

From our President

## A Matter of Choice

By Blu Greenberg



The spiral effect of September 11 was enormous. As in any disaster, the unknowns added to the chaos and pain. One such matter concerned potential *iggun* for the widows. By day three, even before the full shock and horror had crested, I had received several calls: what was JOFA going to do about the *agunot* of the World Trade Center? Hearing the edge in my own voice, I answered that it was premature, absurd to raise the issue; the search for survivors had barely begun; widows were not interested in talking about *get*; there would be no *agunot* because the rabbis always came through in large scale disasters. "You'll see," a friend countered, "they may not be able to – they may not have a choice."

Perhaps I had dismissed the matter too quickly. In the ensuing days, stories circulated of a man who jumped from a high floor so that his body would be found; another called his rebbe just before the building imploded to authorize a *get*. I wondered at how they managed to focus on their wives' vulnerability amidst their own terror. Their actions reminded me of Rashi's commentary on the talmudic passage (Yevamot 122a), "In a time of danger: like one who was thrown into a pit and called out that whoever hears his voice should write a *get* to his wife..."

What is the issue here? A Jewish marriage is terminated through death or

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## Yes, But Will it Stand Up in Court?

### Enforceability of Religious Prenuptial Agreements

By Michelle Greenberg-Kobrin

Religious prenuptial agreements attempt to anticipate issues that arise at the end of Jewish marriage. These issues, which include the granting of a *get*, occur because of the contractual nature of halakhic marriage. Unlike secular marriage, which is a status imposed on the parties by the state (and can therefore be removed by the state), halakhic marriage begins when husband and wife enter into a contractual relationship in which they accept certain mutual responsibilities, and therefore can only be brought to

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## My Agunah Summer

By Rivka Haut

In May of 2001 my husband, Rabbi Yitzchak Haut, passed away. He had devoted much energy to alleviating the *agunah* situation, and following his death I decided to keep up with my own efforts on behalf of *agunot*. In years past, during the summer months I have allowed a *get* organization to use my phone number as their hotline. Always, the issues have been few and not difficult. This summer was different. My phone was ringing often – too often.

The first call I received was from a woman I had tried to help before. Rachel\* was married and divorced in Russia. When her husband refused to

grant a *get*, she went to the only rabbi in her town for help. The "get" document the rabbi issued her is clearly not halakhic, as it states that the *get* is dependent upon the civil divorce. On the basis of this *get* the rabbi performed her remarriage, from which she now has children. When Rachel and her husband moved to a religious community in New York, a rabbi began questioning her *get* and, along with it, the status of her children, who could be considered *mamzerim* (bastards).

Years earlier I tried bringing Rachel to various rabbis, who all declared the *get* invalid. One rabbi made some

attempts to help, but gave up after a few months. This time, I accompanied Rachel to a meeting at an established *beit din*. The rabbis said they felt they could remedy the situation. The summer passed and we heard nothing. I contacted the *beit din* and was told, by a most sympathetic wife of one of the rabbis, to be patient. The rabbis are trying their best, she said, but it takes time. A few months ago, the *beit din* referred Rachel to another *beit din*, whose rabbi is genuinely trying to help. In the meantime, Rachel is becoming more involved in the religious community and is greatly

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## Letters to the Editor

### So What?

I'm sorry to say that I was disappointed with the Winter 2001 issue of the JOFA Journal. Reading it, one would imagine all religious Jewish women were unwillingly trapped, barefoot and pregnant, in their kosher kitchen barely able to read a recipe.

The *frum* world hasn't accepted every demand of the Orthodox feminists. Well, so what? There are opportunities for women that now exist. Are things perfect? Of course not! But life is not perfect. Tensions will exist within the Orthodox community over the roles of women. This is natural, as change is difficult.

Ethel C. Fenig  
Chicago



**JOFA** Journal  
JEWISH ORTHODOX FEMINIST ALLIANCE

A publication of the  
Jewish Orthodox Feminist Alliance  
Volume III, Issue I  
Winter 2002 — Tevet-Shevat 5762

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JOFA Journal is published quarterly by the Jewish Orthodox Feminist Alliance, a non-profit organization. Membership is \$36 per year, \$18 for students. All correspondence should be mailed to: Jewish Orthodox Feminist Alliance, 459 Columbus Avenue, Suite 329, New York, NY 10024. We can be reached by phone at (212) 752-7133 or by email at: [jofa@rcn.com](mailto:jofa@rcn.com).

### "At Whose Expense?"

Janet Dolgin is halakhically and emotionally quite correct in pointing out that a woman can make *kiddush* for her husband. In our home we even go one step further. Every Shabbat one of our teenaged daughters makes *kiddush* for the entire family. Their Hebrew is flawless; their melody is perfect, and their voices are infinitely more mellifluous than their father's.

Am I ashamed that they make *kiddush* for me? I would be ashamed if they couldn't. As my wife and I listen to them, we see and hear a *kiddush Hashem* in more ways than one.

Issac Steven Herschkopf, M.D.  
New York

### Clarification

The mandate of Yeshiva University is *Torah U'Maddab*. It would be wrong to suppose that my article, "At Whose Expense?" published in this newsletter, is in any way critical of this mandate. In my view, Y.U. is an impressive institution of significance to American Jews and to the general academic community.

Janet Dolgin  
New York

### "What Makes Women Sick?"

I was sorry to see the review of Susan Sered's book – *What Makes Women Sick?* – in the Winter 2001 Journal. The book (and review) take it as a given that Israeli women are weaker and sicker as compared to women in other countries, whereas the World Health Organization reports that female life expectancy in Israel ranks twenty-fourth among UN members – ahead of the US and UK. That said, Sered's thesis that Israeli women are subject to any particular stresses, and her list of such stresses, are ludicrous to anyone with minimal knowledge of Israeli society. I hope to see the Journal exercise a bit more discretion and purpose in the future in its choice and manner of book reviews.

Mordy Hurwich  
Jerusalem

Save the Date!

Mission to Israel  
May 19-23, 2002

see Upcoming Events, page 6

### A Matter of Choice

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divorce, and these men had died in the building. But Jewish law contains a remarkable principle, *hezkat hayyim* – the presumption of life. Until we know with certainty a person has died, we should not abandon hope. Perhaps he was waylaid by robbers in the forest, or taken captive. Perhaps his ship went down but he was rescued to a distant shore and would eventually return. *Hezkat hayyim* is an optimistic, life affirming principle. Direct testimony is required to verify death.

In the WTC attack, as in ancient catastrophes, there was no chance for witnessing. While circumstantial evidence was powerful, it did not meet the

classic halakhic requirements of body identification or direct testimony.

Despite this, I felt confident there would be no *agunot* from the WTC attack, for in response to catastrophe, the rabbis always found a way. After the Shoah, they released thousands of women whose husbands did not reappear. Widows of the missing submarine Dakar crew were similarly released. The Israeli rabbinate takes precaution to prevent *iggun* when young IDF husbands go to battle. And, indeed, the *agunot* of 9/11 are being released, with compassion, one by one. No, the problem with *iggun* today is not the man who perishes in a burning building or in a crash over the ocean; the problem is the recalcitrant husband around the corner.

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## JOFAs Agunah Task Force

As part of JOFA's mission to engage, empower and energize Orthodox women to take proactive roles in the Jewish community within the bounds of Jewish law, JOFA has created the *Agunah* Task Force. The Task Force is focused on raising community awareness of the plight of women who are chained to untenable marriages, and working to alleviate the situation through contacts with rabbis, rabbinic courts, other *agunah* advocacy organizations, and individual *agunot*.

This year we sent 10,000 direct mail letters to women all over the world to raise communal awareness of the *agunah* issue and to publicize our *Agunah* Solidarity Pin which we hope will become a recognizable symbol of support for *agunot*, much like the pink ribbon for breast cancer. It is a pewter brooch with two links of a chain, one broken open to symbolize "breaking

the chains" of untenable marriages.

Our ties with rabbis and rabbinic courts that support the right of Jewish women to receive *gittin* have resulted in a series of meetings at which rabbis share ideas on how to ease the *get* process. These meetings are slated to continue during the current year. Presently, we are conducting research in cooperation with other *agunah* advocates to explore the viability of certain halakhic solutions to the *agunah* crisis, such as *kiddushei ta'ut*.

In order to assist individual *agunot*, JOFA is developing a database including referrals to *batei din*, lawyers, social workers and support groups that *agunot* may contact for help. We are updating our website to include a wide range of materials for women seeking relief, including copies of prenuptial agreements and sources dealing with Jewish divorce law and mediation. In addition,

we are organizing a cadre of women who will actively support enforcement of contempt of court citations issued by *batei din* against recalcitrant spouses.

As part of JOFA's mission to prevent situations of *agunah*, we are dedicating JOFA resources to support premarital programs for young women to educate them about the commitment they will be making and the significance of prenuptial agreements as binding arbitration.

JOFA is strongly committed to eradicating situations of *iggun* in our community. It is our hope that one day there will no longer be a need for such efforts. ■

Rose Landowne, Chair  
JOFA Agunah Task Force

Sarah Mendlovitz  
Past JOFA Agunah Task Force Coordinator

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Now let us return to my caller's comment, "They may not have a choice," for therein lies the crux of the matter. Rabbis do have a choice – to rule leniently or stringently within halakhah. As in any legal system, they can follow precedents of narrow or broad construction. This explains why, in earlier times, in cases of presumed drowning in "endless waters" some *poskim*<sup>1</sup> found adequate evidence to free an *agunah* while others deemed similar evidence to be insufficient.<sup>2</sup> In the WTC case, choice is what enabled one *beit din* to release an *agunah* based on a wife's testimony that her husband called her from work at 9:00 a.m., while another rabbi pressed for DNA evidence. From talmudic times onward, the system has tilted toward leniency. Notwithstanding its own principle that a coerced *get* is invalid, the Talmud itself (Yevamot 106a) introduced the concept of *kofin oto*, "we (the *beit din*) coerce him (to give a *get*) until he says, 'I want to do so.'" Evidentiary rules were relaxed to allow leniency. In every age, rabbis

admonished each other to choose the compassionate, lenient path.

I believe we can learn from the rabbinic response to the WTC tragedy, and bridge that response to the primary problem today, the recalcitrant husband. While the situations are quite different – verification of death versus a living husband – the element of choosing stringent or lenient precedents is the same. Just as the rabbis chose to be lenient so as Under rabbinic discussion today is the revival and broader interpretation of methodologies that serve precisely that purpose: *hafka'at kiddushin*

**"I believe we can  
learn from the  
rabbinic response to  
the WTC tragedy..."**

(annulment of the marriage by the *beit din*), wider latitude in declaring witnesses to the marriage ceremony invalid, *get zikkui* (the court authorizing a *get* on behalf of the husband) and *kiddushei ta'ut* (nullification *ab initio* of the marriage).

There are more than ample precedents to enable release of a woman from the lock-hold of a dead marriage, and there is more than one *beit din* courageous enough to apply these methodologies creatively.

Sorely lacking today is respect by *batei din* and rabbis for the work of other *batei din*. Tradition mandates mutual respect, especially where leniency operates to free a woman. And here is where the community comes in. It is not the task of the community to make halakhic decisions, but it should be its task to press for mutual respect and compassionate leniency. In doing so, we can make the difference between eradicating forever the blight of premeditated, willful *iggun* — or carrying injustice forward into history. We, too, have a choice! ■

<sup>1</sup> Among them are *Terumat ha-Desben*, the *Mordekhai*, and *Shevut Ya'akov*. See for example the latter, part 3, *siman* 110.

<sup>2</sup> All base themselves upon Yevamot 121a, that "endless waters" create the conditions for *iggun*.

# Kiddushei Ta'ut: A Discussion of Some Grounds for Invalidating Marriages

By Devorah Zlochower

A Jewish marriage is terminated by the granting of a *get*, a document of divorce. If the husband is unwilling or unable to give a *get* to the wife, the wife is an *agunah* and may not remarry. Historically, two methods have been suggested to break this impasse. One is *kefiyah*, or force, wherein a Jewish court compels the husband to divorce the wife. The other is a determination of *kiddushei ta'ut*, whereby an apparent marriage is deemed fundamentally flawed. The marriage is de facto declared invalid and no *get* is necessary. This article will be limited to a discussion of *kiddushei ta'ut*.

One of the grounds for finding a marriage invalid is the discovery of a grave defect or *mum* (pronounced moom) in the man that pre-existed the marriage and that was undisclosed to the woman at the time of marriage. Since the woman's consent is essential to the creation of the marriage, if we postulate that the woman would not have consented to marry a man with this grave defect, then the marriage may be invalidated.

Complications arise in determining what qualifies as a *mum* in the man. There is no talmudic discussion of defects in men as they relate to a woman's original consent to marriage. There is a discussion in Ketubbot 77a regarding *mumin* that are severe enough such that a woman may be released from a marriage. In cases of severe *mumin*, a *beit din* may compel the husband to grant a *get* to his wife. The Mishna lists three categories of *mumin*. The first two categories are unspecified minor *mumin* and major *mumin* such as being blind in one eye or lame in an extremity. The third category is *mumin* that are serious enough that the court may compel the husband to divorce the wife. Examples of such *mumin* are having an affliction of boils, emitting bad odors, and engaging in malodorous occupations. Even in the most serious class of *mumin*, the marriage is not invalidated and a *get* is necessary to terminate the relationship.

The case for invalidating marriages becomes more difficult when we consider a discussion in Ketubbot 73b. The Talmud relates the following case: A man betrothed<sup>1</sup> and married a woman and subsequently discovered that she has a *mum*<sup>2</sup> or had made vows of abstinence, a behavior deemed undesirable in a marriage partner. Although the man never explicitly stated that he was marrying the woman on the condition that she had not made vows or did not possess *mumin*, such a condition may be assumed.<sup>3</sup> He is free to divorce her without paying her *ketubbah*, the amount of money the husband undertook to pay the wife should the marriage fail. Although he is free to divorce her without financial penalty, the husband is nevertheless required to grant the wife a *get*.<sup>4</sup> This ruling is remarkable because lack of informed consent is a fundamental flaw in the marriage and should invalidate it; yet a *get* is still required to terminate this relationship.

**"Currently, the efficacy and legitimacy of utilizing rulings of kiddushei ta'ut to release agunot is being fiercely debated."**

Another factor limiting the invalidation of marriages is the presumption that a woman would agree to marry a gravely afflicted man. The Talmud in Bava Kamma 110a-b declares that the widow of a childless man whose brother-in-law was afflicted with boils<sup>5</sup> must undergo *halizab* in order to be able to remarry. The ceremony of *halizab* is a formal release of the widow from a requirement to marry her brother-in-law. In this case, the requirement of *halizab* presumes that otherwise the widow would accept such a minimally qualified man as a husband. This state-

ment raises formidable challenges for invalidating a marriage based on a woman's claim of uninformed consent.

In spite of these severe limitations, the presence of a grave *mum* in the man at the time of marriage which was not disclosed to the wife has been accepted as grounds for a declaration of *kiddushei ta'ut* in some cases of *iggun*. Some of the medieval commentators' statements regarding these talmudic passages are instructive.

In his commentary to Bava Kamma 110a-b, Rashi interprets the Talmud's statement to mean that a woman would not accept a minimally qualified man as a marriage partner, but might accept him as a brother-in-law.<sup>6</sup> Rashi proposes that at the time of her marriage the woman is willing to assume the risk that her husband may die without producing children and that she would then be faced with the possibility of marriage to the afflicted brother-in-law. The only reason why the afflicted man is considered acceptable to the woman is because the possibility that she will ever have a marital relationship with this man is remote.

Rabbi Meir of Rothenburg points to a case in which a widowed woman is free to remarry without *halizab*. He relates<sup>7</sup> that he found a geonic responsum releasing a woman without *halizab* in a case where the woman's brother-in-law was an apostate. Rashi, along with other medievalists, disagrees with the responsum and rules that in such a case the woman would require *halizab*. Rabbi Meir of Rothenburg provides textual support<sup>8</sup> for the geonic ruling, noting that an apostate cannot even be considered a minimally acceptable husband as his lifestyle would prevent his wife from carrying out her religious practices. Rabbi Meir of Rothenburg's statement is significant for it expands the definition of *mum* to include defects that are not physical afflictions.

Finally, Tosafot maintain that although a *get* is required when a man marries a woman and discovers she has *mumin*, if the *mum* discovered is her inca-

capacity to bear children, then no *get* is necessary.<sup>9</sup> Rosh provides a justification for this ruling, noting that this incapacity strikes at the very heart of the marriage for "a man's main intent in marrying is to produce children."<sup>10</sup> In this ruling, as well, the definition of *mum* is extended well beyond its original boundaries.

In contemporary times, Rabbi Moshe Feinstein has employed all of these arguments to release *agunot*. In a case of impotence that antedated the marriage, where the husband did not wish to grant his wife a *get* and fled, Rabbi Feinstein declared the marriage invalid. In his responsum, Rabbi Feinstein invokes Tosafot's argument regarding the sterile woman, Rashi's reading of the case of the brother-in-

law afflicted with boils, and Rabbi Meir of Rothenburg's explication of the geonic position regarding the brother-in-law who is an apostate. Basing himself upon these medieval rulings, Rabbi Feinstein further expands the category of grave defects to cases that are relevant today.<sup>11</sup>

Currently, the efficacy and legitimacy of utilizing rulings of *kiddushei ta'ut* to release *agunot* is being fiercely debated. Some suggest that as marriages have occasionally been declared invalid in cases of impotence, insanity, and apostasy, declarations of *kiddushei ta'ut* should be used more widely to free *agunot* from abusive and recalcitrant husbands. Others point to the limited number of cases in which declarations of *kiddushei ta'ut* have been made and caution against

making this rarely used instrument commonplace. A further aspect of the debate concerns the time of appearance of the defect. The instrument of *kiddushei ta'ut* can only be employed if the defect was present at the time of marriage. There is much deliberation as to whether personality disorders that are highly correlative with abusive behavior can be deemed *kiddushei ta'ut* or whether evidence of abusive acts before the marriage is needed to declare the marriage invalid. A critical element of aiding the cause of *agunot* is becoming more educated in the halakhic debate. It is in this spirit that I offer this essay. ■

*Devorah Zlochower is director of full-time programs at Drisha, where she teaches halakhah in the Scholars Circle.*

1 Jewish marriage is composed of two parts: *kiddushin*, in which the man gives and the woman accepts an object that has monetary value, and *nissuin*, in which the man brings the woman into his home.

2 The list of *mumin* is based upon the physical deformities that bar a male member of the priestly family from participating in the Temple service.

3 This is the position of Rashi s.v. *d'amar i efsbi*.

4 The Talmud cites an Amoraic dispute as to the halakhic standing of the *get* in this case. Rabbah and Rav Hisda maintain that the *get* is merely rabbinic, while Rava states that the *get* is biblical but given only because of the doubtful nature of the case. Thus, this is not considered a standard marriage by any of the disputants.

5 This is one of the grave defects for which *beit din* may compel a husband to divorce his wife (Ketubbot 77a).

6 Rashi s.v. *di'menab niha la*.

7 R. Meir of Rothenberg, responsa #564.

8 Rishonim who cite Maharam note that he did not actually rule like the geonim in this case.

9 Ketubbot 72b Tosafot s.v. *al-menat*.

10 Rosh *ad loc*.

11 *Iggerot Moshe Even ha-Ezer* 1:79.

## My Agunah Summer

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concerned that questions may arise regarding her children's status. Months later, Rachel's case is still unresolved.

Another call this summer came from a woman who informed me that she had been unable to obtain a *get* for six years and was planning to remarry at summer's end. Her first husband abandoned her and their children and was currently living in a religious community in Israel. I thought that since the husband lived in a place where pressure could be brought to bear on him he would grant the *get*. I was wrong.

I referred Leah to a *beit din* that had contact with Israeli rabbis. I assumed this case would be quickly resolved; there was the entire summer to work this out. After a few weeks, Leah called and said she had heard nothing further and now the rabbi was on vacation. The rabbi had made efforts on her behalf, but the *get* was still not granted.

With Leah's permission, I turned to the Internet, to the Women's Tefillah Network email list. I asked that rabbis in Israel place calls to the rabbi of the community where the recalcitrant lives. The list quickly responded; rabbis from the United States as well as people from Israel placed calls to the rabbi. A *to'enet rabbanit* was enlisted to help.

Finally, days before her remarriage Leah told me she is giving up. The rabbi of her husband's community said he had tried his best, but was afraid of her ex-husband, whom he

deemed "violent." Her ex-husband put a price on the *get* – a stay with him in Israel when the children reach a certain age. Leah said she could not possibly send her children to stay with an abusive man who had not contacted them in six years, nor provided financial support. Leah felt she had tried, could not succeed, and with the help of a non-Orthodox rabbi she remarried. She is young enough to have more children. Aware of questions that may arise regarding their status, she had desperately tried for a *get*, but was unwilling to put her life on indefinite hold. Can any of us blame her?

The *agunah's* plight results not from an act of God, but from the weakness and inaction of the Orthodox rabbinate, which has not removed the ability of recalcitrant spouses to bind their former wives to them with chains of spite and hatred. With each unresolved case, issues of *mamzerut* increase and will no doubt haunt us in the future. How long will we allow women and children to languish while we "try our best"? ■

*Rivka Haut, co-editor of Daughters of the King: Women and the Synagogue, is an agunah activist. She is the current director of the JOFA Agunah Task Force.*

\* All names in this article have been changed to protect privacy.

# Upcoming **JOFA** Events

## Tu be-Shevat Seder, **January 27**

The second annual JOFA *Tu be-Shevat* seder for women will be held on January 27th at 5:00 p.m. at the Ramaz Upper School, 60 East 78th Street in Manhattan. We will celebrate the holiday with the reading of a *Tu be-Shevat* haggadah, eating special foods and singing and dancing. Please call the JOFA office at 212-752-7133 to make a reservation. ■

## Dr. Nathalie Friedman Memorial Lecture, **March 10**

JOFA will be hosting a program on feminism and family in memory of our board member, Dr. Nathalie Friedman z'l. The event will be held in New York City. More information to follow. ■

## Shabbat T'lamdeini, **April 19-20**

Encourage your synagogue to take part in JOFA's fourth annual *Shabbat T'lamdeini*, in which women are featured as teachers of Torah in synagogues throughout the world. For more information or to book a speaker, please call the JOFA office. ■

## Mission to Israel, **May 19-23**

JOFA's landmark mission to Israel will focus on the status of women and feminism in Israel. Participants will meet with top Israeli feminists, politicians, rabbis and scholars, visit educational institutions and attend cultural events. Those who wish can come to Israel two days earlier and spend *Shavu'ot* with JOFA in Jerusalem. For more information contact the JOFA office. ■

## Fourth International Conference on Feminism and Orthodoxy, **November 10-11**

Entitled "Keeping an Eye on the Vision," JOFA's fourth international conference will explore the idea of modesty as it affects women in public roles, leadership, relationships, and ritual life. We will study in depth the topic of *kavod ha-zibbur*, women's public presence and community sensibilities. ■

## What You Can Do to Help Agunot

- ❖ Learn all you can about *iggun*. The more knowledgeable you are about the halakhic aspects of the debate, the better equipped you will be to advocate change in your community.
- ❖ Begin a discussion group in your synagogue about the *agunah* issue. Become a resource person. Many *agunot* suffer but are afraid to speak out, so others must speak out for them.
- ❖ Encourage your synagogue to set up a home hospitality committee for *agunot*. Welcome an *agunah* and her children to your home for Shabbat, holidays and *semachot*.
- ❖ Inform yourself and your young adult children about prenuptial agreements. Prenuptial agreements can deter a recalcitrant spouse from withholding a *get*.
- ❖ Ensure that your children are receiving appropriate education regarding thoughtful decision-making before marriage. Inquire as to whether your child's high school educates both boys and girls about *agunot*.
- ❖ Organize a group in your community that can be called upon to carry out sanctions when a *seruv* (contempt of court citation) has been issued. Sanctions may include denying synagogue honors and ostracizing recalcitrant husbands.
- ❖ Support those rabbis and batei din that are proactive on behalf of *agunot*. Help an *agunah* in your community find a *beit din* that is sensitive to her situation and will deal fairly with her in all matters related to Jewish divorce.
- ❖ Wear the Agunah Solidarity Pin as a symbol of your support for *agunot*. People will ask what the pin stands for. It will tell them you support *agunot*, seek immediate justice, and stand with those rabbis who search for solutions. ■

# Towards Standardizing Beit Din Procedures

By Rabbi Yonah Reiss

The commentator Maharsha writes at the end of his commentary to tractate Yevamot that the existence of *agunot* in the world causes the delay of our ultimate redemption. When we are asked whether we have done our job in bringing about the redemption (Shabbat 31a), we will have to account for opportunities that we had to help relieve the terrible plight of women who languish without a *get* following a marriage that has ended.

Both the *beit din* and the community play an essential role in dealing with *agunah* situations. The recent resolutions adopted by the Rabbinical Council of America establish certain default principles as to the appropriate time boundaries for a *get* to be given, or for a spouse to otherwise submit to a final determination of the *beit din*. These resolutions constitute an important step towards ensuring that a *beit din* is able to work with communities in resolving potential *agunah* situations. The resolutions place all members of the community on notice with respect to these ethical norms and enable community leaders more easily to implement declarations and decisions of the *beit din*. Additionally, the resolutions provide a mechanism for rabbis to coordinate with the *beit din* to ensure that any actions taken, such as demonstrations of public contempt or the withholding of communal benefits from a recalcitrant spouse, will lead to the granting of a valid *get*. The resolutions send an important message that our community will not support those individuals who withhold a *get* out of spite or employ it as a weapon.

The significance of the resolutions is apparent. Our community will not tolerate the existence of *agunot*. We must continue to commit ourselves to take every measure possible to eradicate every *agunah* situation from our midst. In the merit of such actions, may we be blessed with true redemption for all of our people. ■

*Rabbi Yonah Reiss, Esq. is the Director of the Beth Din of America, which is affiliated with the Rabbinical Council of America. This article has been excerpted from the recent RCA convention program binder with the permission of the RCA.*

## Guidelines Developed by L'Maan Bnos Yisrael and Adopted by the Beth Din of America

1. Fee schedules for all services shall be given in writing to all parties prior to the commencement of any proceedings.
2. There shall be no *a priori* requirements under the aegis of the *beit din* for issuing a *get* (e.g., pre-*get* counseling by the *beit din* or its representatives).
3. In all divorce proceedings, the *get* will be given as the first item of business.
4. *Hazmanot* will be sent promptly. A week's time will be allowed for responding, but no more than 30 days shall be allowed from the sending of the first *hazmanah* until the deadline for responding to the third *hazmanah*. Failure to respond to three *hazmanot* will result in the issuing of a *seruv* no later than 45 days after the sending of the first *hazmanah*.
5. The *beit din* shall be supportive of either party's bringing an individual of his/her choice for emotional support.
6. All *beit din* personnel shall be sensitive and caring individuals.
7. Notes and recordings of all *beit din* sessions shall be taken.
8. A *heter me'ah rabbanim* will be issued only when exceptional circumstances (e.g., severe mental incompetence) warrant it, and it will be done only in conjunction with the depositing of a *get* to be delivered to the woman as soon as she is prepared to accept it. No *heter me'ah rabbanim* will be issued when the wife is prepared to accept a *get*.
9. If civil divorce proceedings have been completed, the *beit din* shall issue a *petur* immediately after the woman's receipt of the *get*. If they have not been completed at the time of the receipt of the *get*, both parties will, upon request, be given official receipts by the *beit din*, and the *petur* will be issued immediately upon the completion of the civil divorce proceedings.
10. Where arbitration is necessary, only regular *daiyanim* of the *beit din* will be used, excluding ad hoc tribunals and excluding *zabla ve-zabla*. In the event that the two sides are unable to agree upon the choice of *beit din*, the two *batei din* involved shall agree upon a panel of *daiyanim* to arbitrate under the aegis of both *batei din*.
11. Litigants are expected to present their case to the *beit din* personally.
12. Litigants shall be represented by no one other than members of the bar. In the event that one party elects to be so represented, the other party must be notified in advance to allow for equal representation. ■

## Glossary

<b>Dayyanim:</b>	Judges
<b>Hazmanah:</b>	Summons to court
<b>Heter me'ah rabbanim:</b>	Literally, an exemption granted by 100 rabbis. In situations when a wife refuses to accept a <i>get</i> , a husband may be permitted to remarry only by means of a decree from 100 rabbis of varying locations.
<b>Petur:</b>	Literally, exemption. In this case the <i>petur</i> refers to granting the wife permission to remarry.
<b>Seruv:</b>	Contempt of court citation
<b>Zabla ve-zabla:</b>	An acronym for <i>zeh borer lo ehad ve-zeh borer lo ehad</i> – this one chooses one (judge), and that one chooses one (judge). In situations in which the litigants do not agree on choice of a particular <i>beit din</i> , each litigant appoints one judge, and the two judges then jointly appoint a third judge to complete the <i>beit din</i> .

## Yes, But Will it Stand Up in Court?

...continued from page 1

an end by a contractual recognition that those obligations have ceased — the *get*.

Although the various prenuptial agreements attempt to address a problem that is halakhic in nature and are drafted in order to fulfill all halakhic parameters, these contracts are essentially secular. As with every contract, their significance lies in whether the parties can rely on a court to compel performance of the parties' obligations or to provide another form of compensatory relief if a party does not fulfill his or her obligations. In order to assist in addressing the problem of *get*, prenuptial agreements have to be enforceable as legal documents.

There are various types of prenuptials, ranging from simple arbitration agreements to promissory notes between the parties with executed releases. This discussion will focus on the prenuptial agreement that has been disseminated by the Orthodox Caucus, endorsed by the Rabbinical Council of America, and is the most widely used in the Orthodox world. The prenuptial consists of several separate documents. One is an arbitration agreement which requires the couple to appear before a *beit din* when the couple no longer lives together. Another is an agreement for a stipulated sum of spousal support the husband will pay to the wife for every day after the effective end of marriage that the husband does not give the wife a *get*. Granting the *get* would end this financial obligation, as would the wife's refusal to appear before a *beit din*. If the couple wishes, they can also execute a second spousal support agreement from the wife to the husband, which would require the wife to support the husband if it is she who is the recalcitrant party.

Prenuptial agreements create a complicated situation where contractual obligations, ordinarily enforceable in secular law, are formed within the context of a religious document. Although secular courts that have addressed issues surrounding halakhic divorce

have tended to brush over the question of constitutionality in an attempt to avoid an inequitable solution, courts are obviously reluctant to involve themselves in situations requiring jurisdiction over religious matters. Thus, these agreements have to be drafted in order to avoid the need for courts to involve themselves in questions concerning religion. In addition, because courts will look to see if the agreement was coercive or unfair in any way, the prenuptial agreements need to be entered into carefully and thoughtfully.

Keeping this in mind, there are a few steps one can take to increase the enforceability of these documents:

### 1. Read and discuss the prenuptial.

Before the wedding, the couple should discuss the prenuptial and its significance. Although the prenuptial is similar to the *ketubbah* in that it addresses issues relating to the end of marriage, many couples are uncomfortable with raising the issue of the prenuptial, given that in our society entering into a prenuptial has connotations of distrust and lack of commitment to the marriage. An open conversation about these issues can dispel some of these notions and build a basis for trust and communication in a marriage. Such a discussion will also indicate to a court that the parties gave careful consideration to the prenuptial before they entered into it.

### 2. Sign the prenuptial in advance of the wedding.

In order for a contract to be enforceable in secular law as well as in halakhah, contracts must be entered into without duress. Thus, if one party asks the other to sign the prenuptial on the day of the wedding, some courts might see, for example, the presence of the waiting guests as a form of duress — which would invalidate the prenuptial. The Orthodox Caucus prenuptial contains a clause whereby the signatories agree that they have been given an opportunity to seek rabbinic and legal counsel, which may not be possible if the agreement is executed shortly before the wedding.

### 3. Have the prenuptial reviewed by halakhic and legal advisors.

Prior to the wedding, the parties should discuss the halakhic nature of the prenuptial and what it does and does not address

with a halakhic advisor. As the prenuptial is a legally binding agreement, discussion with a lawyer may be appropriate, especially if the parties plan to have the *beit din* address monetary and custody issues.

### 4. Opt in or opt out.

The prenuptial agreement contains three optional provisions, and the parties should clearly mark the document to indicate which provisions they want included. These provisions concern the scope of the matters the *beit din* is authorized to adjudicate. The first provision authorizes the *beit din* to decide any monetary disputes (in addition to those relating to *get*, *ketubbah*, *tenaim*, and the prenuptial agreement itself) that may arise. If the parties choose to authorize the *beit din* to decide monetary disputes, an additional provision allows the parties to specify that such disputes will be decided utilizing the laws of a particular state, with certain exceptions. A third provision authorizes the *beit din* to decide issues of child support, visitation, and custody. However, many states, including New York, reserve the right to overturn any decision regarding children and their support, even one reached by mutual agreement of the parties, if the state feels that it is not in the best interests of the child.

### 5. Fill in the name of a *beit din*.

The prenuptial agreement may contain a space to specify the *beit din* before which one wishes to appear in case of divorce, and a *beit din* should be specified. Much of the difficulty surrounding a *get* occurs in the selection of a *beit din*. In order to ensure that the *beit din* will be available if needed, it is best to specify an institutional *beit din* rather than the names of individuals. If a *beit din* is not specified, a secular court may become entangled in determining an appropriate *beit din*, raising complicated constitutional questions which might make it difficult to enforce the arbitration agreement.

### 6. Fill in the amount of spousal support.

As part of the husband's obligation towards the wife (and the wife's towards the husband, if the parties completed such an agreement), he commits himself to support her from the time the couple is no longer living together until a *get* is given or she refuses to appear before a *beit din*. The par-



ties need to agree to an amount that is a reasonable approximation of the daily cost of living and should specify that amount in the prenuptial. For halakhic reasons, this amount cannot be so great as to constitute a penalty for not giving the *get*, and as such, a halakhic advisor may suggest a recommended range.

**A** final word: one should read the prenuptial carefully. Although the prenuptial agreement has been drafted with an eye towards problems that might arise if it is adjudicated in court, many potential problems can be avoided by a careful reading by the couple, to make sure the couple understands what they are signing and have completed all the required information. ■

*Michelle Greenberg-Kobrin is an attorney at Arnold & Porter.*

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# New & Noteworthy

Compiled by Abbie Greenberg

**Australia:** The Executive Council of Australian Jewry and the Organization of Rabbis of Australia have made a joint submission to the Family Law Council seeking legislation to overcome problems relating to Jewish divorce. The Family Law Council is a statutory body of experts which advises the Attorney General on family law matters. The proposal provides that the courts be given the power to make orders including postponement of the final divorce decree until a *get* has been granted, a directive that the recalcitrant party should submit to the jurisdiction of a *beit din*, adjournment or striking out of applications or defenses relating to maintenance if the application or defense is lodged by a recalcitrant party, and enforcement of prenuptial agreements. ■

**Melbourne, Australia:** At the Ha'Makom minyan women serve as *gabbaiyot* for the entire community,

calling men to the Torah, reciting the *misheberakh* prayer for the sick and for those honored with *aliyot*, and announcing *divrei Torah*. The *gabbaiyot* also facilitate *misheberakhs* for women. After each man is given a *misheberakh* following his *aliyah*, a woman approaches the *bima*, blesses those important to her, and is blessed in turn. ■

### New Rochelle, New York:

Women have initiated a women's *tefillah* service that meets every other month in the homes of participants. Shabbat services include prayer, Torah reading, and a *devar Torah*. For more information, contact Jackie Spiegel Cohen at 914- 632-4225. ■

**New York, New York:** This year, the Drisha Institute ran two parallel *minyanim* on Rosh ha-Shana and Yom Kippur. At one of the *minyanim*, both women and men received *aliyot* and read from the Torah. Discussion

of the halakhic basis for this practice can be found in "Qeri'at ha-Torah by Women: A Halakhic Analysis" by Mendel Shapiro, published in *The Edab Journal*, vol.1:2. ■

**Warsaw, Poland:** A women's *tefillah* group now meets for *minba* on Shabbat and reads from the Torah. The *tefillah* group was recently graced by a bat mitzvah celebration, an event that inspired the entire community. ■

### Zichron Ya'akov, Israel:

Women come together for *tefillah* and programs of interest to women. On Simhat Torah many women received their first *aliyot* and were exposed to their first women's *kabbalat Shabbat tefillah*. Future programs include lectures by the newly trained *yo'atzot halakhab* who consult on issues of Jewish family law. For more information about the group, contact Deborah Berzan at (04) 629-2577. ■



# Resource Corner

The following is a list of selected organizations, publications and websites expressing a wide range of views on the *agunah* crisis.

## Agunah Advocacy Organizations

### Agunah International Inc.

An organization that provides advice and support to *agunot* and advocates systemic change in the *beit din* system, Agunah International Inc. is associated with Rabbi Emanuel Rackman's *beit din L'nyanei Agunot*. The *beit din* frees *agunot* through *kiddushei ta'ut* – ab initio annulment of marriages. Agunah International Inc. is directed by Dr. Susan Aranoff, Estelle Frielich, Dr. Elona Lazaroff, and Honey Rackman. (718) 434-6246 [www.agunah.com](http://www.agunah.com)

### G.E.T. (Getting Equitable Treatment)

A group of advocates who work with *agunot* on a case-by-case basis to resolve barriers and impediments to divorce. Led by Stanley Goodman, G.E.T. meets frequently to discuss current cases. (718) 677-1033

### The Jewish Orthodox Feminist Alliance

JOFA is an organization that works to empower, engage, and energize Orthodox women within the bounds of Jewish law. JOFA's Agunah Task Force provides information and guidance for women seeking divorce. Rivka Haut is JOFA's *agunah* professional. (212)752-7133 [www.jofa.org](http://www.jofa.org)

### Kayama

Associated with Agudath Yisrael, Kayama was established to encourage non-observant Jews to grant *gittin* as a way of ensuring Jewish continuity and safeguarding the ability of children to marry within the Jewish community.

1-800-932-8589, in NY 718-692-1876 [www.kayama.org](http://www.kayama.org)

### L'Maan B'nos Yisrael

Affiliated with the Orthodox Caucus, L'maan Bnos Yisrael developed guidelines accepted by the Rabbinical Council of America to establish coordinated policies to protect women from being trapped in undesirable marriages. Directed by Mattie Klein, L'maan Bnos Yisrael also works extensively with individual *agunot*.

718-338-0833 [www.lbyi.org](http://www.lbyi.org)

### Mevo Satum

A Jerusalem based organization that aids *agunot* legally, emotionally and financially, Mevo Satum also advocates for long-term solutions to the *agunah* crisis. Mevo Satum recently published *The Dead End: Divorce Proceedings in Israel* by Leah Ain Globe. The book details the personal stories of several emotionally and physically abused women who felt the rabbinic courts in Israel were not sensitive to their plight. [www.agunot.org/contact.htm](http://www.agunot.org/contact.htm)

## Publications

### Jewish Women in Time and Torah

Dr. Eliezer Berkovits, *Ktav Publishing 1990*

In his section on *agunot*, Dr. Berkovits examines solutions to the *agunah* problem that have been adopted throughout history. The book serves as an excellent introduction to the halakhic issues involved in *agunah* and in Jewish marriage and divorce in general. While he shies away from offering a particular solution to the crisis, Dr. Berkovits implores rabbis to consider the moral and ethical underpinnings of the Torah in all of their halakhic decisions.

### Between Religious and Civil Law:

### The Plight of the Agunah in American Society

Rabbi Irving A. Breitowitz, *Greenwood Press 1993*

In analyzing the interaction of religious and civil law as they affect *agunot*, Rabbi Breitowitz provides an important resource for those navigating the complicated practical issues facing *agunot* today. The book is noteworthy for its detailed consideration of prenuptial agreements.

### Marriage, Divorce and the Abandoned Wife in Jewish Law: A Conceptual Understanding of the Agunah Problem in America

Michael J. Broyde, *Ktav Publishing 2001*

Michael Broyde draws upon his background as a rabbi and a professor of law in analyzing the *agunah* problem in America. He poses that several models of marriage and divorce exist within the rabbinic tradition, creating different sets of rights when marriage is terminated, and varying definitions of *iggun*. Readers will find Broyde's summary and analysis of current proposed solutions to the *agunah* crisis useful.

### On Women and Judaism: A View From Tradition

Blu Greenberg, *Jewish Publication Society 1981*.

Blu Greenberg's influential work on Orthodoxy and feminism contains a chapter entitled "Jewish Attitudes Towards Divorce." In it she points to the pattern of rabbinic sources to expand women's rights in divorce throughout the ages, and encourages contemporary halakhic authorities to follow this path in seeking a broad-based solution to the *agunah* crisis. The book serves as an excellent introduction to the halakhic issues surrounding women and Jewish divorce.

## Divorce in Jewish Law and Life

Rabbi Irwin Haut, Sepher-Hermon 1983

A pioneer in the field, Rabbi Haut z"l was both lawyer and rabbi. The chapter entitled "The *Get* Procedure" is a step-by-step description of how a *get* is issued. Other chapters contain material on Jewish divorce in the 19th and 20th centuries and on rabbinic proposals as of 1983 for solving the *agunah* problem. The book also includes a bibliography of legal articles on enforcement of *gittin* in American civil courts and in Israel.

## The Prenuptial Agreement: Halakhic and Pastoral Considerations

Edited by Basil Herring and Kenneth Auman, Jason Aronson 1996

A collection of articles on the prenuptial agreement, this book contains information on halakhic and legal issues surrounding the document. Readers will find the text of an actual document, as well as a discussion of how rabbis may open a conversation about the prenuptial when meeting with engaged couples.

## Gray Matter: Discourses in Contemporary Halachah

Rabbi Chaim Jachter with Ezra Fraser, Noble Book Press 2001

Associated with the Elizabeth, N.J. *beit din*, Rabbi Jachter has had extensive experience with women and men seeking to terminate marriages. The chapter "Grappling with the Problem of *Agunot*" deals with issues of coercion in the granting of *gittin*, the enforceability of prenuptial agreements, *kiddushei ta'ut* and *kiddushin al-tenai* (marriage based upon conditions).

## "The 1992 New York State Get Law" Journal of Halacha and Contemporary Society

Rabbi Chaim Malinowitz and Rabbi Gedalia Dov Schwartz, 1994.

In 1992 New York State passed an amendment known as the "Get Law," which allows the courts to consider "barriers to remarriage" in ruling on the distribution of marital assets. The law was enacted to serve as a deterrent for recalcitrant husbands who might otherwise withhold *gittin* from their wives. In two separate articles, Rabbi Malinowitz and Rabbi Schwartz respectively address – and disagree – on whether the law is halakhically problematic.

## Women in Chains: A Sourcebook on the Agunah

Dr. Jack Nusan Porter, Jason Aronson 1995

An excellent introduction to the current *agunah* controversy, this book contains articles by rabbinic scholars and *agunah* advocates, as well as pieces from the popular press. The book considers a variety of current solutions to the *agunah* crisis. Readers will find the appendix of resources useful for further exploration.

## Modern Halakhah For Our Time

Rabbi Emanuel Rackman, Ktav Publishing 1995

Long acknowledged as a creative scholar, Rabbi Rackman has written on his understandings of halakhic issues that confront the modern Jewish community. Of interest is the chapter on "Modern Orthodoxy and the Status of Women." As Rabbi Rackman has developed a *beit din* with a creative, but controversial, approach to solving the *agunah* crisis, this book is a "must read" for all who want to be informed about the issues involved in Jewish divorce law.

## "Halachic Principles and Procedures for Freeing Agunot"

*The Jewish Week*, August 27, 1997

and

## "Kiddushei Ta'ut: Annulment as a Solution to the Agunah Problem"

Rabbi J. David Bleich, *Tradition* 33:1, 1998

The former article is a summary of the halakhic principles employed by Rabbi Emanuel Rackman's *Beit Din L'Inyanei Agunot* to free *agunot* through *kiddushei ta'ut* – ab initio annulment of marriages. In the latter article, Rabbi Bleich analyzes and disputes these principles.

## Women and Jewish Divorce

Rabbi Shlomo Riskin, Ktav Publishing 1989

This book provides an excellent review of early to contemporary sources regarding a woman's right to sue for divorce. Rabbi Riskin traces shifting cultural and legal threads as they affect *agunot* throughout Jewish history. Of particular import is his focus on *hafka'at kiddushin* – annulment of marriages as a solution to situations of *agunah*.

## Websites

### [www.agunot-campaign.org.uk](http://www.agunot-campaign.org.uk)

The website of The Agunah Campaign contains articles by Sharon Shenhav, JD, Esther Tager and others who are involved in helping *agunot*.

### [www.divorcereform.org](http://www.divorcereform.org)

The site of Americans for Divorce Reform Legislation contains updates on legislation to aid *agunot*.

### [www.edah.org](http://www.edah.org)

Edah's page on "The Plight of the *Agunah*" provides an introduction to the problem of *agunah*. Visitors to the site can access Michelle Greenberg-Kobrin's article, "Civil Enforceability of Religious Prenuptial Agreements" and can take part in a discussion group on the *agunah* situation.

### [www.jlaw.com](http://www.jlaw.com)

The Jewish Law website references legal documents and court cases involving *agunot*, as well as the prenuptial agreement written by Rabbi Mordechai Willig of the Beth Din of America. Visitors to the site may access an article by Rabbi Adam Berner on Jewish divorce mediation as an alternative to legal proceedings.

### [members/aol.com/mumim](http://members/aol.com/mumim)

This site contains a variety of links to organizations assisting women, including battered Jewish women.

### [www.orthodoxcaucus.org](http://www.orthodoxcaucus.org)

The website of the Orthodox Caucus contains the texts of a number of prenuptial agreements, as well as a wealth of information on the background and legal issues surrounding the agreements.

### [www.ou.org](http://www.ou.org)

Affiliated with the Beth Din of America, the website of the Orthodox Union provides information about prenuptial and postnuptial agreements.

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