

The Prenuptial Agreement for the Prevention of *GET*-Refusal
Rachel Levmore

*Therefore, be it resolved that every member of the Rabbinical Council of America will utilize prenuptial agreements, which will aid in our community's efforts to guarantee that the get will not be used as a negotiating tool in divorce procedures.*¹

Much ink has been spilled in the past few decades regarding, what is known as the modern-day “agunah” problem. Scholarly articles, both Rabbinic and academic, have appeared both in print and on the internet.² Despite the seeming proliferation of serious discussions as to the seriousness and pervasiveness of the problem, to date there exists but one practical method of prevention which can be utilized by the general populace. That method would be the signing of a prenuptial agreement for the prevention of *get*-refusal, prior to the act of *kiddushin* (sanctification of the marriage).

When delving into the agunah problem, a distinction must be drawn between the classic definition of an agunah and a victim of *get*-refusal. Halakhically, an agunah is a woman whose husband has disappeared and we have no knowledge as to whether he is alive or dead. The example used is the passenger on a boat that sank in “waters that have no

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¹ Resolutions of the Rabbinical Council of America, adopted in June 1994 “Reaffirming the Endorsement of Prenuptial Agreements”

http://www.ocweb.org/index.php/pre_nuptial/article/resolutions_of_the_rabbinical_council_of_america/

² Note the publication dates of a selection of examples appearing in English:

Bleich, J. David, “The Device of the ‘Sages of Spain’ as a Solution to the Problem of the Modern Day Agunah”, *Tradition*, Vol. 22 No. 3 (Fall 1986), pp. 77-87.

Breitowitz, Irving, *Between Civil and Religious Law: The Plight of the Agunah in American Society*, Greenwood Press, USA 1993.

Broyde, Michael J., *Marriage, Divorce, and the Abandoned Wife in Jewish Law: A Conceptual Understanding of the Agunah Problems in America*, Ktav, New Jersey 2001.

Dick, Judah, “Is an Agreement to Deliver or Accept a Get in the Event of a Civil Divorce Halakhically Feasible?”, *Tradition*, Vol. 21 No. 2, (Summer 1983), pp. 91-106.

Greenberg-Kobrin, Michelle, “Civil Enforceability of Religious Prenuptial Agreements”, *Columbia Journal of Law and Social Problems*, Vol. 32 No. 4 (Summer 1999), pp.359-399.

Globe, Leah Ain, *The Dead End: Divorce Proceedings in Israel*, Jerusalem 1981.

Haut, Irwin H., “A Problem in Jewish Divorce Law: An Analysis and Some Suggestions”, *Tradition*, Vol. 16 No. 3, (Spring 1977), pp. 29-49.

Lamm, Norman, “Forward”, *The Prenuptial Agreement, Halakhic and Pastoral Considerations*, (ed. B. Herring & K. Auman), New Jersey 1996.

Lamm, Norman, “Recent Additions to the Ketubah — a Halakhic Critique”, *Tradition*, Vol.2, No.1, 1959, pp. 93- 118.

Levmore,Rachel, “Conflict of Legislations?”, *Shalom: The European Jewish Times*, Vol. 41 (Spring 2004), <http://www.shalom-magazine.com/>

Riskin, Shlomo, *Women and Jewish Divorce: The Rebellious Wife, the Agunah and the Right of Women to Initiate Divorce in Jewish Law. A Halakhic Solution*, New Jersey 5788/1989.

Weiss, Avraham, “The Modern Day Agunah: In Retrospect and Prospect”, *The Prenuptial Agreement, Halakhic and Pastoral Considerations*, (ed. B. Herring & K. Auman), New Jersey 1996.

http://www.ocweb.org/index.php/pre_nuptial/ has several articles authored by rabbis.

end”.³ Although this is still a phenomenon which can be found today,⁴ the more prevalent problem is that of a husband who is alive and well (and may even be standing in front of the Rabbinical Court) who is explicitly refusing to give his wife a *get*. In order for a Jewish divorce to be valid, the husband must place the *get* in his wife's hands out of his own free will. If he does not have the will to divorce his wife, no other party—person or court, can do so in his stead. As of late, common usage has coined the term *agunah* to include a victim of *get*-refusal.

To date, there is no general commonly accepted halakhic solution or method of prevention to the classic situation of the “husbandless wife”. This seeming oxymoron accurately describes the situation of the woman whose husband has disappeared or is not legally competent. She is married to a man who has ceased fulfilling the role of a husband. Nevertheless, according to the halakha she cannot change her personal status to that of unmarried.

The prenuptial agreement addresses the more common problem today—that of *get*-refusal. The modern-day *agunah* has requested the dissolution of her marriage in the proper halakhic manner but has met up with her husband's flat refusal, laying down of unreasonable conditions, extortion or even resistance to stepping into a Rabbinical court. This woman may find herself living separated from her husband for an extended period of time or even civilly divorced if she lives in the Diaspora.⁵ Yet, as long as she does not receive a *get* from her husband, she remains married to him. She is prevented from remarrying within Judaism. If she is Orthodox, she will not even go out for coffee with another man, let alone strike up a serious relationship. The natural progression of her life is broken, affecting her day-to-day life, her children's development and her extended family. This, in turn, has a negative effect on Jewish Orthodox society, which is founded on the building blocks of healthy family units. It is in that society's interest to prevent these situations, which unfortunately, are not anomalous. Hence the recommendation to every soon-to-be married couple to sign a pre-nup, emanating from the resolution of the RCA brought above.

In the United States, the most prominent prenuptial agreement for the prevention of *get*-refusal is the agreement of the Beth Din of America.⁶ It is in essence, as its title demonstrates, a “binding arbitration agreement”. The Beth Din, accepted by both bride and groom as an arbitration panel, is legally enabled to render a binding decision in all issues relating to a *get*. This ensures that all adjudication leading up to the administration of a *get* is done according to halakha, by Rabbinical Judges. For clarification—if the same process of adjudication were to be handled by a civil court, say the N.Y. Family Court, the resulting *get* would be considered null and void, invalidated by the very process which led up to its inception.⁷ The clauses of the PNA delineate the rules

³ Bavli, Yevamot, chapter 10.

⁴ The wives of several of the men who were killed on 9/11 in the World Trade Center attack were *agunot*. With the help of Rabbinical Courts, especially the Beth Din of America, all these cases were resolved.

⁵ In Israel there is no civil marriage or divorce. The *get* ceremony is administered by the State Rabbinical Court and is the instrument of change in the civil personal status.

⁶ It is also popularly known as the RCA agreement or the Orthodox Caucus agreement.

⁷ Mishna Gittin 9, 8: A *letter of divorce* under duress is licit if in Israel, but invalid if in a non-Jewish court.

accepted by the signatories, according to which the Rabbinical Court should rule. There are optional clauses authorizing the Beth Din to rule on monetary matters or child custody and related issues. The entire agreement is in keeping with the law of the State where it is signed.

The heart of the prenuptial agreement is the monetary obligation undertaken by the groom. He obligates himself to support his wife at a particular rate (from the point of separation) as long as they are married according to Jewish law, if the Beth Din renders a decision enforcing this obligation. In essence this means that from the point that his wife asks for a *get* and the Beth din recommends that he deliver the *get*, until he gives the *get*, the husband is obligated “*to support my Wife-to-Be from the date that our domestic residence together shall cease for whatever reasons, at the rate of \$150 per ... in lieu of my Jewish law obligation of support so long as the two of us remain married according to Jewish law....*” The agreement empowers: “*the Beth Din of America may issue its decision despite the defaulting party's failure to appear, and may impose costs and other penalties as legally permitted.*”

A different agreement developed in Israel⁸, called the *Heskem L’Kavod Hadadi*—the Agreement for Mutual Respect, essentially works on the same principle of spousal support in the case of recalcitrancy. However, in this case the obligation is mutual. Both the bride and the groom obligate themselves to support the spouse, the amount ranging from \$1500 per month to half his/her monthly net income. The obligation is activated after notification plus a defined waiting period, if the couple is still married according to halakha. If a spouse is willing to give/accept a *get* unconditionally at that point, his/her obligation is voided. In this manner only the recalcitrant spouse’s obligation will remain in effect. Obviously, if a *get* were administered during the waiting period, neither spouse is obligated to the other. There are additional matters covered by this agreement. If one of the spouses demands marital therapy, the other must comply up to three visits. The community property law of the State of Israel is accepted as halakha for those that sign the agreement. The concept of the *ketubah* is even strengthened. In short, this is a mutual agreement which takes our modern-day philosophy of marriage as one of partnership, cooperation and mutual respect, and anchors this outlook deeply in the halakha. It is an educational tool as much as it is an agreement for the prevention of *get*-refusal.

Both the agreement of the Beth Din of America and the Agreement for Mutual Respect are not effective in particular cases. Since it is a monetary obligation incumbent on the recalcitrant spouse, if that party has no assets or income (or has managed to hide them) and/or is already in debt, then an accrued debt may not have the desired affect. He may just ignore it. At the other extreme, if the recalcitrant husband has become wealthy, the static amount specified in the American agreement may prove to be negligible. The husband may determine that the expense is worth his while, if it allows him to retain his obstinacy. The Israeli agreement has minimized that particular possibility by obligating

⁸ The team of authors of the *Heskem L’Kavod Hadadi* consists of two Rabbis and a Rabbinical Court Advocate—Elyashiv Knohl, David Ben Zazon and myself, Rachel Levmore—who consulted with tens of experts in various fields (dayanut, law, women’s organizations, psychology). This particular agreement is recommended by concerned organizations, such as KOLECH and Yeshivat HaKibbutz HaDati.

the recalcitrant party to a fixed minimum amount or 50% of his net monthly income, the higher of the two.

It has yet to be determined whether the one agreement signed in one country, the U.S. or Israel, will be binding when put to the test in the other country. Both the Beth Din of America and the authors of the Agreement for Mutual Respect must cooperate in finding the formula for reciprocal clauses.⁹ These would provide jurisdiction in the country which was not the country-of-origin, if the spouses were to find themselves overseas at the point of divorce.

It must be noted that although the signing of a prenuptial agreement is vital in today's day and age, it is not a "magic pill" which cures all evils. The prenup is a form of insurance which is reliable for the common problem of *get*-refusal, but is not effective in all circumstances. Orthodoxy has yet to develop additional solutions which, added all together, would resolve the "agunah" problem. The dissemination and usage of the prenup is but the first step in this process. Its acceptance in both Rabbinic and lay circles not only protects the individuals who sign the agreement. The practice of signing together with its proven effectiveness¹⁰ lay the groundwork for the opening of the hearts and the minds towards the development of additional, deeper solutions.

⁹ The Council of Young Israel Rabbis in Israel, in cooperation with Rabbi Yonah Reiss and Rabbi Prof. Michael Broyde, both of the Beth Din of America, has translated the Agreement for Mutual Respect into English. A clause has been included which assigns jurisdiction to the Beth Din of America in the case where the Agreement for Mutual Respect itself would prove to not be enforceable for any reason in the State of Israel or "in the jurisdiction that the parties reside in at the time that either one of them seeks enforcement of its provisions". The English form of the Agreement for Mutual Respect can be found at <http://www.youngisraelrabbis.org.il>.

¹⁰ Rabbi Yonah Reiss director of the Beth Din of America, in conversation with me in Feb. 2004 verified that, to his knowledge, in every case of a couple that had previously signed a PNA and later came to divorce, there was a *get* administered alongside the civil divorce.