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## RABBINIC RESPONSES IN FAVOR OF PRENUPTIAL AGREEMENTS

The problem of *get*-refusal and its dire consequences is well-recognized. Less well-known is the extent of acceptance, amongst the rabbinical world, of prenuptial agreements designed to prevent this phenomenon. The following presentation of a number of relevant responsa, dating from the mid-20<sup>th</sup> century to the present, offers direct access to information and sources which have, to date, been largely concealed from the public eye or ignored.

### DIVORCE IN THE DIASPORA

The idea of drawing up a prenuptial agreement or adding a clause to the *ketuba* in response to the problem of *get*-refusal, which had first appeared at the beginning of the 20<sup>th</sup> century and began to spread during the 1950's, originally arose in the Diaspora. Most countries maintain a civil registry for marriage and divorce. Hence, a Jewish couple seeking to marry in accordance with halakha and, at the same time, with State recognition, would have a Jewish wedding with *huppa* and *kiddushin*, and would also be registered, in accordance with the law, with the appropriate civil institutions. In the event that the couple decided to divorce, the dissolution of the marriage was to follow the same parallel tracks, through both the rabbinical court and the civil courts of their country of residence.

However, a new phenomenon became manifest in those countries where the State regulated civil divorce. Couples would finalize their divorce in accordance with the laws of the country—and the men would suffice with this measure, not bothering to present themselves at the rabbinical courts in order to end the covenant of Jewish marriage by handing over a *get*. While according to civil law the couple was now divorced and each partner was free to remarry, their status according to halakha

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remained that of a married couple. A man in this situation would nevertheless sometimes take a new wife: in countries that followed Sephardi custom, he was halakhically permitted to have more than one wife, and even in Ashkenazi countries, if he remarried he would only be violating the enactment (*herem*) of Rabbeinu Gershom, not a biblical prohibition.

The woman, in contrast, retaining her status of *eshet ish* (married woman), would be strictly forbidden to remarry, and any children born to her fathered by a man other than her husband would be considered *mamzerim*. This represented a new dimension of a problem that had only occasionally occurred up until that time: the situation of a woman rendered an “*agunah*” (literally, “anchored,” or “chained”) as a result of her husband’s disappearance, or his departure for a distant destination from which he never returned. In this later model, the man’s location was known—sometimes it was even in close proximity to the local rabbinate and even to his wife—but he was unwilling to cooperate in the delivery of the *get*. The reasons for his recalcitrance were numerous and varied, ranging from lack of interest and apathy, through animosity towards religion, to a quest for revenge and a desire to exact a high price for the *get*.

## EUROPE

The idea of a prior agreement to additional alimony payments as part of a prenuptial agreement, as a way of assuring a future *get* if it became necessary, is mentioned in a question posed to R. Meir Arik, Av Bet Din in Yazlewitz, which was published in the year 5673.<sup>1</sup> He was questioned concerning “a document drawn up between a groom and his bride. . . that after the wedding, if the woman wanted a *get* from her husband, he would be obligated to give her a *get*” along with a sum of money, and if he would not do so, he would owe her a fixed weekly amount for maintenance. R. Meir Arik answered that this formulation would not obligate the man, after the fact, to give his wife the monetary payment together with the *get*, but “the second condition—that if [the first condition] was not fulfilled, he would give it [the fixed amount] to her weekly—would appear to remain valid,” so long as the original agreement was performed by means of a *kinyan* (an accepted, effective halakhic means of transaction), and *me-akhshav* (from that point in time, forward—to cover the possible eventuality of divorce), and through a *bet din hashuv* (an esteemed rabbinical court).

This question was posed *post facto*: it concerned an agreement that had in fact been signed prior to a marriage; the wife now sought a

divorce, and R. Arik was being asked whether the conditions were binding. His response was that the clause for preventing *get*-refusal should indeed be fulfilled through payment of maintenance to the wife until such time as she received her *get*.

## MOROCCO

The idea of tackling the problem of *get*-refusal in a preventative manner using a monetary incentive seems to have first arisen in Morocco, during the 1950's. December 16<sup>th</sup>, 1953 (Tevet, 5714) marked the fifth annual gathering of the Rabbinical Council in Morocco. In the presence of *dayanim* and rabbis representing all the Jewish communities in Morocco, the problem of couples divorcing through a civil procedure, with no *get*, was raised, and specific cases of forbidden relationships and *mamzerim* were mentioned.<sup>2</sup> One of the speakers, R. Yihye ben-Harosh, a *dayan* and rabbi of the town of Port Lyautey (Kenitra), suggested *inter alia* that at the time of the engagement:

He should sign a validated document stating that he commits himself from that time, that if he should divorce this woman he was now engaged to in accordance with the procedures of the civil court, he would be obliged, by virtue of his signature, to divorce her immediately with a writ of divorce (*get*) in accordance with the law of Moses and Israel. Thus, he would not be permitted to marry her until he had signed this document, which would be written in French language and script, which is familiar to most of the public. His signature would also be confirmed at the city council.

R. Ben-Harosh relied on the civil establishment to enforce the husband's obligation to grant a halakhic divorce to the wife whom he had divorced according to the laws of the country. He did not hesitate to enlist what halakha refers to as "gentile courts." While his proposal offers no specific response to the violation of the general commitment to divorce in accordance with halakha, it does make it clear to the prospective groom that he will not be permitted to marry without signing such a commitment.

Following a discussion, the Rabbinical Council ultimately adopted the proposal of its president, R. Shaul Ibn-Denan,<sup>3</sup> which was formulated as follows:

At the time of the wedding, the husband should commit himself in properly validated handwriting that if he should divorce his wife in accordance

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with any manner of civil divorce procedure, he would be obliged to provide her with sustenance—with food, clothing, and housing and *VRV*”R,<sup>4</sup> so long as he had not divorced her with a *get* in accordance with the law of Moses and Israel.

This formulation included a monetary incentive for the man to divorce his wife in accordance with halakha, should they ever obtain a civil divorce.

Three important points concerning this rabbinic enactment that emanated from Morocco are worthy of mention:

1. The problem of *get*-refusal was placed on the agenda by the rabbis themselves. Motivated by concern for the sanctity of the Jewish family, and out of sensitivity *on the part of the rabbinical establishment* to the plight of the women involved, these rabbis decided to address the problem and seek a solution.
2. The resolution adopted by the Rabbinical Council of Morocco was an all-inclusive enactment, meant to be implemented in every instance of marriage. This represented an approach quite different from the usual halakhic procedure—in any sphere—whereby every case is addressed individually.
3. The rabbis adopted a *preventative* measure. In contrast to the usual situation in which religious decisors are called upon to rule on a halakhic problem that confronts them, in this case the rabbis acted to prevent problems from appearing. While the typical halakhic response is to “a case that happened,” here the rabbinical establishment anticipated future developments.

This model of all-inclusive, preventative rabbinical action is extraordinary. The rabbis of Morocco responded to a socio-halakhic need at the time. By means of this innovative approach they laid the cornerstone for future attempts at global, preventative solutions to the problem of *get*-refusal.

## ISRAEL: R. SHALOM MASHASH

In 1981, the idea of prenuptial agreements as a solution received the endorsement of the Chief Rabbi of Jerusalem, R. Shalom Mashash.<sup>5</sup> Noting that such documents had been in use (in Morocco) for more than fifteen years, R. Mashash offered two reasons in favor of their adoption. After

citing the relevant sources among the earlier and later rabbinical authorities, he explains the arguments for and against:

Those who are lenient [and permit the use of a prenuptial agreement] maintain that the fact that the man's delivery of the *get* is dependent on something else [he does it to avoid having to pay the fine] does not render it a case of coercion, since he is free to choose to pay the fine and not to divorce her . . . while the argument of those who are stringent [and forbid the use of a prenuptial agreement] is that since he is fearful of the fine, it is a coerced divorce and hence invalid.

Nevertheless, R. Mashash's ruling was that "the essence of the law here is [directing us] to leniency." His justification is that were this not so,

Several transgressions would result from this, as we know, from some modern women who have thrown off the yoke of religion and would place the responsibility [for their halakhically forbidden new relationships, insofar as they were still considered to be married] upon the rabbis, who did not endeavor to find them a solution . . . Thus in any case adopting the more stringent view would represent laxity, for through the more stringent view we would be chaining the woman and aiding the sinners to fall into the clear prohibition of [adultery with] a married woman . . . the principle that applies here is that "a time of pressing need is like a *be-di'avad* (after-the-fact, non-ideal) situation" [entailing greater room for leniency], and there is no greater "time of pressing need" than this, and so this is our obligation, and this is appropriate.

The sensitivity that R. Mashash displays for the plight of women who are denied a *get* exceeds his concern for the more stringent halakhic view.

The second reason that R. Mashash cites in justifying his ruling is that someone who does not fulfill his marital obligations to his wife (food, clothing and conjugal relations), even if he has divorced her in a civil court, is considered as "rebellious" against his wife, and he is coerced to give her a *get*; in this case, if he does not deliver the *get*, he is forced to pay her. This represents precisely the commitment that the groom accepts upon himself prior to marriage according to the enactment of the rabbis of Morocco.

This Moroccan practice was borne in mind by the rabbis in America when they, too, began to encounter the problem of civil divorce without a *get*. In the winter of 5744, R. Mashash participated in a conference of the Rabbinical Council of America, where he was questioned on this

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subject.<sup>6</sup> Thereafter he corresponded with R. Judah Dick,<sup>7</sup> who had drawn up one of the earliest proposals for a prenuptial agreement at that time in America.<sup>8</sup>

### U.S.: R. MOSHE FEINSTEIN

Towards the end of 1979, in the U.S., R. Moshe Feinstein was questioned by a young rabbi concerning the inclusion of a commitment to give a *get* within the traditional *tena'im* document, signed prior to the wedding. In his letter of response to R. Yechiel Yitzchok Perr, dated 23<sup>rd</sup> Heshvan 5740, R. Feinstein wrote as follows:<sup>9</sup>

Concerning your question of whether it is proper to add the following formula into the *tena'im* document of one of your students: “. . . then he will not withhold giving a writ of divorce, and she will not refuse to accept it, where the Bet Din has so ordered in this regard”: This addition is permissible and the *get* will not be a “coerced divorce.” It is also beneficial in saving her from becoming chained as an *agunah*. . .

It is significant that to R. Feinstein's view, a man's present commitment to divorce his wife in the future, if he is required to do so, and the explicit inscription of the words *get peturin* (writ of divorce) within the *tena'im* document, do not create a problem of the future *get* being considered “coerced.”

A few years after this response appeared, at the end of 1983, R. Moshe Tendler published his own proposed contract.<sup>10</sup> In his Preface, R. Tendler sets forth his dual purpose: to make the *ketuba* and its conditions intelligible to the groom, who signs the document in its original Aramaic, as well as to make the *ketuba* enforceable in civil and religious courts. Like his predecessor in Morocco, R. Yihye ben-Harosh, R. Tendler also enlisted the civil establishment to enforce the halakha. However, R. Tendler saw no need to create any new proposal. He was content to use the traditional monetary agreement that has always been part of every Jewish wedding—the *ketuba* itself. To his view, if a civil court would enforce the man's obligation—an obligation explicitly stated in the *ketuba*—to continue supporting his wife, in accordance with the halakhic principle that “She ascends with him but does not descend with him,”<sup>11</sup> this would cause a recalcitrant husband to divorce his wife with a *get*. Once the husband realizes that from the moment a couple is halakhically divorced, the husband's obligation to support his wife no longer applies, he will have

greater incentive to grant her the *get*.<sup>12</sup> R. Tendler questioned his father-in-law, R. Moshe Feinstein, about the permissibility of enforcing the *ketuba* through “gentile courts,” and was answered in the affirmative. The response was brief and to the point, and we cite it in full.<sup>13</sup>

Drawing up a document in English with a translation of the conditions of the *ketuba*:

7<sup>th</sup> Tishrei 5744, To my esteemed son-in-law who is like my own son, greatly beloved to us, Rabbi Moshe David Tendler, Concerning the drawing up of a document in English, detailing the husband’s obligations to his wife—which are among the conditions of the *ketuba* that have prevailed among us for generations, in order that such a document could be accepted in the [gentile] courts and assist, in some cases, in preventing a husband from leaving his wife with a civil divorce and chaining her without a *get*: it is worthy and proper to do so as an ideal preference, and there is nothing wrong with attaching such a document in English to the regular *ketuba*. With wishes that you be inscribed and sealed for the good, in the books of the perfectly righteous, your father-in-law who loves you with his heart and soul, Moshe Feinstein.

## R. YOSEF DOV SOLOVEITCHIK

During the winter of 1984, the Rabbinical Council of America submitted its proposal for a prenuptial contract.<sup>14</sup> This agreement was based on a commitment by the groom that if his wife would want to divorce, at some time in the future, and he would refuse to give her a *get*, he would have to pay her a certain sum of money. The leader of Modern Orthodox Jewry in the last generation, R. Yosef Dov Soloveitchik, expressed his approval of the agreement.<sup>15</sup>

## RABBINICAL COUNCIL OF AMERICA

The RCA, as the largest Orthodox rabbinical association in the world, numbering 1,000 members, has taken upon itself to promote prenuptial agreements with a view towards ridding Jewish society of the phenomenon of *get*-refusal. Since its founding in 1935, the RCA has stood at the forefront on issues pertaining to the integration of Torah-observant life and its modern, western context.<sup>16</sup> As part of this effort, the RCA has addressed the problem of *get*-refusal at a number of its conferences over the years.

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At a conference that took place in June, 1993, a well-substantiated resolution was passed, calling on all rabbis who were members of the RCA to make use of prenuptial agreements when officiating at weddings, in order to ensure that in the event of a divorce, the *get* would not be subject to negotiation during the civil divorce process.<sup>17</sup> Moreover, the resolution called upon the Executive Committee of the RCA to disseminate the sole agreement (at that time) whose halakhic validity was recognized by the RCA, referred to as “Rabbi Willig’s Agreement.”<sup>18</sup>

At the RCA conference the next year, a resolution was accepted that reaffirmed the resolution of the previous conference. This new resolution stipulated that members of the RCA would, through their sermons and various activities, convey the message of the importance of prenuptial agreements.<sup>19</sup> The resolution was published with the endorsement of ten rabbis of major, well-known communities from all over the U.S.<sup>20</sup>

Eight years later, a further resolution, more strident in its formulation, was passed at the RCA conference held in May 2006:<sup>21</sup>

RESOLVED that since there is a significant *agunah* problem in America and throughout the Jewish world, the Rabbinical Council of America declares that no rabbi should officiate at a wedding where a proper prenuptial agreement on *get* has not been executed.

The home-page of the RCA website provides a list of useful forms for community rabbis.<sup>22</sup> The prenuptial agreement to prevent *get*-refusal is at the top of the list—appearing even before *tena'im* and the *ketuba*.

## YESHIVA UNIVERSITY

While the resolutions were being passed at the RCA conferences, in December 1999, the eleven *roshei yeshiva* of the Rabbi Isaac Elchanan Theological Seminary, affiliated with Yeshiva University in New York, published the following call:<sup>23</sup>

A Message to Our Rabbinic Colleagues and Students

The past decades have seen a significance increase in the number of divorces in the Orthodox Jewish Community. In the majority of these situations, the couples act in accordance with Jewish law and provide for the proper delivery and receipt of a Get. Each year, however, there is an accumulation of additional instances in which this is not the case.

We are painfully aware of the problems faced by individuals in our communities tied to undesired marriages. Many of these problems could have

been avoided had the couple signed a halakhically and legally valid prenuptial agreement at the time of their marriage. We therefore strongly urge all officiating rabbis to counsel and encourage marrying couples to sign such an agreement.

The increased utilization of prenuptial agreements is a critical step in purging our community of the stressful problem of the modern-day Agunah and enabling men and women to remarry without restriction. By encouraging proper halakhic behavior in the sanctification and the dissolution of marriage, we will illustrate that *all* the Torah's paths are peaceful.

(Signed by the Roshei Yeshiva of the Isaac Elchanan Theological Seminary, an affiliate of Yeshiva University: Rabbi Norman Lamm, Rabbi Zevulun Charlap, Rabbi Herschel Schachter, Rabbi Moshe Dovid Tandler, Rabbi Mordechai Willig, Rabbi Yosef Blau, Rabbi Michael Rosensweig, Rabbi Yaakov Neuburger, Rabbi Yonason Sacks, Rabbi Meir Goldwicht, Rabbi Jeremy Wieder—December 1999; Tevet 5760)

By publishing their call, this group of rabbis showed that the problem of the “modern-day *agunah*” is a matter of concern not only for community rabbis, but also for the *roshei yeshiva* of the largest Modern Orthodox *beit midrash* in North America.

### BETH DIN OF AMERICA

The Beth Din of America distributes the main agreement currently in use in the U.S., encourages couples to sign it, and also provides archive services. The original version of this agreement was what the RCA had referred to, in 1993, as “Rabbi Willig’s Agreement.” R. Mordechai Willig had brought this agreement before several leading halakhic authorities, in Israel and in the Diaspora, in Shevat 5752 (1992). The rabbis who endorsed the agreement included R. Zalman Nehemiah Goldberg, R. Ovadiah Yosef, R. Yitshak Liebes, R. Hayyim G. Zimbalist, and R. Gedalia Dov Schwartz.<sup>24</sup> The importance of R. Willig’s agreement is that this was the first such contract to receive the approval of three of the most senior *dayanim* in Israel—Rabbis Goldberg, Yosef, and Zimbalist.

Like the precedent set by the rabbis of Morocco from 1953, R. Willig’s contract is a monetary agreement based on a commitment by the man to pay maintenance to his wife in the event that he refuses to grant her a *get*. However, in accordance with the legal situation in the U.S., the agreement is included within the framework of a legally binding arbitration contract. The man’s signature on this arbitration document authorizes the court to effectuate the prenuptial agreement.

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In recent years, the binding arbitration/prenuptial agreement has been featured on several American Jewish websites.<sup>25</sup> By February 2004, some twenty couples who had signed the document before marrying had applied to the Beth Din of America (the rabbinical court of the RCA) to arrange a divorce.<sup>26</sup> According to the director of the Beth Din, R. Yona Reiss, all but two of these couples were divorced halakhically, quickly, and without needing to resort to the agreement. In the two exceptional cases, the husband gave the *get* just before the Beth Din issued a ruling on the wife's request to effectuate the agreement. In February 2005, R. Reiss noted that out of the updated number (then thirty) of couples who had originally signed a prenuptial agreement and who had later sought to divorce, all had completed the proceedings for a *get* within a reasonable period of time.<sup>27</sup> He also noted that the agreement had had no effect on the percentage of couples who sought divorce, nor did it influence the decision to divorce.

It is noteworthy that in every instance where a couple had signed the agreement and one of the spouses later sought a divorce, the *get* was given even *before* the divorce proceedings had even been completed in the civil court. Thus, among couples that sign the agreement, the RCA has achieved its aim of preventing the phenomenon of civil divorce without a halakhic *get*.

As noted previously, in 1981, R. Shalom Mashash—the Chief Rabbi of Jerusalem at the time—expressed his approval of prenuptial agreements to prevent *get-refusal*<sup>28</sup> in letters, at a rabbinical conference in America, and in his writings.<sup>29</sup>

### R. YAAKOV BETZALEL ZOLTY

In 1986, R. Yaakov Betzalel Zolty authored a halakhic response to R. Abner Weiss of Riverdale on the subject of a prenuptial agreement.<sup>30</sup> R. Zolty introduced his letter with his proposal for a prenuptial agreement, and continued by citing proofs and sources supporting his position. His proposal is as follows:<sup>31</sup>

... [T]he simplest solution is that at the time of the marriage the husband should undertake to make provisions for [his wife]'s support, [when] there has been a civil separation or divorce, and she cannot remarry because of [his refusal to grant a divorce] (*Ketubot* 97b, *Bava Metsiah* 12b). [He must pay] a sum of two thousand dollars weekly until he grants

[his wife] a divorce. However, the husband would have the right to bring the case before an authoritative rabbinic court in order to relieve himself of this obligation, in whole or in part. (This will accomplish the following: we will have forced the husband to appear before a rabbinical court to request aid, and the court will then be able to pressure or persuade him to grant a proper divorce.) Now, this obligation applies even when [the wife] works and earns her own keep. . .

R. Zolty's innovation is the relatively high sum—two thousand dollars weekly—to which the man commits himself in the event that he refuses to divorce his wife once they are living apart. It is clear that, according to R. Zolty's view, this sum does not render the divorce "coerced," since the man remains obligated to support his wife by virtue of the fact that she is prevented, because of him, from remarrying.

In cases where a woman is unable to remarry because of her husband's refusal to grant her a *get*, the maintenance set by the rabbinical court is usually high. While the man is entitled to appeal to lower the amount, he has no guarantee that the court will accede to his request. If he chooses to appeal, then whether the amount remains fixed or whether the rabbinical court lowers it, the man is obligated to pay his wife maintenance until he divorces her with a *get*. In the Diaspora, where the rabbinical court has no authority to have someone forcibly brought before it, this possibility of requesting a reduction in the amount set for maintenance has the helpful effect of causing the man to present himself before the court of his own accord.

### R. HAYYIM DAVID HA-LEVI

R. Hayyim David ha-Levi is a former Sephardi Chief Rabbi of Tel Aviv. In 1984, while he held that position, he—together with his Ashkenazi colleague, R. Yitshak Yedidia Frankel—authorized prenuptial agreements which included clauses for the prevention of *get*-refusal.<sup>32</sup> R. ha-Levi also addressed the subject in his responsa, as follows:<sup>33</sup>

I have also heard others argue against agreements for monetary relations between the couple, [claiming] that it looks as though they are building their home with thoughts of divorce and death. I wonder at these claims: are all the laws of marriage documents that appear in *Even ha-Ezer*. . . not a lawful regulation of monetary relations between the couple? What difference is there between regulation by law and regulation on the basis of

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an agreement? . . . For it is quite clear. . . that if the monetary matters are not well regulated, suspicion will prevail between the spouses which may undermine their married life—for this is the nature of the world. . . Everything is regulated in halakha with a view to the stability of married life, to prevent friction and suspicion between the spouses, and to have peace prevail in their lives. However, nothing that our Sages set forth in halakha obligates the couple in any monetary matters, and they are entitled to regulate the monetary relations between themselves as they wish; this in actuality being an agreement for monetary relations between the couple. Not only is this not contrary to halakha, but the foundations for it are to be found in the halakha.

In these brief words, Rabbi ha-Levi addresses many of the various objections that are raised when people encounter the idea of a prenuptial agreement for the first time in their lives. His response remains valid to this day.

### AGREEMENTS THAT HAVE BEEN AUTHORIZED BY *DAYANIM*

Prenuptial agreements to prevent *get*-refusal based on increased alimony payments were legally ratified during the 1990's and 2000's by marriage registrars in religious councils throughout Israel, as well as by *batei din*.<sup>34</sup> For example, in 1989 the agreement was awarded the validity of a ruling of the Jerusalem rabbinical court by Rabbis Shilo Refael, Shlomo Fisher, and Eliyahu Abergil. In 1996, it was awarded the same validity by R. Zalman Nehemia Goldberg and R. Shlomo Fisher. Between 1995-2000 a number of agreements were signed before the rabbinical court in Jerusalem, by the couple, and thereafter by the *dayanim*.

On January 15<sup>th</sup>, 1997 (7<sup>th</sup> Shevat 5757), a conference was held at the Gruss Kollel in Jerusalem, under the joint auspices of the Association of Yeshiva University alumni in Israel and the Council of Young Israel Rabbis in Israel, on the subject of "The Prenuptial Contract and Its Ramifications for Society." The speakers at this conference included the *dayan* of the Supreme Rabbinical Court, R. Zalman Nehemia Goldberg; Adv. R. Dov Frimer, and the compiler of the agreement used by the Beth Din of America: R. Mordechai Willig. On this occasion, R. Willig reported that in 60% of weddings conducted by a rabbi who was a member of the RCA, the groom had signed the RCA Beth Din agreement.<sup>35</sup> He stated that until that time there had not been a single case of a couple appearing before the Beth Din for a ruling on the

agreement, and that divorces among couples who had signed the agreement at the time of their marriage were conducted quietly and were concluded speedily. R. Willig noted that not only did the agreement have an effect on dignified divorce—if matters came to that—but it was also the basis for mutual respect in the building of the relationship between bride and groom. (At the conference, R. Zalman Nehemia Goldberg voiced his view that R. Willig’s agreement was “appropriate for the Diaspora.”)

Some of the *dayanim* serving in the Israeli rabbinical courts have addressed the need for a prenuptial contract, and have drawn up their own versions. R. Shear Yashuv Cohen, Av Bet Din and Chief Rabbi of Haifa, has proposed an agreement<sup>36</sup> which includes removing the husband’s control over the wife’s assets as well as a commitment to increased maintenance in the event of him refusing to grant a *get*. Apparently, R. Cohen felt—in his official capacity—that the tools at the disposal of the rabbinical courts in Israel were inadequate. He takes the following view of this “problem of the generation”:<sup>37</sup>

Rabbinical court judges often hear the cry of women whose husbands abuse them for the sake of revenge, and who—out of meanness and wickedness—prevent them from divorcing and remarrying in accordance with the law of Moshe and Israel and establishing a Jewish home, to rebuild the ruins of their lives. These husbands brazenly rebel against court rulings obligating them to grant a *get* to their wives; they appeal against them in various courts, show scorn for the rabbinical courts, and delight in the pain of these women.

Two more *dayanim* have recognized the need to provide the rabbinical court with tools in the form of a prenuptial contract, but have proposed solutions that are not based on increased maintenance. The agreement drawn up by R. Eliyahu Bakshi-Doron is based on a division of ownership of the couple’s apartment,<sup>38</sup> while R. Shlomo Daikhovsky prefers a property agreement<sup>39</sup> that allows the rabbinical court to dissolve the joint ownership of the couple’s assets where the court has ruled out the possibility of restoring domestic harmony.

In his latest volume of response,<sup>40</sup> the Sephardic Chief Rabbi of Israel, R. Shlomo Amar, enters into a lengthy discourse regarding prenuptial agreements for the express purpose of prevention of *get*-refusal. Referring to R. Zolty’s proposal of an agreement to be used in the Diaspora,<sup>41</sup> R. Amar examines the possible points of contention. He presents a thorough analysis of the *rishonim*, including Rashba and Rema,

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together with *aharonim* such as the Hazon Ish. R. Amar concludes that under these conditions a *get* delivered on the basis of a *kenas* (fine), which a man accepts upon himself prior to the marriage out of his own free will, would be valid. The validity of the *get* is even more firmly grounded when given on the basis of a prenuptial agreement which obligated the husband in spousal support, namely *mezonot me'ukevet me-hamato mi-lehinasei*. As R. Amar wrote:<sup>42</sup>

This agreement . . . is good and right and has great use in preventing the state of *aginut* from the daughters of Israel abroad, and to prevent strict prohibitions of *eshet ish*, G-d forbid, and the proliferation of *mamzerim*, may G-d protect us.

In describing the proper way to draw up a prenuptial agreement based on spousal support, rather than a fine, R. Amar specifically states<sup>43</sup> that,

Even Rashba would admit in this ruling that there is no fear of a coerced *get*, both because the man obligated himself prior to the marriage, and with this in mind the woman married him; as well as the fact that the obligation is in accordance with halakha so that he should not prevent her [from remarrying].

## AGREEMENT FOR MUTUAL RESPECT

Over the course of its development, as well as in its present form, the Agreement for Mutual Respect<sup>44</sup> has been approved a number of times by various rabbinical authorities, including some representing the Supreme Rabbinical Court in Jerusalem and various Religious Councils.<sup>45</sup> Some communal rabbis and teachers at Religious Zionist *yeshivot* have taken it upon themselves to recommend the Agreement for Mutual Respect to every couple that requests that they officiate at their wedding. Many couples regard the signing of this agreement as an expression of concern for the Jewish nation in general and as a step promoting a proper and just Jewish society. Several couples have even made declarations to this effect as they stand under the *huppa*. One such rabbi, who explains the purpose of the document to the gathering in the midst of the ceremony, expressed his position in the following words:<sup>46</sup>

To my mind, the agreement in question creates a good balance between the conflicting values: protecting the freedom of the individual to choose

vs. protecting the stability of the family; adaptation to the modern ethos vs. loyalty to halakha and to its traditional frameworks. I explained to the couple (as well as to those gathered under the *huppa*) that an agreement and a contract that ensures satisfactory treatment of problems, if and when they arise, may contribute to each spouse's sense of security within the relationship, and thereby help to realize their love and sustain it. I also noted that the *ketuba*, which is signed and read out at the *huppa*, deals with exactly the same issues, since our Sages, too, understood that what halakha contributes to the realization of the love is the creation of that sense of fairness and security.

The Agreement for Mutual Respect appears on a number of websites. The rabbinical organizations that disseminate it include the Yeshiva of the Religious Kibbutz Movement, in Ein Tsurim,<sup>47</sup> and the Council of Young Israel Rabbis in Israel.<sup>48</sup>

## R. ELIYAHU BEN-DAHAN

In a newspaper interview,<sup>49</sup> the director of the rabbinical courts in Israel, R. Eliyahu Ben-Dahan, declared that in principle he approved of prenuptial contracts, and that many *dayanim* accept them if they are drawn up in accordance with halakha. R. Ben-Dahan noted specifically one agreement as being halakhically valid: the contract compiled by Rabbinical Court Advocate Rachel Levmore, R. Elyashiv Knohl, and R. David ben-Zazzon, known as the Agreement for Mutual Respect.

R. Ben-Dahan has reiterated his position several times in public lectures. As a participant in a panel discussion of three Israeli rabbis who approved of halakhic prenuptial agreements,<sup>50</sup> such as the Agreement for Mutual Respect, R. Ben-Dahan explicitly stated (and repeated this statement to a newspaper interviewer shortly thereafter<sup>51</sup>) that the Rabbinic Courts have in the past upheld prenuptial agreements and have arranged *gittin* on the basis of the Agreement of Mutual Respect. He noted explicitly that there has not been any case of an Israeli Rabbinical court declaring the Agreement of Mutual Respect invalid. In the newspaper interview, R. Ben-Dahan expanded his view: "Prenuptials can be very helpful in expediting divorce procedures, especially in cases where it is clear that the couple's divorce is unavoidable, but where halakha does not give the Rabbinic Court judges the power to obligate the husband to give a *get*."<sup>52</sup>

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### CONCLUSION

The evolution of halakhic prenuptial contracts to prevent *get*-refusal can be traced back to Diaspora communities. Later questions posed to and by rabbis in the Diaspora led to the involvement of the Israeli rabbinate. In Israel, too, there is considerable interest in and concern over the problem of *get*-refusal. R. Judah Dick explains:<sup>53</sup>

While in bygone times divorce was rare, and husbands refusing to give a *get* rarer still, there was no need to seek solutions for such unusual phenomena. Today, however, we are obligated to try with all our might to find halakhic guidance to solve this painful problem.

His words, written in 1984, have become even more pertinent over the last quarter century. Over this period, rabbinical involvement has increased and practical halakhic solutions have been proposed in the form of prenuptial contracts to prevent *get*-refusal. These agreements, including the Agreement for Mutual Respect, have been built and developed on the foundations laid by the rabbis of Morocco in the 1950's. By means of their enactment, the rabbinical establishment at that time proposed a comprehensive, preventive solution. This proposal was developed and refined, finally taking the form of the agreements in use today.

Widespread use of prenuptial agreements over the course of several years will lead to rabbinical acknowledgment that such agreements actually serve to strengthen the Jewish family unit. At the beginning of a marriage, a sound and fair agreement offers each spouse the ability to trust the other, thereby easing their concerns. On the other hand, should one or both spouses decide, at some later stage, that their paths should be separated, the agreement comes to minimize the personal anguish that is experienced by both spouses in any divorce. Thus, each side will be more emotionally and psychologically ready to remarry and to rebuild the family unit. In contrast, without an agreement, and in the event of *get*-refusal, both spouses and their children experience trauma that affects each of them. As a result of this trauma, even after the *get* has been handed over, the woman will have profound reservations about remarrying, and is thereby prevented from establishing a new family unit.

Where the divorcing couple has children, it often happens that the parents involve their children as weapons in what they perceive to be a just battle. The children find themselves torn between two adults who are both supposed to be loved and respected, without the tools to deal with this unnatural situation. After the divorce, these two adults will still need

to cooperate in raising their children. How will such joint parenthood be possible between bitter adversaries who have hurt each other so profoundly? With a view to the future, the relationship model that the children have been shown is not one of healthy relations between the spouses. This is likely to affect them when they reach the stage of building their own families.

A further social factor worthy of serious consideration is that over the course of years of legal wrangling, during which time the woman is unable to remarry, her childbearing years are lost. This opportunity cannot be regained. So long as Jewish society tolerates the phenomenon of *get*-refusal, it is acquiescing to the lost potential of Jewish children who could have been born.

To the extent that society encourages the signing of prenuptial agreements to prevent *get*-refusal and that the subject becomes more widely familiar, all the questions about reconciling a time of great love with the content of the agreement will find their answers, just as with regard to the *ketuba*. The prevailing approach will be a mature assumption of obligations—whether to one’s spouse or to Jewish society in general. Along with rabbinical recognition of the positive effects of the agreement on the Jewish family unit, there will be increasing openness to other, fundamentally deeper solutions to the problem of *agunot*.

Signing the Agreement for Mutual Respect serves three aims: personal insurance for the couple that signs; social action through the dissemination of the agreement and its increasing acceptance amongst society; and the paving of the way for further solutions to the problem of the modern-day *agunah*.

## NOTES

1. R. Meir Arik, *Imrei Yosher* (Munkacs: 5673 [1912]), *siman* 6.
2. R. Moshe ben Shelomo Amar, *Sefer ha-Takkanot—ha-Mishpat ha-Ivri be-Kehillot Morocco*, vol. I (Jerusalem: 5746), 359-375, 468.
3. Chief Rabbi and Av Bet Din of the Supreme Bet Din of Morocco.
4. This abbreviation is not clear: it may signify “*ve-reihayim va-rekhev*,” referring to millstones—denoting hard work. Another possible understanding of this abbreviation is “*ve-rov rekhush*,” signifying an additional amount over and above the husband’s obligations to his wife. R. Shalom Mashash, in *Sefer Tevu’ot Shemesh* deciphered the abbreviation as “*ve-rofeh ve-refuot*,” meaning medical treatment. See n. 5 below.
5. R. Shalom Mashash, *Sefer Tevu’ot Shemesh* (Jerusalem: 5741), *Even ha-Ezer*, *siman* 66.
6. The incident is recorded in R. Mashash’s book, *Shemesh u-Magen* (Jerusalem: 1984), *Even ha-Ezer*, *siman* 11. See also R. Shalom Mashash, “*Hayyav Atsmo*

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- be-Kenas Im Lo Yegaresh*,” *Moriah* 11-12 (Shevat, 5753), 68-76. We shall elaborate below on the activity of the Rabbinical Council of America.
7. The letter from R. Mashash to R. Dick was entitled “*Kenas be-Gerushin*” (*A Fine in Divorce Proceedings*) and was dated 28<sup>th</sup> Nissan 5744, April 30<sup>th</sup>, 1984. It was later published in *Shemesh u-Magen*; see n. 6 above.
  8. R. Judah Dick. “*Hatsa’al le-Arikhat Shetar Hiyyuv le-Mattan Get be-Mikreh Shel Gerushin Ezrahuyim*,” in *Sefer ha-Yovel Likhvod ha-GRY”D Soloveitchik*, eds. Shaul Yisraeli, Nachum Lamm, Yitzhak Refael (Jerusalem-New York, 5744), 226-240. Original publication in English: Judah Dick, “Is an Agreement to Deliver or Accept a *Get* in the Event of a Civil Divorce Halakhically Feasible?,” *Tradition* 21:2 (Summer, 1983): 91-106.
  9. The letter appears in *Iggerot Moshe, Even ha-Ezer*, 4:107.
  10. R. Moshe Tendler, “The Ketubah: A Meaningful English Summation and Translation,” *Chavrusa*, Vol. XVIII No. 2 (February 1984). *Chavrusa* is a journal published by rabbinical graduates of Yeshiva University. The proposed agreement is presented in full in my masters’ thesis: Rachel Levmore, “*Heskemei Kedam-Nissu’in le-Meni’at Sarvanut Get be-Sof ha-Me’ah ha-Esrin*” (M.A. thesis, Bar Ilan University, 5761).
  11. Babylonian Talmud, *Ketubot* 61a; *Tur Even ha-Ezer*, *siman* 70.
  12. R. Tendler explained this to me on Jan. 17<sup>th</sup>, 2001, in a private conversation that took place at the Tiferet Avot synagogue in Efrat. R. Tendler also told me that his contract has twice been brought before a civil court in America. On both occasions, the couple reached an agreement and the divorce was completed in accordance with halakha before the civil court ruled on the legality of the contract.
  13. R. Moshe Feinstein, *Iggerot Moshe, Even ha-Ezer*, 4:90.
  14. “The RCA Commission: Solving the Problem of Gittin,” *Hamevaser*, Vol. 22 No. 2 (Oct. 27, 1983).
  15. His endorsement was reported in the same article in *Hamevaser* (see n. 14 above), the student publication of the Department of Jewish Studies at Yeshiva University, where R. Soloveitchik served as Rosh Yeshiva.
  16. [http://www.rabbis.org/about\\_us.cfm](http://www.rabbis.org/about_us.cfm).
  17. “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. We realize that there are several prenuptial agreements and many may raise halakhic or legal difficulties. We, therefore, call upon the Executive Committee of the Rabbinical Council of America to disseminate a list of approved prenuptial agreements with procedures of implementation to the chaverim. All prenuptial agreements must be approved by the Rabbinical Council of America’s *bet din*. To this date only Rabbi Willig’s prenuptial agreement has been accepted and this document will be distributed immediately to the Rabbinical Council of America members.” <http://www.yerushalayim.net/organizations/oc/prenup/rca.htm>.
  18. This agreement will be discussed below.
  19. See <http://www.yerushalayim.net/organizations/oc/prenup/rca.htm>.
  20. See also [http://www.ocweb.org/index.php/pre\\_nuptial/P0/](http://www.ocweb.org/index.php/pre_nuptial/P0/)
  21. <http://www.rabbis.org/news/article.cfm?id=100772>.

22. <http://www.rabbis.org>.
23. See [http://www.ocweb.org/index.php/pre\\_nuptial/article/prenuptial\\_agreement\\_graphic/](http://www.ocweb.org/index.php/pre_nuptial/article/prenuptial_agreement_graphic/). Published in *The Jewish Press* on Feb. 25, 2000, p. 28; “Chained Women Could Have Used Prenuptial Pacts,” *Forward*, Feb. 25, 2000.
24. B. Herring & K. Auman, eds, *The Prenuptial Agreement, Halakhic and Pastoral Considerations* (New Jersey: 1996), 19; [http://www.ocweb.org/index.php/pre\\_nuptial/P](http://www.ocweb.org/index.php/pre_nuptial/P). See also: [http://www.ocweb.org/index.php/pre\\_nuptial/article/on\\_the\\_compelling\\_need\\_for\\_an\\_effective\\_prenuptial\\_agreement/](http://www.ocweb.org/index.php/pre_nuptial/article/on_the_compelling_need_for_an_effective_prenuptial_agreement/)
25. Rabbinical Council of America: <http://www.rabbis.org/forms/Halachic%20Prenuptial%20Arbitration%20Agreement.pdf> Beth Din of America: [http://www.bethdin.org/PNA\\_web\\_with\\_instructions.pdf](http://www.bethdin.org/PNA_web_with_instructions.pdf); Orthodox Caucus: [http://ocweb.org/images/uploads/Halachic\\_Prenuptial\\_Arbitration\\_Agreement.pdf](http://ocweb.org/images/uploads/Halachic_Prenuptial_Arbitration_Agreement.pdf); Jewish Prenup: <http://www.jewishprenup.org/2.html>.
26. Reported to me by R. Yona Reiss, director of the Beth Din of America, on Dec. 2<sup>nd</sup>, 2004. In a letter dated Nov. 14<sup>th</sup>, 2000, he noted that the Beth Din of America’s agreement made it possible to limit the authority of the rabbinical court such that it could not rule on monetary matters such as alimony or child custody and visitation rights. Another important point is that the Beth Din offers couples the option of storing their agreements in their archives. (It must be remembered that the agreement is not signed in the presence of the Beth Din, but rather in front of their rabbi and lawyers.) As of 2004, more than a hundred couples, out of several hundred, had indeed chosen to store their agreements in the offices of the Beth Din.
27. At an evening study session on the subject of prenuptial agreements to prevent *get*-refusal, held at Stern College in New York, on Feb. 16<sup>th</sup>, 2005, the speakers were R. Reiss and myself. R. Reiss told the audience—students of Yeshiva University—that with regard to the couples that had originally married with a prenuptial agreement and later sought to divorce, “in 100% of the cases, the *get* was given in a timely fashion.”
28. R. Shalom Mashash, *Sefer Tevu’ot Shemesh* (Jerusalem: 5741), *Even ha-Ezer*, *siman* 66. See n. 4 and the quotation in the body of the text above.
29. R. Shalom Mashash, *Shemesh u-Magen* (Jerusalem: 1984), *Even ha-Ezer*, *siman* 11. See also R. Shalom Mashash, “*Hayyav Atzmo be-Kenas Im Lo Yegaresh*,” *Moriah* 11-12 (Shevat 5753): 68-76.
30. It is worthy of note that in this response, R. Zolty retracted the position that he had adopted in another ruling, thirty years previously, on the subject of a divorce agreement. In Appeal File Ap/47/16 at the Supreme Rabbinical Court, heard by *dayanim* R. Yitzhak Nissim, R. Y. S. Elyashiv and R. B. Zolty, the ruling had been that even if the man’s commitment to pay had been made “*me-akhshav*” but was dependent on some condition (i.e., his obligation would come into force only if and when his wife sought a divorce), his commitment still belonged to the category of *asmakhhta* (an indecisive contractual obligation or one undertaken without due consideration). In this case the *dayanim* ruled that in a divorce agreement where the man had committed to pay a steep maintenance to his wife and children if he later felt unwilling to give a *get*, the high sum that had been specified now represented a form of fine, which rendered the divorce “coerced” and invalid.

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31. As quoted in: R. Shlomo Riskin, *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). R. Riskin himself proposes a similar formulation (p. 140). R. Zolty's response also appears in R. Riskin's book in Hebrew. See: R. Shlomo Riskin, *Yad la-Isha: ha-Isha ve-ha-Gerushin al pi ha-Halakha—Pitaron Hilkhati le-Vea'ayat ha-Agunah* (Efrat:5764).
32. These agreements are presented in my masters' thesis; see n. 10 above.
33. R. Hayyim David ha-Levi, *Mayim Hayyim Responsa* (Tel Aviv: 5751), siman 63.
34. Levmore, see no. 10 above.
35. It should be noted that this statement was made in 1997—some nine years prior to the RCA resolution requiring any member rabbi who officiated at a wedding to hold a *huppa* only if a prenuptial agreement had been signed. See n. 17 above.
36. The first agreement that R. Cohen formulated was for a couple that married in Jerusalem in 1990. Thereafter he adapted the text for general use.
37. R. Shear Yashuv Cohen, "*Kefiyat ha-Get ba-Zeman ha-Zeh*," *Tehumin* 11 (5750): 195-202.
38. R. Eliyahu Bakshi-Doron, "*Kakh Nitan Liftor Et Be'ayat Mesuravot ha-Get*," *Meimad* (Av-Elul 5755): 8-9.
39. R. Shlomo Daikhovsky, "*Heskemei Mamom Kedam-Nissu'in*," *Tehumin* 21 (5761): 179-187.
40. R. Shlomo Amar, *Shema Shelomo* (Benei Berak: 5768), 6: *siman* 19-20
41. See footnote 31 above.
42. Amar, *ibid.* *siman* 19.
43. Amar, *ibid.* *siman* 20.
44. The Agreement for Mutual Respect was first published, in one of its earliest versions, by R. Eliashiv Knohl, "*Ha-Ketubba ve-Heskemei Mamon be-Nissu'in*," *Tehumin* 21 (5761): 324-339. As noted there, the agreement was compiled by R. Knohl, Rabbinical Court Advocate Rachel Levmore, and R. David Ben-Zazzon, in consultation with lawyers, academics, rabbis and *dayanim* of the Supreme Rabbinical Court.
45. See: Rachel Levmore, "*Heskemei Kedam-Nissu'in li-Meni'at Sarvanut Get be-Sof ha-Me'ah ha-Esrin*" (M.A. thesis, Bar Ilan University, 5761).
46. Response to a research survey conducted by Miriam Levmore, "*Be'ayat Seruv ha-Get: Hishtalshelutah ha-Hilkhatit u-Pitaron Meni'ati-Hilkhati*," Neve Channah Girls' High School, 5767.
47. <http://www.ykd.co.il/hebrew/publications/publications.asp?item=heskem>
48. <http://www.youngisraelrabbis.org.il/prenup.htm>.
49. Published in English: "Strong Bonds," *The Jerusalem Post*, Oct. 5, 2007, <http://www.jpost.com/servlet/Satellite?pagename=JPost%2FJPArticle%2FShowFull&cid=1191257222042>.
50. The three panelists were: R. Eliyahu ben-Dahan, R. David Bass and R. Baruch Gigi. The panel constituted the closing session of a two-day course for professionals entitled "The Agunah problem and Halakhic Prenuptial Agreements," which took place May 18<sup>th</sup> and 25<sup>th</sup>, 2008. Several organizations collaborated in organizing the course, each one promoting the agreement: The Council of Young Israel Rabbis in Israel, The Rackman Center of Bar Ilan University, MaTaN, Mifnim and Yad LaIsha.

51. Matthew Wagner, "Rabbinic Court Head Supports Use of Prenuptial Agreements", Jerusalem Post, June 2, 2008, <http://www.jpost.com/servlet/Satellite?pagename=JPost%2FJPArticle%2FShowFull&cid=1212041459905>.
52. Ibid.
53. R. Judah Dick, "*Hatsa'a le-Arikhat Shetar Hiyuv le-Mattan Get be-Mikreh Shel Gerushin Ezrahiyim*," in *Sefer ha-Yovel Likhvod ha-GRY" D Soloveitchik*, eds. Shaul Yisraeli, Nachum Lamm, Yitzhak Refael (Jerusalem-New York 5744): 226-240.