See also Even Hoezer 11:1

Rav Akiva Eiger Volume 1 Responsa #99

Responsa Ramo #12

Thus, if the woman is permitted to go back to her husband, she is permitted to marry and remain with the second man with whom she was secluded for years. Thus, Responsa Le Ruveni Rosh in one bold stroke removed all stigmas of bastardness from the child and at the same breath permitted the couple to get married. The same logic would apply to the Plaintiff in our case. A similar ruling was made by Yabioh Omer Volume 7 Responsa #6; Minchos Yitzxhok Volume 10 Responsa #126; Igros Moshe Even Hoezer Volume 3 Responsa #9; Even Hoezer Volume 4 Responsa #23.

The reason the woman is permitted to marry the second man is because since she would not have been forbidden to the husband, she is not forbidden to the second man with whom she is suspected of having an illicit affair(Soteh 27B; Rambam Laws of Soteh 2:12; Even Hoezer 11:1, 178:17). As she is forbidden to the husband, she is forbidden to the paramour. It thus follows, if she is not forbidden to her husband, she is not forbidden to the second man. Both are linked. See Yabioh Omer Book 3 Even Hoezer Book Responsa #6. Yabioh Omer, Minchos Yitzchok and Igros Moshe all dealt with removing the stigma from the child of bastardness.

Regarding being permitted to the new husband each author has a separate line of reasoning to permit the woman to remain with her new husband. The main question however, in each case, is removing the stigma of bastardness from the child. See also Igros Moshe Even Hoezer Volume 4 Responsa #20. From everything that has been said it is sufficiently clear that we have searched and investigated some of the many available remedies to remove the stigma of bastardness from the child.

We have established that there exists a myriad of authorities to remove such a stigma.

Likewise the Plaintiff is permitted to marry and remain with her new husband.

CHAPTER 23

Agunot resulting from missing husbands from The September 11, 2001 terrorist attack on the twin towers and the Pentagon

-GET WRITTEN BY HUSBAND AND E MAILED TO WIFE- IS SUCH A GET VALID?

CIVIL DIVORCE -CAN IT BE USED AS AN ADJUNCT TO ANNUL A MARRIAGE?-

ANY WOMEN WHOSE HUSBANDS DISAPPEARED in the aftermath of the terrorist attack are Agunot. Our Rabbinical Court will deal with them using the resources of the Talmud and all the responsa for the last 2000 years regarding Agunot.

According to the responsa of the Minchos Yitzchok Vol #1 responsa #1 it is mandatory to determine that the husband was physically present at the site where the tragedy possibly resulting in his death occurred.

It is necessary to hear at least one witnesses testify that they saw the husband in the towers shortly before the attack, that he was on a high floor in the towers that escape from there was impossible. That he would have been killed by the impact of the airplane crash, or died from the smoke and fire or crushed from the fall . This analysis would follow the guidelines used by Rav Yitzchok Elchonen Spector writing in Responsa Ein Yitzchok, Rav Moshe Feinstein in Igros Moshe Even Hoezer vol 1 , Responsa Tzitz Eliezer vol 1, Rav Herzog Ohel Yitzchok Vol 1 . We would wait a reasonable period of time determined by the Rabbinical Court of at least one year before permitting the wife to remarry. In that period the husband if he be alive would be given a chance to call , write , e mail and come back. If he did not communicate with the wife and come back and he be still alive , we would annul the marriage based on the loopholes mentioned in my book ,especially those loopholes in chapter 4 and 23 of Hatorot Agunot.

In the reported case that a husband stuck in an upper floor of the twin towers e mailed to his wife farewell and instructed her to go to the rabbi to set her free so she can remarry, it is mandatory to determine the source of the e mail . If it can be scientifically established that the e mail came from the

computer in his office that would be an adjunct to other evidence that he was physically present. However room still exists to suspect that he may have gotten out immediately after sending the e mail and saved himself and then decided to use the terrorist attack as a cover that he is dead and establish another identity for himself without the responsibility and burden of a marriage. The same is true regarding a reported case where the husband e mailed his wife that I hereby divorce you and you are free to another man and can remarry. In that instance there exists another adjunct to free the woman.The fact that the husband in his own handwriting -e mail - divorces his wife. According to those authorities that claim that such a divorce is Biblically valid but Rabbinically defective, this e mail can serve as an additional adjunct to free the woman. Under all the circumstances in this case , weighing the additional possibilities that the husband really is dead -a victim of the terrorist attack, we would recognize the Get e mailed by the husband and remove the Rabbinical violation that the woman has by using the Get written and e mailed by the husband. A Get can be written in any language .See Aruch Hashulchon Even Hoezer 126:4,5; 123:12. Although ab initio the Get should be written by a scribe in Hebrew using the precise formula in vogue, post facto a Get can be written in any language, and if the cardinal elements are present the woman is divorced. The cardinal elements are the name of the husband , the name of the wife, the message that the husband is hereby divorcing the wife, or the divorce will take effect a minute before he dies, and that she is free to any man with or without marriage. See Aruch Hashulchon Even Hoezer 123:7. When the Get is written by the husband post facto , no witnesses are required. The woman after she is given such a Get or the Get is delivered to her- post facto even by e mail- the woman is divorced. Even according to the authorities that she is divorced only Biblically, but not Rabbinically, if she has a child with an other man , everyone agrees that the child is legitimate. Aruch Hashulchon Even Hoezer 120:5; 123:12.Tur Even Hoezer end of chapter 130 and Aruch Hashulchon Even Hoezer 130:55 rules that if she disregards the ruling not to remarry and does remarry she does not have to leave her new husband. Wherever we rule that the child is not a Mamzer4 but the wife is not to remarry; if the wife disregards the admonition and she does remarry, she does not have to leave the new husband. He same is true

when the husband disappears in a body oy water that has no boundaries like the ocean that the wife is not permited to remarry, even if a Rabbi ruledthat she is permitted. However if she disregarded the rulings of allthe other Rabbis and did remarry the child from husband #2 is not a Mamzer and she does not have to leave the new husband.

In the situation that people do not recognize the identity of the Agunah nor know that she ever was married Halachically, such a Get certainly is acceptablle. Would the woman want to lie and state that she never was married she would have been believed. So too we do not need to prove that it in fact was her husband that sent her the Get , but a complete stranger as part of a scheme to set her free. See Nodan Beyehuha Mahdura Kama Responsa #38, cited by Pischie Tsuvah Even Hoezer 120. See Aruch Hashulchon Yoreh Dayoh 269:14; Aruch Hashulchon even Hoezer 17:5, 152:5. See Yoreh Dayoh 127:1, 3 Ramo ibid, Shach ibid 127:28 that a person is believed to attest as to his status even if such testimony contradicts allegations of anyone other than two competent witnesses. See Hatorot Agunot Chapter 15 for a detailed analysis for the laws of evidence with comprehensive citations.

In the contingency that the husband wilfully disappeared using the terrorist attack as a cover, then we would free the wife using the loopholes employed in my book Hatorot Agunot Bnot Yisroel Annulments- Emancipating Jewish Daughters from the Chains of husbands who refuse them a Get - Jewish Divorce in a dead marriage. Based on the 4 parts of the Shulchan Aruch and Responsa Jewish Law and practice.

See chapter 4 and 23 of my book for greater elaboration on this current issue where the husband displays such cruel and deceptive behavior and chains his wife in a dead marriage.

We explored two different concepts in this responsa that I wish to elaborate. The concept of typing a Get on a computer then e mailing the Get to the wife. Delivery of the Get is effected when the Get is electronically transported to the wife's computer even before she opens her e mail. Are these novel ways of writing a Get and delivering the Get by the husband to the wife acceptable ? Obviously in a normal setting , not an emergency as the case at

hand , we will insist that we will follow the time tested methods of writing a Get by a scribe , having two witnesses sign the Get, and having two witnesses witness the giving of the Get by the husband to the wife. However the question here is not ab initio the procedure to follow, but post facto , if the husband typed a Get in English incorporating the cardinal information as mentioned above. Is such a Get post facto kosher? Is the woman free to remarry. If she does remarry and has a child from man #2 is the child legitimate?

Aruch Hashulchon Even Hoezer 125:37 permits post facto the writing of a Get by a printing press. Such a Get will free a woman. Aruch Hashulchon states that there is no difference if the letters are created by pressing a pen against paper ;or else pressing the paper against set type used in printing presses. In both cases the Get is Kosher. The Tzitz Eliezer Volume 21 responsa 42 takes issue with the Aruch Hashulchon faulting such a procedure as lacking the actual writing by the scribe . This is especially true in the case of electric run presses and computers that automatically write. The Aruch Hashulchon himself refuses to authorize the writing of a Sefer Torah -Holy scroll used in the synagogue by a printing press. See Aruch Hashulchon Yoreh Dayoh 271:39. So why should the Get be any different?

However a close reading of Aruch Hashulchon Yoreh Dayoh 271:39 reveals that there exists no contradiction whatsoever. Aruch Hashulchon in Yoreh Dayoh 271:39 agrees that if the Sefer Torah holy scroll would be printed by hand , not an automatic printing press that such a scroll would be Kosher . He even cites the authorities that sanction such printing and agrees with them . However Aruch Hashulchon differentiates if the Sefer Torah -Holy Scroll is printed in an automatic press then there exists a deficiency that the scroll must be written by an observant Jewish adult who has in mind to write the Holy Scroll in accordance with Jewish Law , especially the names of G-d. This is lacking in automated printing. The same is true if a Get would be printed by hand in a publishing press the Get is Kosher . If an automatic press would publish the

Get , the first page of the Get is Kosher . Since a Get has no more than one page the Get is kosher thus the Aruch Hashulchon in Even Hiezer 125:37 permits

the printing of a Get because the Get has no more than one page . Thus when the individual who typed the Get presses the icon to begin the printing operation , he releases the electricity to begin the printing process. That is considered Koach Gavreh- the printing of the Get comes as a direct result of a man's effort, it is not performed automatic. This is similar to the law that an animal that is prepared for Kosher meat must be slaughtered by an observant Jewish adult, not a machine that runs automatically. If a machine in the shape of a wheel has a knife at one end and is powered by water and a board is preventing the water from powering the machine and a Jewish adult removes the board, then the first animal slaughtered is kosher. The reason is because the act of removing the board counts as though the man himself slaughtered the animal . It was as a result of his act that the animal is slaughtered . But only the first rotation counts as his act, after the first rotation , the machine is deemed as operating automatically. The fact that it continues to operate because of his initial removal of the board does not carry weight. See Yoreh Dayoh 7:3. So here too in the case of writing the Get and the printer is started by a Jewish adult. This counts as though the printing operation is done by the Jewish adult. as long as no more than one page is printed - the minimum that can be printed . Then it is deemed that a man did the printing, not an automatic machine. Would the printing of the Sefer Torah be controlled and only one page would be printed at a time and then the printer would have shut down requiring an adult to restart it, the Sefer Torah would have been Kosher too. The reason is because we are back to a hand run printing press that is kosher according to many authorities: Bais Shmuel Even Hoezer 125:3; Pri Chodosh Even Hoezer 125:4; Taz Yoreh Dayoh 171:8 says that abinitio a Get should not be printed in a printing press. Thus post facto he too agrees that it is kosher. Also see Mogen Avrohom Orech Chaim 32:57 who agrees that a printed Get is kosher . However all these authorities discuss hand run presses, not automatic presses.

In addition to the above discussion the essence of what the Aruch Hashulchon discusses in Even Hoezer 125:37 is that there may not exist an other alternative than a printed Get. Aruch Hashulchon uses his loophole in order to extract Jewish daughters from the tragedy of being an Agunah. He permits using a printed Get because there may not exist any other way. Otherwise, they will remain Agunot -See

Aruch Hashulchon 126:4 where he explicitly states this fact for using another loophole of having the scribe use script in writing the Get , rather than the letters employed in writing a Sefer Torah other wise the woman would remain an Agunah, there is no other alternative. The same reasoning applies when Aruch Hashulchon permits using a printed Get . The same reasoning applies to print a Get on a Computer that post facto it is kosher where there exists no other alternative.

Likewise delivery of a Get by e mail is post facto kosher . The Get has been transported to her property and possession -her computer located in her house or the house that she shares with her husband. Legally in accordance with civil law that governs in the USA she owns at least 50% in the case of death of the husband or divorce from the husband , even if he supplies 100% of the money. Thus the Get delivered to her by e mail came into her possession. The woman took possession the instant the e mail is stored electronically in her computer even before she printed the e mail. The woman is divorced even if she did not pick up the paper and walk with it as is customary when the woman is given the Get at the Rabbinical Court. There she is not in her home, she is at the office of the Court. She takes possession only by lifting the Get and walking with it several feet . However when a Get is delivered by her husband to her house , she gains possession immediately without having to pick it up and walking with it several feet. Thus her computer in her home in effect takes possession of the Get for her. Even if the computer belonged to the husband , we will definitely assume that the husband will gift the computer to her in order to enable her to take possession of the Get. He will agree to shape all the facts to be in accordance with the Jewish laws in order that his wife not remain an Agunah. If it is necessary to gift the computer and the house to his wife , he will do it. See Aruch Hashulchon Even Hoezer 138:3;and 139:52 who sanctions this concept and considers such delivery of the Get as being in accordance with Halacha-Jewish Law. The same logic applies if the Get is delivered by e-mail, fax, federal express or by ordinary mail to her home where the woman agrees to accept the Get or it is 100% for her benefit. Then her apartment or house becomes her agent to accept the Get for her. This is in line with the principles enunciated by Aruch Hashulchon Even Hoezer 138:3 and 139:52. Post facto such delivery is kosher. The Get is valid. If she remarries she does not have to leave her new husband and any children from the

new husband are legitimate. Ab initio , of course one must not depart one hair from any law or custom practiced by Jews. Delivery of a Get has to be made by the husband handing the Get to the wife. Delivery of a Get by e mail is no worse then mailing a Get to an agent to deliver to the wife. See Seder Haget Mailing a Get- Aruch Hashulchon Even Hoezer after 154 . Obviously in the case of the Aruch Hashulchon e mail or fax did not exist yet There the original Get was sent to an agent of the husband to deliver to the wife. In our case an emergency exists and the husband employs modern technology to lengthen his hand and reach that he personally can deliver the Get to his wife without using the services of an agent. We will use the Talmudic law that the wife can be divorced against her will and no permission need be granted by the wife since this procedure is exclusively for her benefit. True , the wife can refuse to accept the Get and remain an Agunah, claiming that she is protected by the edict of Rabenu Gershom Meor Hagolo that forbid forcing a wife to accept a Get. In such a case , she remains an Agunah . But I doubt that a normal woman would act that way which is against the spirit and letter of the Torah.

Furthermore, in the case of a Get sent by e mail the woman is divorced the instant the e mail arrives, even if it is never printed in the form of a hard copy. Thus the entire issue if printing the Get by computer is counted as the man wrote it himself or it is automatic - lacking human effort and thus null and void is irrelevant. The Get written by the husband is transported electronically to the wife's computer or the computer that is gifted by the husband to the wife. As such not only is the Get given her but also the computer where the Get appears. The wife thus has the Get as written by the husband. This is better than the case where a Get is written on the printing press . The printing press is not gifted to the wife. Here the computer with everything written in it is either gifted to the wife or belonged to her originally. Thus the wife is divorced either by the written Get or by the Get appearing on the screen . A Get does not have to be written on paper with ink. It could be carved on stone or engraved on metal . See Aruch Hashulchon Even Hoezer 125:38 ; and Taz Yoreh Dayoh 271:8 . Thus it is evident that any form of writing is kosher post facto. Thus in our case we can rely in such dire circumstances that the e mail received by the Agunah is sufficient to free her from her chains.

Permitting e mail is supported by another ruling of Rav Feinstein Igros Moshe Orech Chaim volume

2 responsa # 108 . Rav Feinstein rules that one can fulfill the obligation of hearing the reading of the Megila on Purim by listening to the reading by microphone. In Volumue 4 Orech Chaim Responsa # 126 he permits listening to the Megilah by short circuit radio -that the reading is heard in a different room , not in the hall where it is being read. The same analysis would apply to hearing the reading by radio or television or by telephone. Rav Feinstein answers his critics that the sound heard is a newly created voice electronically and is not the real voice of the reader of the Megilah. Rav Feinstein dismisses such a theory and claims that the fact that the voice of the reader undergoes electronic changes does not effect the Halachic validity. At the end of the day -for all intents and purposes this is still the reader's voice . See Aruch Hashulchon Even Hoezer 140:18 who sanctions using telegraph messages to verify if the wife agrees to accept the Get . Aruch Hashulchon Even Hoezer also sanctions using telegraph from the witnesses to verify that the husband is of sound mind the instant that a Get is delivered to the agent of the wife or to an agent who accepts the Get for the benefit of the wife. Telephone, radio, television fax , e-mail were not invented or in use in Aruch Hashulchon's lifetime. However Responsa Bais Ovi book 1 and 2 sanctions getting permission by telephone from the husband to write a Get, have it signed by two witnesses and delivered to the wife by an agent. All this can be done over the telephone. The same logic would apply to using fax, e-mail, radio, and television . The same logic would also apply to have a Rabbinical court where the members are not all in one room -they are in different cities- adjudicate cases of freeing Agunot using telephone short circuit radio or television to communicate with each other and with the litigants who also are in not in the same city as any member of the court. Technically we do not need more than one Rabbi adjudicate Agunah matters.-to free the Agunah to remarry. See Chelkos Mecokek Even Hoezer 17:78. Thus even if we would posit that using the telephone, closed circuit radio, and television does not constitute joining all these men to form a court of three Rabbis, nevertheless one Rabbi certainly exists. All you need to adjudicate Agunah matters to free an Agunah is one Rabbi.

As mentioned we can receive permission from the husband to authorize the writing , signing by two witnesses and the appointment of the agent to deliver the Get to the wife. The husband must be

instructed to name a particular individual to write the Get and name two specific individuals to sign the Get and name who is is to be his agent to hand the Get to the wife. See Aruch Hashulchon Even Hoezer 120:56. Certainly if the husband is taped when he authorizes the writing, signing and handing over to the wife the Get, there exists no chance that he will deny that he gave permission. If he withdraws his authorization to have the agent hand tghe Get to the wife and states this before a witness, such withdrawal triggers an annulment as we have explained elsewhere in these volumes-Hatorot Agunot. Technically even if we do not record the husbands authorization that we can play back to individuals who can recognize if this is the the voice of the husband or not, we still will accept that this is the husband who authorized the writing, signing and giving of the Get. This is true where we have no independent knowledge that this woman was ever married other than what she represented herself, See Aruch Hashulchon Even Hoezer 3:5 , 7:9 152:5; Nodeh Beyehudah Mahdura Kama chapter 38; Pischii Tsuva Even Hoezer chapter 120 end that even though we do not have witnesses that can identify that the two litigants that come before the Rabbinical Court are in fact the husband and wife , we will rely on their say so when they come from a different city and no one knows that they ever were married, other than what they represent themselves to be. See chapter 15 and 21for greater elaboration.

So too I reason , the fact that the letters written by the husband on the computer underwent electronic changes by being transmitted by e mail , does not effect the validity that they are his letters. A Get can be written in any language . Writing a Get in electronic language that then is converted into script is the same as water having three forms -gas, liquid and solid. Once water is created by the husband in any form , the fact that it converts to a different form does not diminish the creation of the husband. The same is true with the Get written in electronic symbols. The fact that it converted to script is an other form of the same writing made by the husband. As such a valid Get exists. Thus, the Get written by the husband is Biblically valid. The additional questions raised that he did actually die in the

terrorist attack, remove the Rabbinical objection that exists when the husband writes the Get himself, rather than a scribe. As such no witnesses are required. The Agunah is free to get married after the time frame set by the Rabbinical Court. The one year time frame is arbitrary. A shorter time frame can be set , if the Rabbinical Court is satisfied that there exists no chance that a normal caring husband would stay away if he really be alive without contacting his family.

Biblically the woman is free to get married immediately , providing we do not have any other information that would lead us to believe that he was not at all present at the twin towers or the Pentagon. We will give the husband the benefit of the doubt that would he have been alive, he would have notified his family and returned. We do not have to be paranoid and suspect that the husband suddenly exploited the tragedy to escape his family . This is true where the relationship with his wife is normal -there does not exist fighting and talk of divorce,. They do not hate each other. See Horav Hamagid Laws of Divorce 9:11. Horav Hamagid Issurei Bioh 20:5 -everyone is presumed to be innocent . The burden of proof is on the one challenging this assumption . Thus by default we will assume that the husband is dead , otherwise he would have communicated with his wife and family and returned.

The whole discussion of post facto accepting the Get is only as an additional adjunct since we are dealing with a very cardinal issue of permitting a married woman to marry another man.

According to Aruch Hashulchon Even Hoezer 4:22 , 4:23 , 4:34 when other factors and variables exist , we will give the husband or the wife the benefit of the doubt that in this case the husband is dead. The Agunah would not even have a Rabbinical prohibition in view of all the other additional variables in this case . We will permit the Agunah to remarry .

It is obvious that in those cases that the couple were separated or civilly divorced and there was no Get -and the above assumptions do not apply- that we will annul the marriage based on all my writings in my books Hatorot Agunot.

Going back to the case of the husband who writes his own Get in English. What happens if someone else wrote the Get , but the husband signed the Get , is such a Get valid at least Biblically? I want to state

that such a Get is valid. I am basing myself on Aruch Hashulchon Choshen Mishpot 69:4 where a note drafted by a lender without any witnesses is valid if either written by the lender or written by someone else and signed by the lender. Also see Otzer Haposkim on Even Hoezer 26:1 - MinchosYechiel Book 3 Responsa # 60 that cite authorities that a marriage contract -without any witnesses being present- prepared in the writing of the groom or written by someone else but signed by the groom -without any witnesses being present creates a possible doubtful Halachic marriage. See Ramo Even Hoezer 32:4; Bais Shmuel Ibid 32:9 Chelkos Mechokek Ibid 32:8; and Hamakneh Ibid. The Minchos Yechiel also rules that a civil marriage where the groom signs the marriage contract is considered a doubtful Halachic marriage requiring a Get to dissolve the marriage. - See also Machne Efraiyim Laws of Agency that considers the agency of a non Jewish agent who delivered a marriage contract to the bride as valid if he is paid for his work . So the non Jewish Civil Court clerk can validate the marriage contract that he draws up and then is signed by the husband. The couple have a possible - doubtful Halachic marriage that would require a Get to dissolve the Halachic marriage. Even if the clerk of the court never gave the bride the marriage contract , and the contract remained with the offices of the court the possible validity of the marriage remains the same. . The reason is because we will assume that the court takes possession of the document in proxy for the benefit of the bride since it is for her benefit. They are ZOCHE for her.

So here too in the case of divorce in those cases where the husband refuses to give a Get , but sues for civil divorce, and signs all the papers that in effect divorces his wife- even though they are prepared by the clerk of the court. Such papers post facto Biblically constitute a Get. The reason I am applying the precedent of the Minchos Yechiel to have a civil divorce initiated by the husband create a semblance of a Halchic Get is because the entire concept of a marriage contract written by the husband being Halachically valid -without the benefit of having two competent Halachic witnesses present derives from the same concept when the husband writes a Get himself that post facto is possibly Halachically valid and does not require any witnesses. Thus the additional derivatives of the marriage contract that is written by someone else -Jewish or not - that is signed by the husband that is discussed as being

possibly Halachically binding can equally apply to a civil divorce .The Rabbinical Court can use this civil divorce as an adjunct, I repeat only as an adjunct , in addition to other grounds that I have written in all my books Hatotot Agunot to annul the marriage. The Rashba in Yevomos and Gitten stipulates that any time the husband is forced to give a Get that is in reality no more than an annulment, some semblance of a Get must exist. Without some semblance of a Get there can never be any annulments. Thus the civil divorce initiated by the husband represents a semblance of a Get. This together with all the other grounds we use in our annulments as detailed in all my books Hatorot Agunot and tapes can set free Agunot where the husband although he initiated the civil divorce refuses to give a Get. See Aruch Hashulchon EvenHoezer 32:5,6,7 ;130:55-60;Bais Shmuel Even Hoezer 32:9 ; 130:31;Ramo Even Hoezer 32:4; Shulchan Aruch Even Hoezer 133:1 ; Aruch Hashulchon Even Hoezer 133:1-9.

Of course we are using those authorities who recognize a civil marriage as being Halchically binding and we are extending the law to cover civil divorces as well. This is the practical application and use that can benefit Agunot since the husband suing for divorce and refusing to give a Get is very common. Now we have a solution to solve this problem. Of course if the civil court is willing to jail the husband until he agrees to give a standard Get, that must be done, and not rely on any annulments. All the grounds for my annulments written in all my books are to be used only if there exists no alternative whatsoever and the woman will remain chained all her life. Otherwise G-d forbid to depart one hair from conventional practice. I agree with all my critics. We part company only where there exists no other choice.

I say we can free the Agunah . They say she should remain chained to eternity. I stake my reputation and my portion in the hereafter that my interpretation as sanctioned by our Rabbinical court is the accurate one. I and the members of our Rabbinical court are willing to defy all the pressures of our critics because we are convinced that our knowledge of Halacha regarding annulments is one million percent accurate. As I mentioned many times and Rav Klotzkin has written in the prologue , I have mastered and observe the four parts of the Shulchan Aruch. Only an individual who has mastered and observes the four parts of the Shulchan Aruch has the power given by the Torah to annul marriages. See

introduction to Hatorot Agunot and chapter 3. Which ones of my critics can match my credentials?

Chapter 24

Mother Claims that Son is Mamzer-She Never agreed to Receive Get Given by First husband

All facts have been changed in order to protect the identity of the litigants

Facts The mother claims that she refused to come to the Rabbinical Court to receive A Get from husband #1 . She then married civilly another man and gave birth to a son .If her version of the facts are accepted and she had a Halachic marriage with man #1 , the son is a Mamzer, forbidden ever to marry a Jewish girl . The stigma would exist for eternity until the coming of the Prophet Eliyohu at the time of the coming of the Messiah.

Responsa

The mother's version of the facts are never accepted if the end result is to stigmatize the Child as a Mamzer -illegitimate. No one is believed to incriminate themselves . Ain Adam Masim Atzmo Rasha

See Choshen Moshpot 34: 25

For the woman to allege that she refused to accept a Get and lived with another man and committed

adultery with the resulting stigma to her children to eternity of bastardness- -when all she had to do is the simple procedure of accepting the Get-is incomprehensible. Either she lied and is bragging that she defied all religious authority , but in reality she did accept the Get. Or else she really did not accept the Get, but the Get was in reality given without her consent . Bet Din has the power to accept the Get in proxy for her since they are not only saving her from the sin of adultery, but preventing the debacle of illegitimacy to any future offspring that she might have with other men. In that manner they are acting to protect not only any future offspring she might have, but also other Jews who would marry such future offspring,. See Igros Moshe Even Hoezer. See Otzer Haposkim Even Hoezer chapter 1 Volume 1 for an encyclopedia of authorities who sanction the Rabbinical Court to accept a Get for the wife when she refuses to accept the Get .

This is especially true when she claims that she does not believe in the entire concept of Gitten-Jewish Divorces.

Now if the Rabbinical Court accepted the Get before she was pregnant with her son, then there is no problem at all. When she got pregnant, she was already divorced. If the Court accepted the Get after she was already pregnant , the very acceptance of the court , in effect, is an annulment. See Minchos Yitzchok Volume 10 Responsa 126 from Rav Yitzchok Weiss Dayan of Manchester UK ,who later became the head of the Rabbinical Court in the Haredi community in Jerusalem, Israel. Rav Weiss rules that a person who is not religious and denies the validity of Gitten is deemed as one not Jewish. As such no marriage is binding Biblically with such a person, man or woman. At most marriage with such a person is Rabbinical. When such a person gives a Get or receives the Get if she be the non believing party- the giving of the Get or the acceptance of the Get in effect annuls the marriage ab initio. Thus even if this woman would have been pregnant with her son, the acceptance of the Get by the Rabbinical Court would have caused her to be deemed never married. As such , she got pregnant when she was single with absolutely no stigma to the

child . See chapter 22 and 23 for greater elaboration of this concept and for all the citations.

If the court did not accept the Get for her and the Get was written , signed and remained with the

Court to be given her when she changes her mind and agrees to accept it, the child , nevertheless, is saved from the stigma of Manzarot- illegitimacy . See Igros Moshe Even Hoezer Vol 4 responsa #20. Rav Feinstein ruled in the case of a woman who married civilly husband #2 , without the benefit of a Get- Jewish Divorce that the child from man # 2 was legitimate. Rav Moshe Feinstein insisted that two competent witnesses who supposedly should have been present in her marriage to man #1 testify before the Rabbinical Court and relate the precise date and place that the marriage to man #1 occurred. Failing the testimony of two reliable witnesses who must never have violated any moral , ethical or ritual law of the entire Torah, even advertently there exists post facto no marriage. In effect unless the witnesses are saints post facto there exists no marriage, the couple never had a Halachic marriage . Never mind that the couple held themselves out as married. See chapter 13 The Agunah Rabbi is Right. where I elaborate as to the citations for this concept. True we do not go around applying such a standard to uproot normal marriages, but where we have no other alternative we will use this principle to free a woman from the chains of being an Agunah and a child from the stigma of being a Mamzer- illegitimate.

Consequently, the son in our case is one million percent kosher and is permitted to marry any Jewish girl. It must be remembered that in all instances as long as an option exists that can result that the child is legitimate, the burden of proof is up to those individuals who question the legitimacy of the child to prove that these options never occurred. By default the child is one million per cent legitimate. See Aruch Hashulchon Even Hoezer 4:22, 4:23. See Magid Mishna on Rambam Isurei Bioh 20:5 A person is presumed innocent until proven guilty. See my book Hatort Agunot Chapter 2 that discusses Mamzarut the various concepts relating to illegitimacy.

Chapter 25

All facts have been changed to protect the identity of the parties

Married Woman, Husband Missing 40 Years

Eye Witness Saw Him Briefly a. Either husband is dead or b. We annul the marriage

Question:

A woman got married 40 years ago. She moved, together with her husband, to another country thousands of miles away. She lived there several years and had a number of children. Her marriage was marked by fights, arguments, verbal abuse on the part of her husband to her.

One day her husband informed her that he was going on a business trip. He left. He never returned. He never contacted her or the children he had with her nor any member of his family for the last 40 years. The lady did everything in her power to discover the whereabouts of her husband, but to no avail.

After a while, she returned to her home and family in the native country where she lived before getting married. She met another man who courted her for many years and then got married civilly and with a Reform ceremony since the Orthodox Rabbinate considered her as a married woman. They refused to declare her husband as dead or annul her marriage. She did not have any children with man #2.

What is the status of this woman? Is she permitted to remain with her husband? If she would have had children with him, would they be mamzarim - illegitimate?

Response:

Circumstantial evidence dictates that the husband is dead. Would he be alive, he would have contacted his former wife. Even if he hates her guts, he would have contacted his children or his family to find out about his children. See Igros Moshe Even Hoezer Volume 1 and 4 , Chasam Soffer, Nodeh Beyehuda, Ein Yitzchok, Ohel Yitzchok # TsuvohsTzitz Eliezer and Mashiv Milchomo- Rav Gorin. In our case, there was no contact of any family member for the last 40 years. The lady informed me that a certain man informed her that he saw her first husband several years ago.

This fact does not change our decision that the husband is dead. We do not accept the testimony of this man. In order to establish that the man is still alive and she is a married woman, forbidden to have sex with another man at the pain of a capital offense, you must have two witnesses. These two witnesses must testify in front of all the concerned parties in a Rabbinical Court. Such was not the case here. See Even Hoezer 11:4, Choshen Mishpat 28:15, Rav Akiva Eiger Volume 1 #99. The Rabbis believed the testimony of a single witness

only to free the woman, not to imprison her. See Rambam Gerushin 13:28,29. Furthermore, circumstantial evidence contradicts the testimony of this eye witness. Would the husband be alive and not have made contact with his former wife and his children and his family? Why didn't he get the phone and address of his former wife and his children, and his other family - not his wife and children? No one was contacted. It is possible this eye witness concocted the story or mistook this man as a look alike, but in reality he was not the husband. Assuming that it was the husband, such a Rasha - terrible human being- who abandons his wife for such a long time and did not honor his obligation to his wife of conjugal rights and support of food, clothes, and a home, can be forced by the Rabbinical Court to either honor his obligation or divorce his wife. See Rambam Ishus 12:5, 13:11, Even Hoezer 70. See Pischei Tzuvoh who cites Responsa Chasam Soffer 130 that if a husband does not give any support, the court will flog him until he divorces his wife. So too, if he does not give her conjugal rights, the wife will argue, "my husband is disgusting to me," and the Court will beat him until he divorces her. See Rambam Shos 14:8, Garushin 2:20, Ramo Yoreh Dayoh 228:20, Tzitz Eliezer Voulume 5 #26, Yabiah Omer Volume 3 #18, Responsa Ramo Chudoshes #36. Today we can't beat husbands. Civil law does not permit it. So, we annul marriages. See Igros Moshe Volume 1 Even Hoezer #79, #80, Dvar Eliyahu #48, Ohel Moshe Volume 2 #123.

The conclusion is either the husband was dead before she had any sexual liaisons with another man or else we would have to annul the marriage if he was alive. Furthermore, the wife had sexual liaison with another man and therefore is prohibited to husband #1. We will force him, by beating him, to divorce his wife. See Rabbenu Yerucham as cited in Otzer Haposkim Even Hoezer 11:1. Even Rambam would agree. Rambam 24:18 stipulates that in order to force the husband to divorce his wife whom he claims had sex with another man, there must be two eyewitnesses who saw the sexual act. Otherwise we do not force the husband. Circumstantial evidence dictates that she had sex. (Rambam Ishos 24:18 Even

Hoezer 115:6, 178:9 Ramo Pischei Tsuvah 178:19, Rav Akiva Eiger #100, like Bais Meir)

Such circumstantial evidence is sufficient to satisfy the requirements of the Rambam.

We would then force the husband to divorce her.

Even if the Rambam's requirements are not satisfied, we rule that circumstantial evidence suffice to force the husband to divorce his wife. Since the husband is missing and we can't force him, we will annul the marriage. See Igros Moshe Volume 1 Even Hoezer #79. See Pischei Tsuvoh 179: from Responsa Nodei Beyehudah Volume 1 #54.

Thus, it is 100% certain that the woman is permitted to remain with her present husband. Would she have had children with him, such children would not have been Mamzarim. They would be legitimate. Either the husband was dead before her sexual liaison with man #2 or the Rabbinical Court would have annulled the marriage #1 retroactively. She never was married. Consequently, she was not a married woman when she had a sexual liaison with man #2. Any children from man #2 would, consequently, not be Mamzarim. The children would be legitimate.

Chapter 26

Mamzarus

Question:

Factual Situation

A woman living in North America was married before World War II in Poland and had one son. Her husband was taken by the nazis and deported to a concentration camp. After the war,

hearing nothing about her husband's fate at the hands of the Nazis, she assumed that he was killed by the Nazis and she remarried. She gave birth to another son. Her first son from husband #1 joined her after the war and lived with her. Then he moved to Israel.

About 40 years after husband #1 disappeared, the woman received a phone call from a man who identified himself as her husband #1. The phone conversation was interrupted and conducted by the son born from husband #2. The son told the man, who identified himself as husband #1, not to call again. It is not clear if the woman did or did not speak to this man and for how long. However, a while later she noticed a man passing by her husband's shoe repair shop who resembled her husband #1.

A while later, a man identifying himself as husband #1 called by telephone the first son, presently in Israel. The son refused to have anything to do with him. He told him that if he really was his father, where was he for the past 40 years? Didn't he care all these years to know what happened to his son? The man called many times and begged this son in Israel to have some relationship with him. He argued that before he dies he must have closure. It is not know if there was any meetings between this man and the son in Israel.

Analysis:

As the facts are related, it is not clear if the wife ever spoke or for how long she spoke to the man who identified himself as husband #1. If the son from husband #2 spoke to him, certainly he dad no way of knowing who this caller really was. He obviously never knew husband #1. Even if the wife spoke to him briefly, it is very doubtful if, after 40 years, she could positively identify the voice that phoned her as being the voice of husband #1. People's features change and also their voices over the passage of so many years. See Bavali Yevomos 88A; Bava Metziah Bavali 39B Ksubos 27B. See Yerushalmi Yevomos.

See Even Hoezer Part I #65. See Otzer Haposkim 280:6. See Clhoshon Mishpat. See Aruch Hashulchon Choshen Mishpot 280:7. The Talmud cites a case of a man who disappeared and the Rabbis adjudicated his case that he was dead. They granted the woman permission to remarry. Years later a man identified himself as husband #1. The man identifying himself as husband #1 had many of the features of the missing husband. Nevertheless, the Rabbis refused to acknowledge the resemblance and adamantly maintained their position that the newcomer was an impostor.

It is important to understand the logic of the Rabbis' refusal to accept the story of the man. They were not playing games and making believe that they do not recognize him. The Rabbis adhered to the Talmudic principle that the status of a woman's marital status can not be adjudicated unless two competent male witnesses testify in a Rabbinical Court in the presence of all involved parties. Here the woman, an Agunah for a period of time, was released from her chains by the Rabbis. She was free to get married, and she did get married. Suddenly, a monkey wrench is thrown in when a man identifying himself as husband #1 comes on the scene. His very appearance would destroy a number of lives and cause untold tragedy. It would wreck her 2nd marriage - husband #2 would be forced to divorce her. See Even Hoezer Chapter 17. Any children born from husband #2 would be mamzarim.

Would the Rabbis have established beyond a shadow of a doubt that this man was really husband #1, then the full impact of the law as outlined above would take its toll. However, the position of Rambam in Laws of Isurei Tomoh Mes 9:12 is that any prohibitioon in the Torah is forbidden by Divine Law only if we are 100% sure that it is prohibited. Anything less than 100% certainty renders the prohibition as being only Rabbinically prohibited not Divinely forbidden. This position is espoused by many other Rishonim of the status of the Rambam. This position is adhered to by many later decisions.

See Aruch Hashulchon Yoreh Dayoh 110: Even the Rashbah, who disputes this position of the Rambam, agrees that once the number of doubts are increased concerning the case that there does not even exist a Rabbinical prohibition either. See Aruch Hashulchon Yoreh Dayoh 110: See Magid Mishne on Rambam Laws of Shechita Chapter 5:2. Consequently, the Rabbis in the Talmud Yevomosk Bavali Chapter 10 and Yerushalmi Chapter 10 Yevomos, who refused to acknowledge the man identifying himself as husband #1, did so because they did not have overwhelming proof that this man was 100% husband #1. Anything less than 100% proof that he in fact was husband #1, means that the test of this woman being considered still married to man #1 does not exist. The Rambam explicitly states in Laws of Tumee Mes Chapter 9:12 that all prohibitions of the Torah only apply if one is 100% certain that they are prohibited. Anything less than 100% renders them as being prohibited only by Rabbinical Law. Once other doubts exist, there does not even exist a Rabbinical prohibition either.

It is the collective judgement of Rabbinical authorities that anyone captured by the Nazis was killed. See Mashiv Milchomo Volume 3 pages 12-235. See Ohel Yitzchok Volume 2 #1,39,54,63. See Igros Moshe Even Hoezer Volume 4 #58. See Tzitz Eliezer Volume 3 #25. The chances of escaping the Nazis was almost nonexistent. Any survivors appeared soon after the war. Anyone not appearing for many years following the end of the war could be presumed dead. With the means of communications available today, it is next to impossible not to be able to identify and find relatives. The central agencies available enable survivors to locate loved ones. Telephone, telegraph, radio, television, advertising in newspapers in cities all over the world, relief agencies, the State of Israel maintains a tracing agency, Jewish organizations maintain tracing agencies are forms of communication that could have been employed to search for missing relatives.

The fact that these means were not employed for a period of 40 years by the husband in our case is indicative that the real husband #1perished at the hands of the Nazis. The man who identified himself as husband #1 is really an impostor who gained certain information about the family and wished to exploit this information for sadistic purposes to wreck the marriage of this woman and cause her children to be Mamzarim, or else to use this information for financial gain. He could stipulate that he wants a great sum of money in order to free the woman. In order to annul the marriage and render her subsequent marriage valid and subsequent son legitimate, the man can insist that he be paid a great sum of money. Prices have ranged from $100,000 to Five million dollars. This form of extortion could have been the motivating rationale of such an impostor. Even if he really was not an impostor, such may very well have been his motivation. True, in this instance, no monetary demands were made. All contacts were severed after one phone call with the woman.

The following contingencies exist:

1. The man is an impostor whatever his motivation.
2. After 40 years it is impossible to positively identify a man over the telephone.
3. As such, this phone call fails the test of 100% certainty required in order to establish that this is the man she married.
4. Even if we establish that this is 100% the man, how do we know that there ever existed a valid Hallachic marriage?
5. In order to establish that this woman was married Hallachically, it is mandatory that two competent witnesses appear before a Rabbinical Court and testify that a valid Hallachic marriage occurred. See Igros Moshe Even Hoezer Volume 4 #20.
6. Even if the witnesses appear, they must identify the exact day, hour, and place where the Hallachic marriage occurred. See Yabiah Omer Volume 3 #8. See Bais Shmuel Even Hoezer

17:63. Failure to meet the above requirements means that there is no Hallachic marriage.

7. The woman need not prove that her marriage ceased, that her husband divorced her or is dead. Witnesses must prove that she was married in the first place. Otherwise, no Hallachic marriage exists. If the witnesses to the marriage are missing and do not appear before the Rabbinical Court, there does not exist witnesses and ipso facto there does not exist a marriage.

7. Furthermore, even if there are witnesses who testify before the Rabbinical Court knowing the precise date, time, and place of the wedding, witnesses must testify that no relatives stood under the Chupah. For if relatives stand under the Chupah, they invalidate and corrupt all the competent witnesses. This is true unless all other people in addition to the competent witnesses are explicitly excluded. See Ritvoh on Kedushin 43A; Gitin 18B cited boy Ohel Yitzchok Voulume 2 #19 by Rav Yitzchok Herzog. See also Shach on Choshen Mishpat 36:

8. Relatives stand under the Chupah in practically all marriages. Relatives are not explicitly excluded. Thus 99% of all marriages fail this test.

9. When it comes to freeing an Agunah, we will use all these theories to invalidate the marriage and legitimize her children from man #2.

10. Furthermore, we will rule that any marriage consumated with a ring is no more than having Rabbinical validation, not Divine.

11. Furthermore, any man who abandons his wife and son for 40 years is sadistic and beyond name calling. Such a man had this character trait all along, even before he was married. Consequently, the marriage is annulled on the ground that no woman would marry such a sadistic man-Mekach Tout.

12. I am enclosing five chapters of my book, Hatorat Agunot BnosYisroel, emancipating Agunot, Jewish Daughters. These chapters will show, at length, the

arguments and principles our Rabbinical Court used in freeing over 500 women.

13. Thus, in our case logic dictates that husband #1 perished in the holocaust. This man, who identified himself as husband #1, is an imposter. We do not need to prove that he is an impostor. The burden of proof lies on this man to prove his identity. As long as that proof was not made in a Rabbinical Court, the woman remains in her status of being unmarried.

14. Likewise, as long as proof is not brought in a Rabbinical Court by two witnesses who testify that a valid Halachic marriage occurred, identifying the day, time and place of the Halachic marriage, the woman remains unmarried.

15. Consequently, her marriage to man #2 is valid. Ay children from man #2 are legitimate.

16. Consequently, the man who is asking the question is legitimate. His children to the end of time are legitimate.

Note: Husband #2 died so there exists no question if the woman can remain with him.

CHAPTER 27

HUSBAND MISSING 10 YEARS

Civil DIVORCE - NO GET

REMARRIED - PREGNANT FROM 2nd MAN

All facts have been changed to protect the identity of the litigants

Statement of facts by wife!

We got married several years ago. I got pregnant and gave birth to a boy. A short while afterwards, my husband picked himself up and abandoned me and our son. The boy is 10 years old. My husband never sent any support for me or my son. He never, once, called to inquire about the welfare of myself or my son. No one from my husband's family inquires about our health.

I do not know the whereabouts of my husband, if he is dead or alive. His family provides me with no information either out of ignorance or sheer cruelty. In the interim, I have met a wonderful man. In the beginning it was only platonic. However, this relationship soon blossomed to love and intimacy. We married civilly and I am now five months pregnant with his son.

Responsa :

The above marriage can be annulled on the following grounds: The husband abandoned his wife. He does not provide her with marital needs - sex. He likewise does not support her or their son. In both instances, the law dictates that the Rabbinical Court can coerce the husband to divorce his wife. We will use every possible means of coercion, including flogging, until the husband complies and grants his wife a Get.

Citations:

Responsa Ramo #36 New Edition. Also see Even Hoezer Chapter 70 and Pischei Tzuvo there citing Responsa Chasam Soffer 130. We will force the husband by flogging to free his wife and restore her to the position she was in before the marriage. She will be free to marry another man who will support her. See also Even Hoezer 76 end. If a man insists in having relations while wearing his clothes, such behavior is grounds for divorce because the spouse

cannot fully enjoy cohabitation. Certainly, where there is no intercourse at all. See Even Hoezer 154:7. The wife is believed to state "my husband is not a man, he has no erection." Certainly where he has abandoned her. No authority exists that will sanction a marriage where there is no intercourse. In such a situation, we will coerce the husband to divorce the wife using all measures including flogging. In our day and age, that corporal punishment is not acceptable by society's mores, nor by civil laws, the Bet Din can annul the marriage. See Igros Moshe Book 1:79 end. See Dvar Eliyahu Responsa #48. See Tzuvois Bais Ov Book 7 Responsa #27. See Ohel Moshe Book 2 Responsa #123. See Chelkos Yoev Book 1 Responsa #24. See Meshivas Nefesh Rav Arye Leib Tzinz #15.

In addition to the above reasons, the husband has been missing for over ten years. There exists the possibility that he is dead. If he is not dead, he is either a shoteh, an idiot, or a Rasha, a wicked person, for not having any contact with his wife and son for the last ten years. If he is dead, there exists no marriage. If he is not dead, then the husband is either a moron or wicked for not having contact with his flesh and blood - his son. As such, we can assume that this idiocy existed all along from the day he was married. See Chapter -4 for sources for this assumption. Likewise, if he is not an idiot, he is wicked. Such moral decay always existed. We can assume that such was his character at the time of marriage. See Chapter -4. If he was an imbecile at the time of marriage, then no marriage can take effect. See Even Hoezer beginning Chapter 42. At most, there is only a Rabbinical marriage, not Divine. See also Nesivos- Toras Gitin Even Hoezer Chapter 121:4. Position of Nesivos is that even if one is sane in all respects except one relating to his ability to function in a marriage, the marriage is aborted. This is in accordance with Rambam, as opposed to Rav Avigdor. Such is the ruling of a consensus of Rabbinical authorities in declaring a wife insane. Even if she be normal in every respect, but she cannot function as a wife, she is declared insane in accordance with Rambam's position. We then grant the husband permission to remarry and place a Get in the custody of the Bet Din. See Chelkos Yoev Book 1:24. The same logic is

applied if the husband displays insanity. If in the view of the Rabbinical Court, it is impossible for the wife to continue a relationship with him, we will annul the marriage. See Ohel Moshe Book 2 Responsa 123:8 Otzer Haposkim 39:5 volume 13.

Thus, if the husband is crazy for not seeing or inquiring about his wife and son for ten years, Bet Din has the power to annul the marriage. If the husband be alive and not crazy, then he is wicked. There is no Divine marriage with one who is wicked. At most it is Rabbinical. Even if such a spouse became wicked later, the court has the power to annul the marriage. We follow the opinion of those authorities who hold that a marriage with one who is wicked that cannot legally take effect, will become abrogated at the instant such spouse become wicked later in the course of the marriage. See Rashi Yevomos 49. See Minchos Chinuch 203. See Avnei Melium Even Hoezer 44. See Otzer Haposkim Even Hoezer beginning chapter 17. See Shredei Esh Book 3:25. See Responsa Mahrsham Book 2:119,120.

In addition to the above grounds, the wife is pregnant from another man. As such, she is a Soteh-forbidden- ever to return to her husband even if he would be found. As such, he is obligated to grant her a Get. If he refuses, he would be coerced and flogged. See Rabbenu Yeruchem cited by Otzer Haposkim Even Hoezer beginning Chapter 11. See Chedushei Chosem Soffer Nedorim 89,90. See supplement to Otzer Haposkim Chapter 11 from Ohel Yitzchok -Rav Herzog. Since that remedy is not available we will annul the marriage. See Igros Moshe Book 1 Even Hoezer 79 end, Ohel Moshe Book 2:123, Dvar Eliyohu 48,, Meshivas Nefesh 15. See Rabbenu Yeruchem cited by Otzer Haposkim beginning Chapter 11. In addition, we annul the marriage because the wife argues, Mous Alai - "my husband disgusts me." We flog the husband until he grants her a Get. When this remedy is not available, we annul the marriage (Jerusalem Talmud Ksubos 7:6, Meiri Bavali Ksubos page 268). Even if there does not exist an explicit clause in the Ksuboh, we constructively assume that such is the intent of the parties. See Bavali Bova Metziah 104 and Tosphos there. See Bais Ov Book 7 Chapter 27 for same reasoning regarding a defect on the part of the husband.

See Chedushei Rashba Gittin 48B that if Bet Din would not enforce a woman's rights, women will no marry. See Chidushei Rashba Yevomos 46B that Bet Din has been delegated this power from the last Sanhedrin 400 AD to annul marriages. Otherwise, the entire Jewish Judicial system would crash and we would have chaos. See Tur Choshen Mishpat Chapter 2 and Choshen Mishpot 2. We likewise have the power to confiscate the monetary value of the ring and change its character to a gift. Thus the woman was never married. See Ibid Choshen Mishpat 2. See Responsa Chosam Soffer Responsa #107, 108. See Rav Herzog Hahukoh Al Pi HaTorah page 154.

We likewise assume that all Kedushin with a ring is only Rabbinical. See Ksubos 3A -Rabbis of Rashi and Yevomes Bava Basra 48B . See Rambam Sefer Hamitzvohs Shoresh 2 . See Rambam Ishes 1:2,3. See Pischei Tsuvah Even Hoezer 42:25 citing Rabbenu Akiva Eiger #49 and Shev Yaakov #23.

Furthermore, no woman today would agree to sell her body to her husband as a Cananite slave. Thus all Kedushim today is Rabbinical. See Hatorat Agunot Chapter 1.

<u>Witnesses are disqualified</u>

1. They were not observant same as the husband and wife.
2. They do not remember the precise Hebrew date of the wedding.
3. Even if 1 and 2 did not exist, any witness who violates as much as any ritual or moral law once inadvertently is disqualified. Only saints fit this category. See Chapter 1, 2, 3, of Hatorot Agunot.

Even if all prior conditions were satisfied, if the kosher witnesses were not segregated from all who are not competent according to Halacha, all the witnesses become tainted and disqualified. Even Chasam Soffer Even Hoezer #100 who is satisfied if witnesses were not at the chuppah but were in the building, nevertheless requires that the other witnesses come forward to the court with their testimony that a marriage occurred. They must remember the

precise date and place of the wedding. Lacking this testimony there exists no marriage. In our case we have no witnesses at all who can testify and remember the exact day and place that the Agunah was married.

Therefore, the woman never was married ab initio. She got pregnant from man #2 while she was unmarried. As a result, her new child is one million % kosher and definitely not a mamzer - illegitimate.

Consequently, as a result of all that we have written, the woman in our Responsa is permitted to marry according to Halacha the man she has been living with. We have established, beyond a shadow of a doubt, that no marriage ab initio ever existed with her first husband. Thus, when she lived with the second man, she was in effect free, never deemed married, Halachically. It is only a woman Halachically married, who lives with another man, who is then forbidden to return to her husband and likewise is forbidden to marry her lover. We elaborated in other Responsa the Halachic consequence if a woman lives with her lover without a Halachic marriage. We pointed out that the woman and her lover both are in violation of either a Lav or an Asseh a Biblical negative prohibition or a Biblical Positive Commandment or a Rabbinical Law. It all dependnds on the commentary interpreting the Rambam. See Hatorot Agunot Chapter 12.

When a couple live together without the benefit of a Halachic marriage , there exists a dispute among authorities if such a woman and her lover are in violation of a Lav, a negative commandment of the Torah, where the punishment is Makos - flogging. Or there is a violation of a Lav- a Biblicl Prohibition but , nevertheless, there is no flogging. See Bais Ov Book 7 Responsa 11 who makes an elaborate analysis of the gravity of the prohibition, according to Rambam, if a man and a woman live together with no Halachic marriage. Some say there is a

Lav, a negative prohibition, carrying the penalty of flogging (Sefer Mitzvohs Negative Commandments 355; see Ramban ibid). Others say there is no negative prohibition only an Assey. One violates a positive Mizvah if one has no Halachic marriage.

Other authorities, namely Ramban- Responsa Rashba attributed to Ramban #284, Kesef Mishne Ishus 1:4 and Raaved Ishus 1:4 holds that there is no violation at all, This is true providing the couple live together on a permanent basis and the woman observes the Laws of Nidah and immerses herself in a mikvah 12 days following her period. See Shulchen Aruch Even Tur Bach Bais Yoseph on Even Hoezer Chapter 26, Shulchun Aruch and Ramo Bais Shmuel Ibid, Chelkos Mehokek Taz, Gro, Pisch Tzuro and Otzer Haposkim Ibid. However, according to Rambam, there is a violation. Thus if they do have a Halachic marriage, they do not violate the Rambam's position.

On the other hand, since they lived together before the annulment, there exists authorities who would forbid the couple to continue living together and certainly having a Halachic marriage. It is the position of Rambam Laws of Isurei Bioh 15:1 that one violates a law - negative transaction - only when there are two conditions: the couple lives together and they are married Halachically. What happens if they do not have a Halachic marriage? They are not in violation of the Lav - negative prohibition - of living with a woman that they had sex with before she was free from her husband. Just as a woman who had an affair is forbidden to return to her husband, so she is forbidden to marry her lover. However, if she does not marry Halachically the lover, there is no prohibition. This is the interpretation in Rambam by Harav Hoffman in Melamed Lehoel. He permits a Kohen to live with a convert rather than marry her Helachically. Would the Kohen have a Halachic marriage with the convert both would be in violatuion of a Lav - a negative violation carrying Mankos -flogging. If they live together without a Halachic marriage according to Rambam Isurei Biah 15:1 there is no prohibition.

However, Rav Moshe Feinstein disagrees since when someone lives together without Halachic marriage, he violates another law- the position of Rambam Ishus 1:2,3 that forbids

living together with any woman without benefit of a Halachic marriage. Thus one is in a catch 22 situation.

It is my opinion that since we annulled the marriage, the woman was never married. When she lived with her lover, she was single and never violated her marriage vows - infidelity. Consequently, she is permitted to her lover. By having a Hallachic marriage, the couple will not violate the position of Rambam as mentioned

earlier. Likewise the child from the lover is one million % legitimate since we had annulled the marriage and she was never married in accordance with Halacha , in the first place to man #1.

Harav Moshe Morgenstern Grandmother is Eshat Ish - Married woman

A woman approached me with the following case history:

She is married to a 3rd generation Mamzer. Her husband's grandmother was unable to acquire a Get from her first husband. She had received a civil divorce but the first husband refused to give her a Get. This occurred over 100 years ago. She had married in an orthodox ceremony. The grandmother either left her first husband or else he left her/ We do not know who sued for divorce or who left whom. One thing we know for sure is that there occurred a civil divorce. The grandmother did not return to the first husband, but instead married husband #2 and had several children from husband #2. Ten years later, husband #1 gave the grandmother a Get at the Rabbinical Court. Ordinarily, the children are Mamzarim providing we can prove beyond a shadow of a doubt that she had a Hallachic marriage. She also is prohibited from marrying, according to Hallacha, husband #2. Since she had children with him, she obviously had sex with him since she gave birth to several children before receiving theet from husband #1. We do not know if her grandmother was or was not observant. The children of this woman proceeded to marry in a Reform ceremony. The 3rd generation likewise

proceeded to marry in a Reform ceremony.

What is the Hallacha regarding the 3rd and 2nd generation? Are they Mamzarim? Are they permitted to marry their mates according to Hallacha? Are their children Mamzarim?

Response: The grandmother's original marriage was not in accordance with Hallacha. Consequently, they are permitted to have a Hallachic marriage with their spouses. Consequently, the children that were born - the 2nd and 3rd generation are not Mamzarim. What are the reasons? I have prepared detailed treatises being published called "Hatorat Agunot Bnos Yisroel - Emancipation of Jewish Daughters." Agunot I elaborates at great length on the reasons. I will ask the reader to consult all my books. I will summarize those reasons applicable to the case at hand: 1. All the parties, including the witnesses to marriage #1 are dead. As such, non of the parties concerned who created the current question of Mamzaris can be summoned to appear before the Rabbinical Court. They can't be summoned from the graveyard. Would the grandmother be alive, we would annul her marriage based on the fact that the witnesses to the marriage have not testified in a Rabbinical Court. Consequently, she never was married. See Igros Moshe Volume 4 Responsa #20. Therefore, her children are not Mamzarim.

When it comes to annulments, Talmud Yerushalmi states that Chachomim, Sages, have the power to uproot Torah Law. (Jerusalem Talmud Gittin 4:2). Definition of a Chochem - Sage - is one who is able to rule on all parts of the Torah. Today it means one who has mastered the four parts of the Shulchun Aruch - like I have. See Talmud Yerushalmi Nedorim 10:8; Yerushalmi Chagiga 1:8; Rambam Sanhedria 4:8; Shulchon Aruch Even Hoezer 49:3; Talmud Bavali Kedushin 6A. I meet all these requirements. Therefore my Rabbinical Court can annul marriages.

At any rate, what is applicable to our case is that since all the witnesses are dead as well as all the litigants, the grandmother, her husbands #1 and #2, no proof exists. By default, since no

proof exists that she was married in accordance with Hallacha, that marriage is deemed as not being Hallachically valid. See Responsa Igros Moshe Volume 4 #20. See Aruch Hashulchon Even Hoezer 48:1,2,12,13. See Shulchan Aruch Even Hoezer 11:4; Choshen Mishpat 28:15; Aruch Hashulchan Even Hoezer 11:15; Aruch Hashulchan Choshen Mishpat 28:2 and 75:1. Even, for arguments sake, that the witnesses are still alive, they would be required to recite the precise Hebrew date 100 years ago that the grandmother got married. Failure to do so would invalidate the marriage. See Yobiah Omer Volume 3 #8; Bais Shmuel Even Hoezer 17:63. In addition, we need two observant witnesses to testify that the witnesses to the marriage were observant that they never violated any ritual, moral or ethical law. Would they have violated any such law, they are incompetent to testify. See Aruch Hashulchan Yoreh Dayoh 119:8. In addition witnesses must exist that no relatives or non-observant Jews stood under the canopy at the time of the wedding. Otherwise, the observant witnesses become tainted. See Tur on Choshen Mishpot Chapter 36 and Shach Ibid who rules like such opinion. Even though there exist opinions of other authorities who do not require that witnesses meet such stringent requirements, we nevertheless rule like the decisers who do have such stringent tests in order to free an Agunah. See Taz Even Hoezer 17:15. See Taz Yoreh Dayoh 293:4. Taz applies his ruling even if the issue involved is of Divine nature. The issue at hand is of Divine nature. We are adjudicating the issue of mamzarim that is Divine. At most, our adversaries may challenge our analysis, they may not be concerned that we have reversed the status of Hallachic marriage from the grandmother. However they will concede that any arguments created some doubt. Even if they have a different interpretation as to the sources, we always rule like such interpretation that will free the Agunah. See Ginot Veradim 3:23. At most the children are sofek Mamzarim - doubtful Mamzarim. As such, they are permitted to marry by Divine Law according to Rambam Laws of Tumei Mes 9:10. It is only Rabbinically that they can not get married. Rashba, in Torus Habayis Bais 4 Shaar 1will agree. See Aruch Hashulchan Yoreh Dayoh 110:89-95, Ibid 110:96-111. Once we augment

additional doubts, all authorities will agree that they can get married even Rabbinically. See Aruch Hashulchan Yoreh Dayoh 110:90. 110:110. See Igros Moshe Volume 1 # . See Bais Ov Volume 7 # . In our case, we have numerous doubts as to the validity of the Hallachic marriage. Thus, even out adversaries, if they are knowledgeable and honest, must concede that the children of the grandmother are not mamzarum and are permitted to marry. Their children, in turn, are likewise legitimate. Written records are not admitted in evidence even if they be records of the community. See Yabiah Omer Volume 7 #2. "From their lips and not written records" are admitted as evidence. seeShulchan Aruch Choshen Mishpot 28:11 and Ramo Ibid .See Rambam Laws of witnesses 3 :4 and Lechem Mishna Ibid. See Aruch Hashulchon Choshen Mishpot 28:16,17 . Even though there exist other opinions who permit written records, in order to free an Agunah we will rule like those authorities who admit in evidence only the testimony of two living witnesses before a Rabbinical Court and all the concerned parties must be present. See Even Hoezer 11:4; Choshen Mishpot 28:15; Aruch Hashulchon Even Hoezer 11:15; Responsa Rav Akiva Eiger Volume 1 #99; Responsa Ramo #12. Failure to meet such test will render any previous decision as null and void. We thus overturn any prior decisions by the authorities making the children as Mamzarim. We have jurisdiction by authority of Responsa Rashbas #46 to override other courts who are unable to free Agunot. In addition to everything written above, we will retroactively annul the grandmother's marriage that occurred 100 years ago on the following grounds:

If the grandmother left husband #1 because she detested him, he is obligated by Jewish Law to divorce his wife. The court would have beaten him until he granted her a Jewish divorce - a Get. See Rambam Ishos 15:8. See Rambam Garushin 2:20. We rule like Rambam today. See Yabioh Omer Volume 3 #8; Tzitz Eliezer Volume 5 #26. This is based on Ramo Yoreh Dayoh 228:20. Since today we are forbidden by the Civil authorities from beating husbands, we will annul the marriage. See Igros Moshe Even Hoezer Volume 1 #79 end and #80, Volume 4 Even Hoezer #45. If it was the husband #1 who abandoned his wife rather than the

wife, the Rabbinical Court would have forced him by beating to grant his wife a Get. See Even Hoezer 154:1,2; 70:1,2; 76:1,2; Responsa Chasam Soffer Even Hoezer 131 cited byo Pischei Tzuvo Even Hoezer 70:1,2. Since today we cannot force husbands to give a Get because it is against the Law, we will annul the marriage.

Since all the information that the grandmother was married comes from her grandchild's wife who is a concerned party,(our knowledge that this woman is married to an alleged mamzer comes for this woman. She is asking about herself.) We must also believe all the facts concerning the grandmother as related by the wife of the grandmother's grandson. "The mouth that informs us that she or he is forbidden to get married is likewise believed that he or she is permitted to get married. See Ramo Even Hoezer 178:1,2; Pischei Tsuvo Ibid. See Igros Moshe Even Hoezer Vol. 4 #20 and Igros Moshe Even Hoezer Volume 1 #79, 80 and many other Responsa of Igros Moshe. See Responsa Chelkos Yaakov Even Hoezer based on Taz Yoreh Dayoh end of Chapter 48.

Thus we accept her testimony that the husband #1 of the grandmother was not religious. As such, if he gave a Get later, we rule that retroactively the first marriage is annulled. See Minchos Yitzchok Volume 10 #26. The fact that he denied a Get for ten years is concrete evidence that he was wicked as a person and completely unethical and immoral. As such we are empowered to annul this marriage ab initio. See Minchos Chinoch Mitzvoh 203; Avner Meluim on Even Hoezer 44; Otzer haposkim beginning Chapter 17.

In addition to everything said, it is certain that the grandmother had sex with man #2. As such, she was forbidden to return to husband #1. He must grant her a Get. If he refused he would have been beaten by the Rabbinical Court. See Rabbenu Yeruchean cited by Otzer Haposkim Even Hoezer 11:1. Since today we cannot coerce the husband, we will retroactively annul the marriage. In addition to the above, following are additional grounds for annulment of the grandmother's marriage:

When a married woman declares she had sex with another man, she can go back to husband

#1. The reason is that we annul marriage #1. So when she had sex with her lover, she in effect was never married to husband #1. Thus she never violated her oath of marriage making her forbidden to her husband or prevented from marrying her lover. See Ran on Nedorim 89B. In addition, we will rule like those authorities that all marriages where a ring is given are only married Rabbinically not by Divine Law. Since the grandmother was married by her husband giving her a ring, it is only valid Rabbinically. See Rambam Shroshei Hamitzvohs Shoresh #2 beginning. See Rambam Ishus 1:2,3; 3:4. See Responsa Shere Yaakov #21 cited by Pischei Tsuvoh Even hoezer 42:25. We will also retroactively confiscate the ring that the grandmother's husband gave her 100 years ago and convert it to a gift. Thus she never was married. See Chasan Soffer Even Hoezer 108,109. Once you increase the number of doubts, the Rabbinical marriage becomes null and void. See Aruch hashulchon Yoreh Dayoh 110:90, 110:110, 110: ; Igros Moshe Even Hoezer Volume 1 # ; Avi Ov Volume 7 # .

Be it as it may be, there exists another ground for annuling the marriage. Once there exist so many doubts regarding marriage #1, if the woman marries again the 2nd marriage will by virtue of being married in a positive marriage annul a marriage that is riddled by doubts. See Mishne Lemelech on Rambam Isurei Bioh 15:10.

Since the grandmother was married to husband #2 by a Reform Rabbi, the marriage was not Hallachically valid. Thus the marriage by giving of a ring was not valid biy Hallachic standards. However, since both the grandmother and husband #2 were committed to each other and intended to get married, then their act of living together and having sex, consisted of a valid Hallachic marriage.

1. One can get married by giving of a ring.
2. One can get married by having sex in a committed relationship.
3. One can get married by writing a contract in a civil marriage.

Thus when the grandmother had sex with her husband #2, this constituted a Hallachic marriage. Such marriage has a Divine character according to all authorities. See Even

Hoezer 33:1,2,3; Aruch Hashulchon Even Hoezer 31:42. Thus, the definite Divine Hallachic marriage of the grandmother to husband #2, uproots and annuls her marriage to husband #1 that was riddled by doubts. This is the ruling of Mishne LeMelech on Rambam Isurei Bioh 15:10. This is also cited by Yabioh Omer Volume 3 #8 as another ground to annul the marriage. Yabioh Omer stipulates that you must have a cocktail of grounds to annul the marriage. One ground does not suffice. In our case, we have listed multiple grounds. Thus the individual grounds indicated are valid since a cocktail of grounds exist.

Conclusion: All the children are not considered Mamzarim. They can have a Hallachic marriage and remain with their spouses. Any children born from such marriages- Hallachic or not - are legitimate. The fact that they lived together, had sex, constitutes Hallachic marriage. See Aruch Hashulchon Even Hoezer 33:1, 33:2,3,8,9,10,31:42. Even if we question the validity of such marriage, as indicated in Orech Hashulchon Even Hoezer 33:11, 26:3,33:4,5,6 , nevertheless , a Pilegesh relationship exists if it is an ongoing relationship with commitment. A casual relationship would be considered Znut- free sex . Thus, if no valid Hallachic marriage occurred by living together, then a Pilegish relationship exists like the ruling of Ramban - Responsa of Rashba attributed to Ramban #264. The children resulting from marriage, Pilegesh relationship or free sex are one million percent legitimate.

In any case, even if there is no Halachic marriage, the children born from such a relationship even if it is a child born from a simple sexual encounter with no commitment, is legitimate. See Even Hoezer 4:13. A Mamzer is only a child born from an illicit relationship where there exists a capital punishment such as a woman married Hallachically. See Even Hoezer 17:1 or Krissos when one gets his wife's sister pregnant (the wife is alive), Orech Hashulchon Even Hoezer 15:23 and Even Hoezer 11:13. Otherwise, the child is legitimate. Thus the children would be legitimate. The parents should have another marriage officiated by an Orthodox Rabbi to touch base with all the various opinions given by the various authorities. See Even Hoezer 42:5.

In addition to what was written, the following are additional grounds that all the children of the grandmother are not Mamzarim. They are permitted to remain with their spouses and future offspring are not Mamzarim.

The wife or the husband of the children or grandchildren can state the following to their respective spouses "I do not believe that you are a Mamzer or Mamzerus? How do you know that you are a Mamzer or Mamzarus? You only know because your father or mother told you so. You have no first hand knowledge. You were not present at the wedding. I do not accept, nor do I believe the identification of Mamzer." The law is in such a case the child or grandchild of the grandmother is obligated to honor their marital obligation and continue cohabiting with their marital partner.

When one accepts and believes the declarations of the grandmother and the Rabbinical Court that declared the grandmother as still married, then he or she is forbidden. When one rejects the ruling of the Rabbinical courts and likewise rejects to be bound by the ruling accepted in error by the grandmother, one is not obligated by Hallacha to be forbidden in any capacity to marry another Jew or to have one's children tainted as Mamzarim. This is true because the children of the grandmother were obviously not privy to know what happened. They were not born yet when the grandmother married husband #1. Therefore their knowledge of events of the marriage to husband #1 came from the grandmother. At the most, the grandmother is believed, for herself, that she is prohibited to get married to any man; but she cannot impose her status on anyone else. See Even Hoezer Aruch Hashulchon 48:1,2,12,13.

Chapter 29

Is a binding agreement used by the civil authorities -to use a particular Rabbinical Court considered binding on the litigants by Halacha?

FACTS

The defendant claims that he was induced by his rabbi , whom he greatly respects and finds it very difficult to disobey , to submit to arbitration of the Rabbinical Court that this rabbi is one of the officers.
Following the insistence of his rabbi the defendant was contacted by the executive director of the Rabbinical Court and mailed a form to sign of his agreement to use the Rabbinical Court for the arbitration. The form does not mention that the defendant agrees to give the sum of x dollars -under dispute- to the defendant if such is the findings of the Rabbinical Court . Likewise, the defendant was not given a copy of the form signed by the plaintiff that he relinquishes his claim of x dollars if so found by the Rabbinical Court. There was no Kinyon Suddor , the Halachic binding agreement . In the customary Kinyon Suddor the defendant gives to the plaintiff a handkerchief and tells him with this handkerchief I hereby gift you the sum of money under dispute if such is the finding of the judges of the Rabbinical Court. He must name the individual or individuals he selects. The plaintiff ,likewise, gives a handkerchief to the defendant and agrees to relinquish his claim to x dollars. The question - is this considered a binding agreement?

Response

In this case, not only was there no Kinyon Suddor , but the written agreement omitted the critical language that this agreement is between the two litigant . Rather the agreement was between the plaintiff and the Rabbinical Court. See Choshen Mishpot 40: 1 that in order to be binding the agreement must be between the two litigants. See Sma Choshen Moshpot 12:18 . The defendant can bind himself to the plaintiff if he writes I herewith oblige myself to pay you a sum of money.
He then can not change his mind. See Choshen Mishpot Nesivot in Beurim 12:8.ore , even if there

existed a Halachic agreement , the plaintiff has the right to change his mind if he later discovers that there was a material error. Any kinyon - any contract- can be rescinded when there was error at the time of entering the contract. See Choshen Mishpot 25: 5; Shach Choshen Mishpot 40:1 ;Choshen Mishpot 126:12,13,14;Aruch Hashulchon Choshen Mishpot 242:6 .The parties to a contract can rescind the contract even many years after the contact was entered into when they discover the defect, providing they do not use the object under dispute. Choshen Mishpot 232 :3 In our case providing the defendant did not attend any sessions of the Rabbinical Court, which the defendant did not , he then can rescind any agreement to appoint the Rabbinical Court to represent him, once he discovered the consequences that he would suffer by engaging their services. .

In our case the defendant was not appraised of the consequences of relinquishing the right of appointing one of the judges rather than agreeing that the Rabbinical Court appoint all the judges. The defendant has the right to insist that he wants a Peshora - a compromise. Then he has a right to appoint one of the judges to the panel and the plaintiff has a right to appoint one of the judges to the panel . Both judges or the defendant and plaintiff then appoint a neutral judge to the panel. Each of the judges representing the plaintiff and defendant have the right to veto any agreement that is not in their favor of the plaintiff or defendant. The Court is then deadlocked until an agreement is reached that meets the needs of the parties. Even if there was a Din Torah - a regular trial -not a compromise- each party has the right to name one judge to the panel .The third judge is selected by both parties or their designated judges. In a regular trial there is no veto power , but the majority vote of the judges rules .We follow the majority. Nevertheless, each party selects one judge that represents his interest.

The booklet issued by the Rabbinical Court to the defendant does not contain this information.
The defendant was induced to sign the agreement without full disclosure. When the defendant became aware of the consequences of not having his appointed judge in the panel of arbiters , the defendant wrote to the Rabbinical Court insisting that he appoint certain Rabbis to represent him and he will agree to go to a Din Torah -a Rabbinical Court with these Rabbis. The Rabbinical Court with whom there is the current dispute replied that the plaintiff insists on having them represent him. There is no dispute regarding the right of the plaintiff to have this Rabbinical Court represent him . But the issue is that the defendant has the right to have another group of rabbis represent him in accordance with Choshen Mishpot 13:1 The defendant was correct and acted in

accordance with Halacha to refuse to attend any sessions of the Rabbinical Court . Would he have attended any sessions such attendance is tantamount to submission to their jurisdiction See Aruch Hashulchon Choshen Mishpot 13:7.

When the defendant refused to submit to the jurisdiction of the first Rabbinical Court , the Court awarded judgement of millions of dollars to the plaintiff and sent their judgement to the civil Court for enforcement. This act on the part of the Court is considered in violation of Jewish Law. The defendant was never informed the consequences he would face if he refused to attend. Such dracula style punitive measures are considered Asmachta and are not binding. At no time would any defendant agree to be subject to such penalties . See Choshen Mishpot 207. Consequently even if the written agreement would be considered as binding , it nevertheless can be rescinded as an Asmachte.

Furthermore, the first Rabbinical Court in the pamphlet they issued agree that most Rabbinical Courts insist that a Kinyon Suddor be used to bind the parties. According to Mahrsham Vol 5 responsa # 25 the custom is that every Rabbinical Court that accepts a civil contract always has the parties make a Kinyon Suddor. Thus the procedure of this Rabbinical Court as published in their pamphlet under discussion that leaves it up to the discretion of the individual rabbi each time to decide to have a Kinyon Suddor or not to have a Kinyon Suddor is unacceptable. They can not create such a custom. See Mahrsham Ibid that only a great sage can create a custom [and that has to be accepted by all Jews.] That is not the case here. Thus by not having Kinyon Suddor the defendant never accepted the jurisdiction of the Rabbinical Court. As a matter of fact Aruch Hashulchon the recognized authority of Jewish Law states that written binding contracts are no longer used . See Aruch Hashulchon Choshen Mishpot 13:7. Furthermore Aruch Hashulchon states that only if a Kinyon Suddor is employed by the litigants can conditions be inserted into a contract not by using a written agreement. Thus conditioning the gifting of x dollars to the plaintiff on the decision of the Rabbinical Court can only be effected by using a Kinyon Suddor, not a written agreement. If a written agreement is used it must state that the defendant herewith gifts to the plaintiff x dollars unconditionally. See Aruch Hashulchon Choshen Mishpot 12:7. In our case there was no Kinyon Suddor.

Furthermore any agreement by litigants to follow civil law rather than Hallacha is null and void. Thus to

have a binding agreement recognized by civil law and not by Halacha is null and void. See Aruch Hashulchon Choshen Mishpot 22:8. See Halacha Psuko Chapter 12 footnote 216. When a defendant is not aware of the consequences of his agreeing to a binding agreement, when he discovers the adverse consequences , he can rescind his agreement, as Mekach Tout - a mistaken contract. This is even more true when he was induced by others to agree to enter into the contract. This is true even where halachicaly recognized forms of Kinyon - Halahic means of entering into a binding contract were employed. The fact that the defendant refused to proceed and bind himself further to be under the jurisdiction of the first Rabbinical Court is further evidence that he never agreed to accept their jurisdiction. There never existed any intent to place himself under their exclusive jurisdiction. Yes, they still retained jurisdiction regarding the plaintiff, whom they can still represent. They still retain veto power for any decisions, that they opine are not in the benefit of the plaintiff. However they do not have exclusive jurisdiction to force the defendant to submit to their jurisdiction against his will by awarding the entire disputed amount to the plaintiff. In effect the first Rabbinical Court has usurped authority which is not theirs and thus they are in conflict with recorded Halacha. As such their decision is null and void in accordance with Choshen Mishpot 25:1 See Pischei Tsuvoh Ibid25:2 Also Choshen Mishpot 25:4 Sma 25:29 and Shach 25:45. As such the defendant has a right to sue the members of the Rabbinical Court in a civil suit for all damages he suffered by the torts that they have perpetrated. This cause of action is recommended to force the members of the court to rescind their judgement that is blatantly one million percent against Halacha. This is in accordance with Aruch Hashulchon Choshen Mishpot 4:1.

There exists absolutely no connection to Choshen Mishpot 201 where it was the custom among business people to make a contract binding by a handshake or giving a deposit or marking ones initials on the merchandise being purchased, providing this is done in the presence of the seller and purchaser. The contract is between the seller and purchaser. Here the contract is not between the two litigants, but between the defendant and the Rabbinical Court, who insists upon forcing its authority upon an unwilling party, who never accepted their jurisdiction once all the facts were disclosed. Thus there does not exist authority for this court to have any jurisdiction in accordance with Halacha -Jewish Law. If there would be a civil law that only a binding agreement that is legal only by Civil Law must be used and not to use any other binding agreements such as a

Kinyon Suddor - and Jewish custom was to use such an agreement -then such an agreement is binding. Aruch Hashulchon Choshen Mishpot 201:3. This is not the case with our defendant. There exists no such law and there exists no Jewish custom to have the litigants be at the mercy of the discretion of this Rabbinical Court to use a binding agreement authorized by Jewish law -Kinyon Suddor -or not.. The only reason the Rabbinical Court did not use the Kinyon Suddor was because they wanted to hold the defendant against his will . They exploited his ignorance of signing the civil arbitration agreement and when he became aware of his error they refused to relinquish their advantage -in civil law- even though they were fully aware that all binding agreements must also be authorized by Jewish Law in order to be enforceable. Since the dispute is between the Rabbinical Court and the defendant would the Rabbinical Court have followed Jewish law they must sue the defendant in an other Jewish Court and not act as the court jury and executioner. They are an interested party and are disqualified to render a decision to award the money to the plaintiff as punishment for refusal of the defendant to use them exclusively rather than have other jurists sit on the panel . See Mahrsham volume 5 Responsa # 25 ; Aruch Hashulchon Choshen Mishpot 37:2,3. This is similar to individuals who have only a civil wedding and refuse to have a Halachic wedding. The civil marriage is not considered as Halachicaly valid according to many decisors of Jewish law . The reason is because the couple chose not to have a Halachic wedding on their own volition. Therefore there never was any intent that their living together later on should be considered as getting married in accordance with Halacha. -Jewish law. They were not forced by civil law to have only a civil marriage and not a marriage in accordance with Halacha. See Aruch Hashulchon Even Hoezer 42:51. Similarly in our case the Rabbinical Court was not forced by civil law not to have a Kinyon Suddor. They did not have a Kinyon Suddor because of their own choice and because they wanted to entrap the defendant and hold him against his will knowing full well that he never intended to designate them as the exclusive jurists in the panel for arbitration. They exploited their advantage under civil law that the defendant signed the agreement and awarded the plaintiff with the millions of dollars and gave the judgement over to the civil courts for collection.

Even if we would concede , for arguments sake-that we do not- that the court has a right to have a binding agreement based only on civil law, then the court has to be consistent. They must recognize that the statute of limitation has tolled for the litigation. See Ramo Choshen Mishpot 68:1; See Responsa Mahrsham vol 5

Responsa 25 in the middle who applies cited Ramo Choshen Mishpot 68:1 that the litigants must apply all other related civil laws in order that the contract be considered enforceable in a Jewish Court. Even if we recognize a civil contract as binding upon the parties we must also adhere to the civil law regarding the litigation. If according to the civil law the contract has tolled, we must likewise admit that this contract has tolled. We never give the parties greater advantage when we adopt civil law than the parties would have gotten if they originally went to the civil courts. See also Aruch Hashulchon Choshen Mishpot 68:6, who likewise cites Ramo Choshen Mishpot 68:1, and arrives at the same concept as the Mahrsham , although Aruch Hashulchon does not cite the Mahrsham. Even where the custom is to accept the civil law we must adhere to all the restrictions of the law we are accepting. Thus once the parties have no standing in civil court because the statute has tolled, we will not resurrect the statute. As such there is no basis for the litigation in the first place.

Furthermore, since the plaintiff first turned to the civil courts, it is Jewish practice not to afford the plaintiff another venue in Jewish Law once he loses in the civil courts. In our case the plaintiff turned to the civil courts and lost there . The statute of limitations tolled. The Rabbinical Court was in violation of Jewish practice to hear the case after the plaintiff lost and the statute of limitations tolled. See Choshen Mishpot 26:1 Ramo Sma 26:7 Ibid.

Furthermore , even if the defendant would have attended all the sessions of the Rabbinical Court and they would have ruled against him their ruling would have been null and void. This is so since the defendant would have attended because he was coerced. The defendant would have been afraid that unless he attends, the Court would have awarded judgement to the plaintiff in the Civil Courts, which they in fact did. Thus any attendance on the defendant's part at the Rabbinical Court could not be interpreted that he assented to accept the court . See Mahrsham Volume 5 Responsa 25 in the middle. Thus in conclusion the judgement of the court awarding the money to the plaintiff is null and void according to Halacha. The Rabbinical Court abused its power . Rabbinical Courts can permit the winning litigant to go to secular Courts when there was a trial and the litigant who lost refuses to fulfill the judgement of the Court. This is not true when the issue is that one of the litigants refuses to accept the jurisdiction of the court and wishes to exercise its rights under Halacha to use other jurists.

For a Rabbinical Court to flaunt Halacha is outrageous and the greatest Chillel Hashem -the

desecration of G-ds name and gives Judaism a black eye. In this environment of anti Semitism what is the fall out and negative public relations for such a scandal?

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