extreme hardship and suffering we will be lenient and rely that they are not Kohanim unless proven that they are.

In the case of the groom, we consider it to be extreme hardship and suffering and we will rely on those above cited authorities that he is not a Kohen until he can prove that he is. This serves as an additional adjunct coupled with the fact that your daughter’s first relationship is not deemed a Halachic marriage for the reasons previously cited.

See my web site, [www. AGUNAH.com](http://www.AGUNAH.com) for my book and writings Hatorot Agunot by Harav Moshe Morgenstern, for elaboration on the theory that this responsa is based. In addition to everything stated, there exists another adjunct. The Rambam states in Laws of Tumo Mes 9:12 that all laws of the Torah are forbidden by Divine Law only if they are definitely forbidden. Any time there exists a question as to the factual situation if something is or is not forbidden, the prohibition is only forbidden by Rabbinical Law. See Aruch Hashulchon Yoreh Dayoh 110:109. Once you increase the number of doubts in a case there is not even a Rabbinical prohibition. See Magid Mishne Shechita 5:3

end. See Aruch Hashulchon Yoreh Dayoh 110:99, 101, 102, 103, 104, 105.

Consequently, in our case where there exists multiple doubts, if there was any Halachic Kedushin at all and if the groom is a Kohen or not, we can rely on those opinions that there was no Kedushin and the groom is not a Kohen since the issue is only Rabbinical, not Medoraisa - Divine. Even the Rashba, who disputes the premise of the Rambam in Toras Habayit Bais 4 Shaar¹ and holds that doubts as to facts or law are forbidden by Divine Law, agrees that in case of multiple doubts that the matter is permitted. See Aruch Hashulchon Yoreh Dayoh 110:99. See Sdei Chemed Laws of Sfekot 60:9,10 that in addition to Rambam, Ramban, Riff Behog and Rosh also hold that Divine doubts are only forbidden Rabbinically. The Mahram Ben Chaviv in Kapos Temorim and Laws Yom Kippur holds that this principle applies universally in all cases even in case of Chaivo Crisos where punishment is Koros like the case of a married woman to free her from her Kedushin.

Thus in our case we have sufficient authority to rely on to permit your daughter to marry the groom based on everything we discussed.

14 Iyr 5760

19 May 2000

Mazel Tov! Mazel Tov! Mazel Tov!

Our Bet Din, sitting in session, reviewed your special circumstances regarding your first marriage over 20 years ago. We have determined that such marriage was null and void ab initio. The reasons are separately enclosed. Also enclosed is a responsa to another Rav whose daughter's marriage our Bet Din annulled. We permitted her to marry a Kohen. We enclosed copies of a few chapters of my book, Hatorot Agunot.

Consequently, you are hereby granted permission to marry the man who claims to be a Kohen. According to our careful investigation the man is not a Kohen.

Sincerely,

CHAPTER 21

DESCENDANTS OF MORANOS

ALL FACTS HAVE BEEN CHANGED IN ORDER TO PROTECT THE PRIVACY OF THE INDIVIDUALS-

It is the collective judgement of our Rabbinical court, Bet Din Tzedek Lebanot Agunot, Inc., that you are Jewish. You have a right to accept testimony of your uncle that your ancestors are Jewish and are Moranos, Jews who kept their ancestry as Jews hidden because of persecution. Later they migrated to countries that did not persecute Jews, like France and Canada, but never-the-less kept their Jewish heritage secret because of anti-semitism. That is the reason given by Rav Moshe Feinstein to believe someone who claims that they are Jewish. If anyone claims they are Jewish in face of all the anti-Semitism prevalent in our day, either he or she is telling the truth and braves all the hatred to openly live their Jewishness-the truth- or else they must be insane. So the fact that your parents did not disclose your Jewishness and were openly non-Jews is no surprise.

Furthermore, Moranos married among themselves to other Moranos. We do not have to be afraid that they intermarried and some Mother or Grandmother were non-Jewish making you non-Jewish. See Aruch Hashulchon Even Hoezer 3:16. See Aruch Hashulchon Yoreh Dayoh, end of Laws of Conversion 268:14. "If a person comes and claims that he is Jewish, he is believed." You do not need any letters of certification from any Rabbinical Court. You are not seeking to marry a Jewish woman. You are married already. Even if you would want to marry a Jewish woman, your statement that you are Jewish is sufficient. We would insist that you have a marriage license , to make sure that you are free to get married, that you are single.

However, as far as your Jewishness, your work is sufficient.

See my book Hatorat Agunot, Chapter 13, regarding the principle of "Kim Li," that any Jew can make a statement of fact regarding his or her status. See also Aruch Hashulchon Even Hoezer 3:5 citing Yoreh Dayoh Chapter 127.

In conclusion, you can observe and should observe all the Laws of the five parts of the Shulchan Aruch that a Jew is instructed to observe by G-d and the Rabbis. See also Hatorot Agunot.

chapter 15, re: conversion.

Ab initio we require all individuals who claim ancestry from Jews dating back hundreds of years that their ancestors were practicing another religion and certainly not 100% of Halachic Judaism regardless of the reasons to undergo a conversion ; even if they practiced certain laws and customs of Judaism in secret or openly.

In that way many problems such as Mamzarut are easier to resolve. When a woman who was married in accordance with Halacha -Jewish law separated from her husband but never received a Jewish divorce, has child from an other man , the child is a Mamzer-illegitimate . However if the woman is not Jewish or her status of being Jewish is clouded and doubtful, then this problem is easier to resolve. Furthermore, we do not have two kosher witnesses that will testify that throughout all these hundreds of years there were no women that intermarried and the person in question is a descendant of this woman who may not have had a valid conversion. Wherever it is possible to be 100% sure by undergoing a kosher conversion we do not depend upon loopholes. It is only post facto that major problems exist to undergo a Halachic conversion that the above letter applies. Thus if descendants of individuals claiming to come from Jews do have a Halachic conversion and observe 100% of Halacha it is definitely better and their status as Jews is universally accepted.

Such is the ruling of Rav Moshe Feinstein as well as the chief rabbis of Israel regarding the Fallashim who emigrated to Israel from Ethiopia and claim that they are descendants of one of the lost tribes or descendants of King Solomon and Queen Sheba 3000 years ago. Thus was

the ruling of Rav Yaakov Emden regarding individuals who claimed ancestry from Kariaites. In addition to other adjuncts that Rav Yaakov Emden used to permit them to marry other Jews- see Radvaz in his responsa-

he also postulated that the conversions of the Kariates were not in accordance with Halacha.

Consequently the person in question could be a descendant of a non Jewish mother or grandmother going back many years. Even if there exist a possibility that somewhere along the line there was a mother that was previously married , separated from her husband without a Get and had a child

from an other man, the child is not a Mamzer-illegitimate because the woman in question may have been non Jewish or a descendant of a non Jewish mother. Thus the possibility of being a descendant of a non Jewish mother would cancel out the possibility that the individual is a descendant of a Mamzrer-illegitimate. Thus by undergoing Halachic conversion this problem is cured.

It is a delight to share the afore going decision with _____ and I approve of it whole-heartedly.

CHAPTER 22

ALL FACTS HAVE BEEN CHANGED IN ORDER TO PROTECT THE PRIVACY OF THE

INDIVIDUALS

Civil Marriage without a Get

Facts:

Plaintiff married her husband and had a very unhappy marriage. Her mother-in-law was continuously interfering in her day to day relationship with her husband. Her husband took the side of his mother and fought with his wife. The mother and son were partners in the family business. The mother controlled all the finances. As a result, she was aware of all financing and spending of the wife and was able to interfere in all day to day activities of the couple. This continuous interference and the fights that it engendered was the cause of the dissolution of the marriage. There were no children born. See Otzer Haposkim 70:12-64,65,66. When parents interfere and cause fights between a couple and the spouse refuses to move away or stop the interference, the aggrieved spouse has the right to leave and sue for divorce. If husband refuses to give a Get, we will flog him until he gives a Get. Today, the above conduct is grounds for an annulment as will be explained, at length, further on. See Piske Din Rabbonim for same. The Plaintiff's husband, toward the end of the marriage, was not religious and non-observant of the Sabbath, Kashruth, and all other ritual laws. He denied her sexual rights and stopped supporting her.

The Plaintiff proceeded to obtain a civil divorce. All the time she solicited a religious Jewish divorce, but her husband adamantly refused. All the Rabbinical courts tried to convince the husband, but were routinely turned down by the husband.

The Plaintiff met another man and eventually married him in a civil ceremony. A child was born from this union.

Many years later, the first husband was convinced to grant the Plaintiff a Get. The first husband remarried and had children with his new wife. After a few years, he died.

Questions at issue:

The woman - Plaintiff is:

1. Presently divorced, has a Get. She, therefore, is not Zokuk Leyivom or Chalitza - she does not have to obtain Chalitza from a brother-in-law.
2. The deceased husband left children and
3. Had no brothers.

Each of these facts make Chalitza unnecessary. (Chalitza is a ceremony that frees a widow to remarry. It is mandatory when there were no children in the union with the deceased husband, the husband had no other children from another marriage, there is a living brother-in-law, and the widow was not granted a Jewish divorce, a Get, prior to the death of her husband.)

The problem therefore is not that the Plaintiff is not permitted to remarry, but she cannot remain with her present husband to whom she is married civilly only. This is so since she lived with him and had a child with him before obtaining a Jewish divorce - a Get. See Even Hoezer 11:1 and 178:17. See Talmud Sotah 27B Rambam Laws of Sotah 2:12. Also her child would be considered a Mamzer. See Even Hoezer 4:13. See Talmud Yevomos 49A.

Responsa: Resolution of the Problem

Since the first husband was completely irreligious and non-observant and also had in fact given the Plaintiff a Get-Jewish divorce, an annulment unwittingly had taken place. See Minchos Yitzchok Volume 10 Responsa 126. This responsa relies on several additional principles and concepts involving the problem if a non-observant person is considered Jewish and can be a party to contract a Hallachic marriage. Tur Even Hoezer 44:23 cites authorities that hold that a non-observant Jew cannot contract Hallachic marriage.

One who violates the Sabbath and or worships, adopts another faith, is considered as a non-Jew. See Prisha on Tur 44:23 that you do not need that he also have adopted another faith. The fact that he is violating publically the Sabbath is sufficient to put him into the category of being considered as a non-Jew and consequently he or she cannot contract a Hallachic marriage. See Aruch Hashulchon Even Hoezer 123:17 - that one who writes a Get on Shabbos in the presence of the husband, wife, and two witnesses is considered as violating the Sabbath publically and is considered as a non-Jew. Consequently the Get is null and void. It is not necessary that he adopt another faith. Such a person, according to the opinion cited by Tur Even Hoezer 44:23 cannot contract a Hallachic marriage. The marriage of such a spouse is only Lehumro - it is not deemed as marriage by Divine or Rabbinical Law. It is only deemed a marriage for appearance sake, only because we want to be strict in matters of marriage and divorce. However, technically there is no marriage. Such is the opinion of Rabbenu Shamson cited by Mordecai Yevomos Hacholetz.

See Even Hoezer 44. Bar Haitiv 44:7 cites Mahram Mintz, Responsa #12 that such marriage is only Rabbinical. See also Responsa Rahm part 2, Mayim Amukim Responsa #33. See also Responsa Mehrashdam Even Hoezer #10 that even according to opinions of Rambam, Laws of Ishus Chapter 4, Smag, and Shulchan Aruch Even Hoezer 44:9, that opine that one not observant can contract a marriage, such competence is not 100% because he or she is considered Jewish; but his or her status is at the most doubtful. Consequently at most such marriage is Hallachically doubtful. According to Rambam, such status is Rabbinical. See Rambam Laws Tumei Mes 9:12. See Shruda Esh Book 3 Chapter 25 who cites Levushei Mordecai Responsa 64:3, that a non-observant Jew is considered as though he is non-Jewish. He therefore, cannot contract any Hallachic marriage. See Bach on Even Hoezer 157:15 who rules that a woman can argue that there was a mistake in a prior marriage to her observant husband if he dies without children and she falls for Yivom - Leverite marriage - to her non-observant brother-in-law. The reason is that he will force her to cohabit with him while she is

in her nidah state (menstrual impure state until she waits a total of twelve days from the outset of her menstrual bleeding and then dips in a mikvah). Thus we see that even a prior marriage can be annulled if later she would be forced to fall into a Leverite marriage to a non-observant brother-in-law. Even if the husband was observant and ceased being observant, authorities exist that the marriage can be annulled ab initio. See Avnei Meluim 44:12, Avnei Meluim 44:4, Minchos Chinoch Mitzvoh 203, Otzer Haposkim Beginning Chapter 17. Also see Shrudei Esh Volume 3, Chapter 25. See also Zkan Aaron who agrees that a non-observant Jew cannot contract a marriage. He need not have adopted another faith. Certainly when the husband is not observant ab initio that no marriage is contracted.

Even those authorities who hold that a Get is necessary, the question arises how can someone who is deemed as non-Jewish give a Get? We have a principle that one who cannot contract a marriage can likewise not give a Get. The answer given is that we annul the marriage ab initio. See Get Poshut Responsa #123:7 cited by Hagoas Rav Akiva Eiger and full text cited in Even Hoezer Rav Akiva Eiger Hasholem -Pesach Habis 44:9.

Everyone who marries Halachically marries in accordance with the agreement and approval of the Rabbis and subject to their laws. It is the law that the Rabbis can elect to enforce that the marriage of a mumor - non-observant Jew is annulled by the process of giving a Get. Such also is the ruling of Meharsham Book 2 Responsa 110 and 111.

Even without the giving of a Get, Meharsham wants to rule like the authorities that the marriage of a non-observant Jew is null and void. However, he advises to attempt to have the non-observant Jew give a Get and then the mechanism of annulment is triggered. The reason why we require the giving of a Get and we simply will not annul the marriage is the following: the only time that we find that annulments were made without the giving of a Get is when a man forces a woman to marry him (Bava Basra 48). The Talmud states that since the man acted out of control, we will respond and annul the marriage. However all other cases where there was no breach of human conduct in the marriage relationship ab initio, at the very

outset, we will not annul such marriage other than with a Get. All instances of annulments recorded in the Talmud, Responsa, and Shulchan Aruch, all have Gittin. See Shreida Esh Book 3 Responsa #25 at end. The Shreida Esh cites numerous authorities that require a Get to effect annulment. For same, see also Tnai Kedushim by Berkowitz. Even a Get possessing defects is better than no Get at all. See Mashiv Dover Responsa #79.

At any rate, the Get given by the Plaintiff's first husband triggered the Annulment.

Consequently, the plaintiff never was married to him. Consequently, she was considered a Pnuoh unmarried at the time she married civilly her second husband and did not violate any law. The prohibition cited in the analysis of the problem Talmud Sotech 27B, Rambam Laws of Sotech 2:12, Even Hoezer 11:1 and 178:17 that prohibit a woman from marrying a man with whom she had illicit relations do not apply since relations the plaintiff had with her 2nd husband were not illicit. Consequently, her child from marriage #2 is 1 million percent kosher since the plaintiff was considered not married halachically when she got pregnant with him.

Furthermore, Responsa Divrei Chaim Orech Chayim #35 cites Ran on end of Nedorim 90B. When a woman has an affair and tells her husband or her husband is informed because she married civilly another man, if the husband believes her he will divorce her. If he does not divorce her, the former marriage is automatically annulled. Or else, even if we do not rule like Ran Nederim 90B, we will rule like Rabbenu Yeruchim cited at beginning Otzer Hoposkim Chapter 11. If a woman has an illicit affair, she is forbidden to the former husband (Even Hoezer 11:1). The former husband must divorce her. If he refuses, the Rabbinical Court will flog him and exert all pressure to divorce her. If the court is impotent and cannot exercise this power, the marriage is automatically annulled. See Igros Moshe Even Hoezer Volume 1 Responsa #79 pages 189-190. See Responsa #80 page 191, that this ruling is applicable to all cases that we rule that the Rabbinical Court forces a recalcitrant husband to divorce his wife. This ruling applies to the cases of a husband that the court rules breached the marriage contract by:

1. Impotence - Igros Moshe Even Hoezer #79
2. Abnormal
3. Homosexual - Igros Moshe Even Hoezer Volume IV
4. Insane - Ibid #80
5. Non-support - Shulchon Aruch Even Hoezer #70
6. Abandons wife and does not have regular sex relations - Even Hoezer #76 and 154
Responsa Ramo new #36
7. Beats his wife - Even Hoezer 154:2 Ramo

See Igros Moshe Even Hoezer Vol I #80 R.Ramo #36. See Pesach Gilyon Even Hoezer 154:2. See Rav Boruch Knesses Hagdola Even Hoezer 134, Mabit Volume 2 #47, Hagoas Maimones end Rambas Ishus - we will force a husband who beats his wife to divorce her.

See Perach Nato Aaron Volume I #60 for same.

It is not necessary that the wife leave the husband immediately. See Igros Moshe Even Hoezer Volume 4 Responsa #45 end. If the wife had a reason that prevented her from leaving the husband immediately, her right to claim there was a mistake in the marriage is not forfeited. See also Machne Efrayim cited by Pischei Tsuvoh Choshen Mishpot 232:1. See also Aruch Hashulchon Choshen Mishpot 232:4 who also state that a person can claim at a future date that there was a mistake to the marriage. She does not need to leave the marriage instantly. See Responsa Chazon Yehezkel Even Hoezer #8 (together with Likute Hashas and Mesactas Zvochim) Rav Yehezkel Abromski that a woman was granted an annulment after waiting four years for her husband's impotence to cure. Upon failure, she was granted an annulment.

Any defect considered by society as intolerable is deemed a defect that can trigger an annulment; or a breach of contract- Bais Yosef Choshen Mishpot 232:6. See Ohel Moshe Rav Moshe Zweig Volume 2:123 that the Rabbinical Court has the power to decide if the conditions of a defect are impossible to live with such a spouse - man or woman. Then we will

annul the marriage. See Chelkos Yoev Part 1 #24. A defect depends on the ruling of the Rabbinical body as to what they consider intolerable to continue a marriage. See Dvar Eliyahu #48.

From all cited sources, since the Plaintiff remarried, her husband was forced to give her a Get. When he refused the Rabbinical Court has the power to annul the marriage. This is precisely what we did.

In addition to all grounds cited, additional grounds exist to annul the marriage, permit the Plaintiff to have a religious wedding with her present husband and consider her child one million percent legitimate. There exists a fundamental principle that one is innocent and kosher by presumption unless proven guilty. See Magid Mishna on Rambo Isurei Tziah 20:5. Consequently before we can condemn the Plaintiff that she had illicit relations with her present civilly married husband, a trial must take place where the former husband, her present husband, her child, and herself are all present. This never occurred. Consequently the woman remains non-married and the child is one million percent kosher. The issue of a woman having illicit relations and the consequences of such an act are a capital crime issue. When the Holy Temple and Sanhedrin existed, such a woman and her paramour were given a capital punishment if found guilty. Even today, all the laws to the most minute detail must be strictly followed. True, today there is no capital punishment but there are severe consequences. The woman is forbidden to marry the man with whom she had illicit relations (Even Hoezer 11:1) and any offspring are illegitimate (Even Hoezer 4:13). It is therefore, even today, classified as a capital issue. See Responsa Ramo #12 and Responsa Rav Akiva Eiger Volume 1 #99. If there is no trial - where all the involved people are present, any ruling made is null and void. See Rav Akiva Eiger Volume 1 #99. See Even Hoezer 11:4, Choshen Mishpot 28:15, Aruch Hashulchon Choshen Mishpot 75:1. See Igros Moshe Even Hoezer Volume 4 Responsa #20 who ruled that failing to have the witnesses who were present at the Chupah of the first husband testify at such a trial renders the entire issue moot. Only they can

testify that the Plaintiff - the woman who remarried without a Get - had a Hallachic wedding in the first place to her first husband. Otherwise, she is considered unmarried by default. Furthermore, Rav Ovadye Yosef in Yabioh Omer Volume 3 Responsa #8 brings encyclopedic evidence that the witnesses who testify that there was a Hallachic marriage must remember the precise date in Hebrew that the marriage took place. That is a requirement in all capital crime cases. Failing to do that there is no marriage to husband number one. Furthermore, there must exist witnesses vouching as to the complete saintliness of the two Jewish adults who witness the marriage. If even by perchance one of the witnesses violated any Law - ritual, moral, or ethical - even once, he is disqualified. See Aruch Hashulchon Yoreh Dayoh 119:14. Even if one witness is a saint and the other is not, the witness who is not, corrupts the entire set of witnesses. See Choshen Mishpot Chapter 36 interpretation of Tur and Shach. See Pischei Tsuvah Even Hoezer 42:8 and 9 who cites Responsa Noda Beyehudoh Tinyoah #76 who rules that in very extreme circumstances like in our case we rule that all witnesses are corrupted if one witness is invalid. The same applies if relatives were present under the chupoh. Their presence corrupts the set of witnesses who became corrupted by the mere act of being under the chupoh with such relatives. See Tur Choshen Mishpot and Shach Chapter 36:1 Shach 36:3. Even if other witnesses exist who were not in the presence of relatives standing under the Chupoh as suspected by Chasam Soffer Even Hoezer #100, the other witnesses must first be verified as saints and in addition must remember the precise Hebrew date that the marriage occurred. Otherwise their testimony is null and void. If such witnesses fail to appear at a trial, by default, the woman's first marriage is deemed as null and void and she remains in the state of not married. One is innocent unless proven guilty. One is unmarried unless proven as married.

Thus Rav Feinstein concluded that the woman's first marriage, even though allegedly officiated by an Orthodox Rabbi, is null and void. The woman's child is legitimate since it was not proven that his mother was married Hallachically when she was pregnant with him or her.

The mother's testimony that she was married then and therefore the child is illegitimate is not accepted. See Choshen Mishpot 34:25 and Even Hoezer 4:29.

Furthermore, the law that a woman having illicit relations is not permitted to marry the man she had relations with, is no more than Rabbinical. It is derived from the Thirteen Principles that the Rabbis derive many laws. It is not explicitly written in the Torah and such law is not declared explicitly as Divine by the Talmud. According to Rambam in Shroshei Hatorah, Shores 2, such law is deemed Rabbinical. See Ramo Choshon Mishpot 33:2 cites approvingly such opinion. Such is also the ruling of Divrei Chayim Orech Chayim I Responsa #35 end.

Furthermore, the opinion of Rambam Shronshei Mitzvohs Shores 2 is that all Kedushin Kesef marriage where the groom gives the bride a ring is no more than Rabbinical. This opinion is reinforced in Ishus 1:2. Pischei Tzuvoh in Even Hoezer 42:25 cites Rav Akiva Eiger Volume 1 Responsa #94 who approves of such a position taken by Bais Yaakov Responsa #21-5 provided, in addition to the giving of a ring, there exists another factor that renders the marriage as Rabbinical. We cited numerous factors that not only render the issue as Rabbinical, but rendered the entire marriage as null and void.

Therefore, in our case, the marriage of the Plaintiff is null and void. In addition, we performed a 100% kosher wedding with her new husband to whom she is married civilly. This in turn further acts as an additional annulment. See Aruch Hashulchon Even Hoezer 18:2 who considers remarriage to a second man as triggering annulment to a Rabbinically authorized first marriage. In our case, at most, marriage #1 was Rabbinical. See Mishna Hamelech on Rambam Isurei Bioh 15:10 that the marriage to a new man that is 100% kosher will uproot the marriage of a former husband that is burdened by numerous doubts. This in turn is reinforced by identical ruling of Rav Hai Goah cited by Magid Mishna on Rambam Garusin 10:2 and Kesef Mishna Garusin 10:3. See Avodye Yosef Volume 3 Responsa #8 who utilizes this form of annulment.

Consequently the plaintiff's former marriage is completely annulled. She is permitted to remain with her newly wedded husband and her child that she had prior to the granting of a Get by her first husband is one million percent kosher.

In all the cases we rely on minority opinions. In order to free any Agunah, this is permitted when there exists no other way out and the woman would remain shackled for the rest of her life. Even if the issues under discussion are Divine Laws, one can rely on a minority opinion to free the Agunah. See Taz Even Hoezer 17:15, Taz Yoreh Dayoh 293:4. Even Shach Yoreh Dayoh 242 disputes this principle and posits that only in cases of Rabbinical matters do we rely on minority opinions, but not in cases of Divine matters, agrees that if there exists multiple doubts, the Divine Law converts to a Rabbinical Law. See Aruch Hashulchon 110:99. Even the Rashba in Toras Habayit Beis 4 Shaar# 1, who disputes Rambam's claim that whenever one doubt exists all Divine Laws convert to Rabbinical Laws (see Laws Tumoh Mes 9:12 Aruch Hashulchon Yoreh Dayoh 110:89) agrees that once you increase the number of doubts to more than one the Divine Law converts to Rabbinical (Aruch Hashulchon Yoreh Dayoh 110:99). We follow these principles and do not have to ascertain facts from independent sources. See Aruch Hashulchon 110:109, 110:110, 110:111. Even if the doubt regards what the facts are, we can rely on the above principles.

We also can rely on the representations of the Plaintiff. This is reinforced by Shach's writing in his book, Tokfo Kohen, that we can rely on the representation of a Plaintiff when the issue concerns her (or him) and the Plaintiff is in possession. The Plaintiff, in our case, is in possession of her body and has a historical tract of being single - not hallachically married. Therefore she can assert certain facts that the court will accept as accurate. She can also elect to choose those authorities who support her position as far as Jewish Law is concerned

even if those authorities be minority opinions. This position of Shach's writing in Tokfo Kohen is parallel to the position of Taz Even Hoezer 17:15 and Taz Yoreh Dayoh 293:4. This is certainly true when our knowledge that the woman has been married in the first place comes from the woman herself. There exist no third sources that establish this fact thus we rely on the principle of HAPEH SHEOSUR HAPEH SHEHITIR. the mouth who informed us in the first place that she is forbidden to be free since she already is married. Therefore she is not free to marry

another man is believed to state the factual situation that will in reality set her free. Or is believed to state that she already has a Get or is a widow, or had a husband who behaved in a manner that the Bet Din would have forced him to give a Get. Since today the Bet Din is powerless we will annul the marriage. For additional Halachic support for this concept see chapters 15 and 21 in this book-Hatort Agunot. I cite Aruch Hashulchon Even Hoezer 3:5 and Yoreh Dayoh 268:14. Also see Yoreh Dayoh chapter 127 for elaborate discussion of this principle. Also see Nodaeh Beyehudal Mahdura Kama Responsa #38.

We already discussed that even Shach Yoreh Dayoh 293:4 in Nekudaas Hakesef on Taz Yoreh Dayoh 293:4 as well as Shach in Yoreh Dayoh 242 who posit that only regarding Rabbinical Law will we rule like minority opinion. However, when there exist more than one doubt - multiple doubts- the Divine Law converts to a Rabbinical Law. See Aruch Hashulchon Yoreh Dayoh 110:99. Thus even Shach will agree that we can rely on minority opinions. Furthermore, the Plaintiff when she divorced her first husband despised him. She could not stand him and would never be together with him even if he be the only man on this planet. The law, traditionally followed from day one when G-d gave the Torah 3500 years ago, that when a woman alleged that she despises her husband and cannot stand him, that the Rabbinical Court would force the husband to grant the wife a Get. See Yerushalmi Ksubos 7:6 interpretation Pnai Moshe and Korbon Hoedo. Such clause was recorded in all the

Ksubos. See Meiri on Ksubos page 268, that even if the Ksuboh did not contain such a clause, it was constructively read into the Ksuboh that if the wife claims, "I despise my husband," that the Rabbinical Court would force the husband to divorce his wife. This position was reinforced by the Rabbonim Savroyeh and later by the Rishonim Riff and Rambam. See Rambam Ishus 8:14 and commentaries Magid Mishna Hagoas Maimonines. Even those authorities who feared that the marriage institution would suffer if such a policy was adopted as standard will agree that we will force the husband to divorce the wife when the wife has rational reasons why she cannot continue the marital union. Examples:

1. If she cannot have children with this man
2. If the husband has denied her sexual marital rights. See Even Hoezer Chapter 76 end and 154 that these are grounds to force the husband to grant his wife a Get
3. If the husband refuses to support her. See Even Hoezer 70 beginning-grounds to force husband. See Gvuros Anoshim by Shaach .
4. If he beats her. See Even Hoezer 154 and Pesach Gilyoav. See Ramo Responsa (new) #36 that constitute grounds for forcing husband to divorce.

In our case the Plaintiff's first husband denied her children, sexual rights and did not support her. As previously mentioned, the Plaintiff had the right to leave him since he refused to stand up against his mother who was continuously meddling and causing arguments and fights. Therefore the Rabbinical court had the right to force him to divorce her. Since the court is impotent, the marriage is annulled. See Igros Moshe Volume I #79 end and #80, Dvar Eliyahu #48, Ohel Moshe Volume II #123. The wife moved away because the husband could not stand up to his mother's continued interference. The wife was in her right for moving away (Otzer Haposkim 70:12:1,2,3). Since the husband did not cure the situation, his conduct is grounds to coerce him to give a Get. Today Bet Dins are impotent and consequently we will annul the marriage as explained elsewhere (Chelkos Yaakov Volume I #24). See also Rav Yitzchok Elchonen Einyitzchok Volume I #24;41 - that when the court has the right to force a

husband, we do not argue the ruling that a woman would agree to marry any man rather than be a spinster, does not apply to those husbands that the court forces them to divorce their wives. Nowadays, we follow the principle that when a woman argues "I despise my husband" we annul the marriage. We are not afraid that the marriage institution will collapse. See Yabioh Omer Volume 3 Responsa #18. See Tzitz Eliezer Volume 5 Responsa #26. See Ramo Yoreh Dayoh 228:20, Piske Tsivo Ibid 228:15 citing Node Beyehuda Kama Yoreh Dayoh #68 and Tinyonoh #204 that nowadays it is considered the judgement of the leading Sefardic and Ashkenazic Rabbis that it is a graver danger for the community if we do not actively force the husbands to divorce their wives when the woman argues "I despise my husband and will not cohabit with him." Otherwise these women will become prostitutes and will leave the religion. Since the Rabbinical court is impotent to force the husband we will annul the marriage as previously stated.

Consequently, in light of all the arguments advanced, we will accept the version of the Plaintiff with no outside verification. In the final analysis, if she refused to continue to cohabit with her first husband, such feeling is subjective. We would then force him to divorce her regardless if she was wrong objectively. We would follow her subjective feelings regardless of any story that she concocts. If she has to concoct a story, she obviously refuses to remain with him.

This is the biggest proof that she despises him. See Pesach Gilyon Even Hoezer 154:21 citing Ritvoh that even if the husband admits that the reason he gave to stop the giving of a Get is false, nevertheless we note that the thrust had been to stop the Get. So here too, even if the reasons cited by the wife are false, the bottom line is that he refuses to cohabit with him.

She is not a slave that can be forced to cohabit with anyone (Rambam Ishus 14:8).

Consequently, we will annul her marriage to husband #1 based on all the facts and legal arguments advanced. She is free to continue to live with her new husband. Her child is one million percent legitimate.

In addition to all material explained, the Torah will give the child in order to remove him or her for harms way, a godfather who, for Halachic purposes only, will be deemed his father, not his biological father. He will thus be deemed the Halachic father -even if all the arguments previously mentioned - are not held to be sound. The child is thus saved from the stigma of Mamzarut -illegitimacy. See Bais Shmuel Even Hoezer 4:43; Yabiah Omer 7: #6; Minchos Yitzchok Volume 10:126. We therefore are one million percent certain that the child is not a mamzer and is one million percent legitimate.

In order to understand the last building block to establish that the child is not a mamzer-illegitimate, it is necessary to understand certain principles of Hallacha. The concept of mamzer is a Hallachic moral and ethical directive given by G-d. Mortal man can not go beyond its perimeters. Only a child that Hallacha establishes 100% is illegitimate is considered a mamzer (Even Hoezer 4:13 Rambam Laws). If the slightest doubt exists as to the child's illegitimacy, the child is not a mamzer from Divine Law, only Rabbinical Law. This Law, shown in Laws Tuma Mes 9:12 Rambam, generalizes and applies this principle to all Laws of the Torah - Shabbos, Kashrut, Laws of Family Purity, Laws of Marriage and Divorce. Only when the facts and law are 100% clear does a Divine Prohibition exist. Otherwise the prohibition is only Rabbinical. Rashba in Toras Habayis Bais 4 Shaar 1 admits that such above mentioned Law applies to mamzer. He, however, refuses to generalize like the Rambam and apply this principle to other laws of the Torah. See Aruch Hashulchon Yoreh Dayoh 110:89,90.

However, regarding mamzer, everyone agreed that if doubts exist, if the mother could have

had relations (no matter how far fetched) with her first husband (Even Hoezer 4:29, or with a non-Jew (Even Hoezer 4:19 and also Bais Shmuel Even Hoezer 4:43), or became pregnant by artificial insemination, the child is not deemed a mamzer. It is not necessary to prove that the mother in fact in reality did become pregnant from the above three sources mentioned. As long as that possibility exists, it is sufficient to remove the stigma of illegitimacy by Divine Law. Once additional doubts exist as to the authenticity of the marriage as we elaborated in prior pages, the Rabbinical stigma of Mamzer Medarabonen disappears. See Aruch Hashulchon Yoreh Dayoh 110:99. See Bais Or Volume 7 Responsa 11. (Rav Yudelovitz) Igros Moshe Even Hoezer Volume 1-both citations regarding civil marriage only if woman can remarry when no religious Get can be obtained. In both cases there existed multiple doubts. As a result, both Rav Moshe Feinstein and Rav Yudelovitz ruled that there did not exist even a Rabbinical violation. In both cases the issue was - was the woman married. That is a capital violation. Even there, multiple doubts removed all prohibitions - Divine as well as Rabbinical. Certainly in the case at hand, where mamzarus is no more than a Law (ordinary prohibition) not a capital case violation, that multiple doubts remove all stigmas, Divine and Rabbinical. In a classic case, similar to our Plaintiff, recorded by Responsa Rosh LeRuveni #19 and Responsa #31, a woman shared the same house with a man for several years. The entire town assumed they were married. Eventually she got pregnant and gave birth to a son who was circumcised in the local synagogue and the entire town was invited to a party following the Bris. Soon afterwards the lady received an agent carrying a Get from her first husband.

The issues were:

1. was this woman permitted to marry and remain with the second man if she was living with him and got pregnant from him prior to receiving a Get. She is forbidden to continue living with him and certainly not allowed to marry him.
2. If the negative conclusions reached in (1) are true, the son is a mamzer.

Responsa Rosh LeRuveni used the above mentioned doubts to remove the stigma of

mamzarus from the child. As long as it was possible that she could have become pregnant from husband number one, even though it is far fetched as he lived hundreds of miles away (he or she would have had to travel by railroad or horse and buggy), we nevertheless seize upon this contingency and postulate that she got pregnant from husband number one.

Consequently the child is not a mamzer. Even if husband number one was in China and he could have come by magic carpet, using G-d's name to fly, we make such a possibility in order to remove the stigma of illegitimacy. See Even Hoezer 4:14, Bais Shmuel Ibid 4:15. This is the opinion of Behag. Even though such a far fetched possibility of flying by employing G-d's name is ruled as an impossible probability regarding conditional marriage or divorce.

However, to remove stigma from a child, we will employ such reasoning. In addition, she could have gotten pregnant from a non-Jew and she is believed if she asserts that or else we will presume that fact. See Bais Shmuel Even Hoezer 4:43, Igros Moshe 4:17:1.

By default the child is considered legitimate. It is not necessary to prove that the possibilities that render the child legitimate did in fact occur. The burden of proof is on the party who wants to state that the child is illegitimate. He must prove that all the possibilities that render the child legitimate did not occur.

As far as marrying the man she was sharing the house with, the following arguments were used:

In order for a married woman who secludes herself in a house or shares a house with a strange man to become forbidden to her husband, two kosher witnesses must witness the actual sexual penetration. Unless two witnesses testify to this fact, the woman is not forbidden to her husband. Some authorities do not require such proximity, but the man and woman must be in a posture used by a couple engaged in intercourse. The witnesses must testify to this fact. The fact that the entire town was aware that both spent the night together in the same house for years was not sufficient to prove that they were having sex. See Aruch Hashulchon Even Hoezer 33:2 that we do not assume a couple was living together having sex

and consequently married by having sex, when such an act constitutes a sin. Otherwise when a couple share a house together certainly for 30 days or more, such a assumption is made.

Even if both admitted to this fact, they are not believed. No man or woman is believed to incriminate themselves. See Rambam Sanhedrin end of chapter 18:6. See Choshen Mishpot 35:25, Igros Moshe Even Hoezer and Volume 4 Responsa #21. See the following Responsa that insist that witnesses be present at the time of a sexual encounter. Otherwise the woman is not forbidden to her husband:

Ben Ish Chai

Rab Peilim

Even Hoezer Volume 2 Responsa #1

Shoel Umashiv Kama

Rav Shaul Nathanson

Volume 1 Responsa #262 page 101

Node Beyehuda

Responsa #35

See Chidoh in Chayim Shoul

Volume 2 Responsa #48

Yabiah Omer Volume 3 Responsa #7

See also Rambam Isurei Bioh 18:3, 18:23

who requires two witnesses.