

THE CENTER FOR WOMEN IN JEWISH LAW

*To Learn and To Teach*

Study booklets regarding women in Jewish law

NUMBER FOUR

PRENUPTIAL AGREEMENTS:  
A SOLUTION FOR THE AGUNAH PROBLEM OF OUR TIME

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Translated from the Hebrew by

Rabbi Diana Villa



THE SCHECHTER INSTITUTE OF JEWISH STUDIES

JERUSALEM, FEBRUARY 2007

## THE CENTER FOR WOMEN IN JEWISH LAW

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The Schechter Institute of Jewish Studies is grateful to the Dorot Foundation and to the Nash Family Foundation for their financial support of The Center for Women in Jewish Law.



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Printed in Israel

ISBN 965-7105-43-9

Typesetting: Leshon Limudim Ltd., Jerusalem



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# PREFACE

## THE SCHECHTER INSTITUTE OF JEWISH STUDIES

The Schechter Institute of Jewish Studies is one of the leading academic institutions of Jewish studies in the State of Israel. The unique approach of Schechter combines traditional and modern methods of study. Historical and textual discussions of Jewish sources are accompanied by cultural and topical discussions, which grapple with the ethical and social dilemmas of Israeli society today. The Schechter Institute offers courses of study towards an interdisciplinary M.A. degree in Jewish studies in classic fields such as Bible, Jewish Thought and Jewish History alongside innovative fields of study, which examine Gender, Education, the Community and Art from a Jewish perspective.

The students from all over the country who study at Schechter represent a broad spectrum of beliefs and world-views within Israeli society. They are attracted by the warm, open and pluralistic atmosphere at the Institute.

In the fields of applied research, the Schechter Institute runs the Institute of Applied Halakhah, the Center for Judaism and the Arts and the Center for Women in Jewish Law.

## THE CENTER FOR WOMEN IN JEWISH LAW

The Center for Women in Jewish Law was established at the Schechter Institute of Jewish Studies in 1999 with the assistance of a grant from the Ford Foundation. The first purpose of the center – to study the status of women in the synagogue – is presented in my book *The Status of Women in Jewish Law: Responsa* published in 2001. The second purpose is to find halakhic solutions to the problem of modern-day *agunot* (anchored women) who are compelled to wait many years to receive a *get* (religious divorce) from their husbands. This problem is addressed in the book entitled *Za'akat Dalot: Halakhic Solutions for the Agunot of Our Time*, which appeared recently; and in the bi-annual *Jewish Law Watch*, which examined actual *agunah* cases that languished for years in the rabbinic courts without resolution. The booklets *To Learn and to Teach*, of which this is the fourth issue, deal with both of these subjects.

## TO LEARN AND TO TEACH

The first three booklets in this series were devoted to the status of women in the synagogue. Those booklets were based on my book *The Status of Women in Jewish Law: Responsa*, but were intended for the general public. The goal was to make those responsa accessible to laypeople who do not have a strong background in Talmud and Jewish Law. This fourth booklet deals with prenuptial agreements as a solution to the *agunah* problem. It is based on the chapter about this subject in the book *Za'akat Dalot: Halakhic Solutions for the Agunot of Our Time*. After Rabbi Monique Susskind Goldberg, Rabbi Diana Villa and Rabbi Israel Warman studied the subject, Rabbi Diana Villa wrote Chapters I-II and Rabbi Monique Susskind Goldberg wrote Chapter III and the "Summary and Conclusions". As in the previous booklets, an effort was made to write the booklets in language accessible to all readers. Rabbi Diana Villa added a Glossary of Authors and a Glossary of Terms to assist the reader. We hope that more couples and rabbis will be convinced of the need to sign a prenuptial agreement before the wedding and thus reduce the number of *agunot* in our time.

The booklets in this series appear in five languages – Hebrew, English, Spanish, French and Russian – in order to reach as many readers as possible in Israel and in the Diaspora.

We hope that these booklets will encourage the public to learn and to teach about the status of women in Jewish law and that these activities will lead to action.

Prof. David Golinkin  
The Schechter Institute of Jewish Studies  
Jerusalem  
February 2007

## Introduction\*\*

Men and women do not share equal status under Jewish law regarding issues of marriage and divorce. The husband is empowered to divorce and he must grant a *get*\* of his own free will, while the wife cannot divorce her husband. Therefore, a woman is completely dependent upon her husband if she wants to be freed from a failed marriage. Today we are witnessing a reality in which husbands abuse the power that *halakhah*\* grants them by using the *get*\* in order to extort their wives. As a result, thousands of women in Israel and worldwide who have separated from their husbands cannot remarry, due to their husbands' refusal to divorce them. These women are called "*agunot*"\* or "*mesoravot get*".<sup>1</sup>

We will study the main legal sources about marriage and divorce in this booklet in order to understand the *halakhic*\* basis for the *agunah*\* problem. We will then describe the nature of this problem in the Israel, show how prenuptial agreements can prevent it, explain their basis in Jewish law and how they function. Finally, we will propose a prenuptial agreement that fulfills *halakhic*\* requirements and is effective in preventing *iggun*\*.

## I. Marriage and Divorce in Jewish Law

### 1) Marriage

Marriage consists of two stages according to Jewish law. The first one is called *kiddushin* (betrothal) and the second one *nisu'im* (marriage). In Talmudic times, *kiddushin* and *nisu'im* were two separate ceremonies. During the first stage, the man betrothed the woman and from that moment the woman was an *eshet ish*\* and would therefore require a *get*\* (in order to terminate the relationship). The woman was only considered married a year later<sup>2</sup> when she entered her husband's house. In time, both ceremonies were unified and named *huppah v'kiddushin*. Evidence from the *Rishonim*\* indicates that both ceremonies were performed together as early as the twelfth century.<sup>3</sup>

#### a) *Kiddushin*

According to the sources, the act of *kiddushin* is an acquisition in every way. We have learned in *Mishnah Kiddushin* 1:1:

\*\* A Glossary of Authors and a Glossary of Terms appears at the end of this booklet. The symbol \* refers to the Glossary of Terms; the symbol • refers to the Glossary of Authors.

1 See Chapter II for statistics and for an explanation of terms.

2 See *Mishnah Ketubot* 5:2; Babylonian Talmud *Ketubot* 57a; Freimann, p. 10; Schereschewsky, p. 33.

3 See Freimann, pp. 29-30.

A woman is acquired [in marriage] in three ways and acquires herself [her freedom] in two ways. She is acquired by money, by contract or by intercourse.

This *mishnah* appears in a chapter that also deals with other acquisitions, such as acquiring a Hebrew slave, a Canaanite slave and property. Furthermore, Maimonides\* writes (Marriage Laws 1:1):

Upon the revelation of the Torah, the people of Israel were commanded that if a man wishes to marry a woman, he must first acquire her in the presence of witnesses, and only thereafter does she become his wife, as it is said: "When a man takes a wife and possesses her" (Deuteronomy 24:1).

The rabbis derived that *kiddushin* is an act of purchase from the first part of the above-mentioned verse:

When a man takes a wife and possesses her, if she fails to please him because he finds something unseemly about her, then he writes her a bill of divorcement, hands it to her and sends her away from his house.

A *midrash* in *Kiddushin* 2a explains:

He derived the meaning of "taking" from the field of Ephron. Here it is written "When a man takes a wife" (*yikah*, Deuteronomy 24:1), while there it is written "Let me pay the price of the land; take it from me" (*kah*, Genesis 23:13). Moreover, "taking" is designated acquisition, for it is written: "the field that Abraham had acquired" (Genesis 25:10).

In other words, the rabbis compare the word "*yikah*" (take) that refers to taking a wife to the word to the word "*kah*" in the verse that refers to Abraham's taking Ephron's field by means of a *gezerah shavah*\*. Just as "*kah*" in the context of Ephron's field refers to the monetary acquisition of a field, so the word "*yikah*" in the context of a man taking a wife means that the man acquires the wife with money.

As noted above, the *Mishnah* mentions three means of acquisition. The Talmudic rabbis preferred betrothal by monetary acquisition over the other methods. They were especially opposed to acquisition by intercourse (see *Yebamot* 52a). In time, acquisition by contract was also discarded. Nowadays, a woman is acquired only by money.

The *kiddushin* ceremony takes place before two witnesses.<sup>4</sup> The ceremony is described as follows in the *Shulhan Arukh*\* (*Even Ha'ezer* 27:1):

4 Since betrothal and marriage are performed together today, the husband betrothes the wife under the *huppah* (marital canopy).

How does monetary acquisition take place? He gives her a *perutah*\* or the equivalent of a *perutah*\* in front of two people, and says to her: “you are hereby betrothed unto me by this means”. Gloss [of the Rema\*]: And some say that the following must also be said to her: “according to the laws of Moses and Israel”. And it is customary to betroth with a ring.

In monetary acquisition, the man gives the woman money or its equivalent, such as a ring. While placing the ring on the woman’s finger, the man says to her “you are hereby betrothed unto me by this ring” which means that he takes her for his wife. Nowadays, it is customary in all communities to add the words “according to the laws of Moses and Israel”, based on the Rema\*.

It must be stressed that even though the husband is the one who acquires, this transaction requires the wife’s agreement. *Tosefta Yebamot* 2:1 (Lieberman edition, p. 5) says: “The *kiddushin* of a woman is not considered a valid purchase unless they both agree to it”.

### **b) *Nissu'in***

In the past, when the betrothal and marriage ceremonies were separate, the woman entered her husband’s house after a year and was then considered married (see, for example, *Mishnah Ketubot* 5:2). Nowadays, since the marriage ceremony is performed at the same time as the betrothal ceremony, when the couple is together under the *huppah* (bridal canopy), the process is completed and the couple is permitted to be together intimately. Maimonides\* describes it in this manner (*Marriage Laws* 10:2):

Once the woman has entered the *huppah*, her husband may have intercourse with her whenever he wishes, seeing that she is completely his wife in every way. Once she has entered the *huppah*, she is called married.

### **c) The *Ketubah***

The *Ketubah* is a contract designed by the rabbis in order to protect the wife in case the marriage is dissolved. This contract imposes a financial obligation on the husband, so that the wife does not remain penniless in case the husband dies or divorces her. In fact, the two hundred zuz\* “*ketubah money*” was the equivalent of an average annual salary.<sup>5</sup> Thus the Rabbis intended to ensure that the

5 See, for example, Rabbi Obadiah of Bartenura’s commentary on *Mishnah Pe’ah* 8:8: “Two hundred zuz – the rabbis considered that this sum is sufficient for clothing and food for a whole year”. See also *Pnei Moshe*’s commentary on the Jerusalem Talmud, *Pe’ah* 8:7.

husband would not treat divorce lightly, and that he would always take into account that he had committed himself to paying his wife a significant amount of money upon the dissolution of the marriage. The Talmud observes (*Yebamot* 89a): “For what reason did the Rabbis enact the *Ketubah*? So that it should not be a light matter in his eyes to divorce her”.<sup>6</sup>

It should not be overlooked that the *Ketubah* also obligates the husband to support his wife and to take care of all her needs for the duration of the marriage.<sup>7</sup>

The significance of the *Ketubah* is evident from the fact that the Rabbis prohibited a couple from cohabiting if they did not have a *Ketubah*. *Baba Kamma* 89b states in the name of Rabbi Meir: “It is prohibited for any man to live with his wife without a *ketubah* even for one hour, the reason being that it should not be a light matter in his eyes to divorce her”.<sup>8</sup>

#### **d) The *Huppah* and *Kiddushin* ceremony**

As mentioned above, nowadays both ceremonies take place one after the other, and the occasion is called “*Huppah* and *Kiddushin*”. The following stages are included in the ceremony, which is conducted under the *Huppah*:<sup>9</sup>

- Entering the *Huppah*,<sup>10</sup>
- The betrothal (*Kiddushin*) blessings over a cup of wine;
- The act of acquisition: the groom gives the ring (the *Kiddushin* money) to the bride in front of two witnesses and says the phrase “you are hereby betrothed unto me by means of this ring according to the laws of Moses and Israel”;
- The *Ketubah* reading,<sup>11</sup>
- The bridegrooms’ blessing (*Shevah Berakhot* or seven blessings) over a second cup of wine, in the presence of ten people.<sup>12</sup>

7 Such as financial support, medical needs, sexual relations, etc. See *Mishnah Ketubot*, chapter 4.

8 We must emphasize, though, that according to the *Mishnah* in *Ketubot* 4:7, the husband must fulfill his financial obligations to his wife even if he did not include them in the *ketubah*.

9 See Golinkin, chapter 7, pp. 147-157; Fox-Levine, pp. 93-98 and English abstract on p. xxi.

10 Some decisors claim that the couple must enter the “*yihud*” room after the *huppah* for the marriage to be valid; others claim that entering the *huppah* together validates the marriage. See *Shulhan Arukh, Even Ha’ezer* 55:1 and in the Rema’s gloss there.

11 The *Ketubah* is read aloud in order to separate the betrothal and marriage ceremonies. See Golinkin, p. 147.

12 According to the *Mishnah* (*Megillah* 4:3, Babylonian Talmud *Megillah* 23b) “The bridegrooms’ blessing is not said save in the presence of ten”, and this is how it was ruled (*Mishneh Torah, Laws of Marriage* 10:5; *Shulhan Arukh, Even Ha’ezer* 62:4). For more details on this issue, see Golinkin, pp. 148-149.

- The groom breaks a glass in order to commemorate the Temple's destruction.

The bridegrooms' blessing is the only part of the ceremony included in the "sanctified things",<sup>13</sup> and therefore requires the presence of ten people. The entire ceremony customarily takes place in the presence of a *minyan* of ten people, and a rabbi who conducts the ceremony (*messader* or *messaderet Kiddushin*) and makes sure that everything is carried out according to Jewish law.

## 2) Divorce

The Bible already indicates that divorce is a possibility under certain circumstances. The Rabbis considered marriage the ideal family framework, while divorce, a regrettable occurrence, is only justified in cases in which it is unavoidable.<sup>14</sup>

### a) In the Bible

The aforementioned verse from the book of Deuteronomy refers to the dissolution of marriage as well. Deuteronomy 24:1 states:

When a man takes a wife and possesses her, if she fails to please him because he finds something obnoxious about her, then he writes her a bill of divorcement, hands it to her and sends her away from his house.

According to this verse, a husband can divorce his wife if he discovers a defect in her.<sup>15</sup>

### b) In the *Mishnah*

The *mishnah* cited above (*Kiddushin* 1:1) regarding *kiddushin* mentions divorce:

13 For more details regarding "sanctified things", see *To Learn and To Teach*, issue number 3.

14 See *Gittin* 90b: "Rabbi Elazar said: If a man divorces his first wife, even the altar sheds tears".

15 The *Mishnah* (*Gittin* 9:10) explains: "Beit Shammai says: A man should not divorce his wife unless he has found her guilty of some unseemly conduct [*erva*], as it says "because he finds something unseemly about her". Beit Hillel, however, says [that he may divorce her] even if she has merely spoiled his food, since it says "because he finds something unseemly about her". Rabbi Akiba says [he may divorce her] even if he finds another woman more beautiful than she is, as it says "she fails to please him". Therefore, there are reasons that justify divorce; according to the narrow interpretation they would only include "unseemly conduct", connected to sexual conduct [*arayot*], while according to a broader interpretation they would also include being incompatible in other ways.

A woman is acquired [in marriage] in three ways and acquires herself [her freedom] in two ways... *and she acquires her freedom by divorce or by her husband's death.*

As noted above, the active partner in *Kiddushin* is the husband. The same holds true for divorce. Moreover, the divorce takes place only if the husband agrees. As *Mishnah Yebamot* 14:1 states:

A man who gives a divorce is not like a woman who is divorced. For while a woman may be divorced with her consent as well as without it, a man can give a divorce only with his full consent.

It was not until the Middle Ages that Rabbeinu Gershom\* "The Light of the Exile" enacted a decree establishing that a woman must receive a *get*\* of her own free will, but in any case it is the husband that grants the divorce.<sup>16</sup>

### c) *Get me'useh*\*<sup>17</sup>

As previously stated, a man divorces his wife only of his own free will. If he was forced to divorce his wife against his will, the divorce is called "*get me'useh*"\* or a *get*\* given under compulsion and is invalid. According to the *Mishnah*, if the Rabbinic Court determines that the husband can be coerced to divorce his wife, the divorce is valid. *Mishnah Gittin* 9:8 states: "A *get* given under compulsion [exercised] by an Israelite court is valid".

Despite this, the Talmud limits the *Mishnah* – the Rabbinic courts do not have the unrestricted authority to force the husband to divorce under any circumstance. *Gittin* 88b states:

Rabbi Nahman said in the name of Samuel: *A Get given under compulsion [exercised] by an Israelite court with good legal ground is valid, but if it is without sufficient legal ground, it is invalid.*

That is, only in cases in which it is agreed upon that the husband can be pressured is the compulsion based on good legal ground [*kadin*] and the divorce is therefore valid. In any other case, the divorce will be given under compulsion without good legal ground, and will therefore be invalid and the woman will remain married (*eshet ish*\*).

16 *Shulhan Arukh, Even Ha'ezer* 119:6: "And Rabbeinu Gershom enacted a decree that a wife could not be divorced against her will... and even if he is willing to give her the *Ketubah* [money], she cannot be divorced in our times against her will".

17 The word "*me'useh*" comes from the root *issui* that means pressure, force. For a detailed analysis, see *Jewish Law Watch*, number 2 and Goldberg and Villa, chapter 7, pp. 259-306 and English abstract pp. xxiv-xxvi.

#### d) Legally permissible reasons for compelling a divorce

The Talmud\* mentions various reasons for compelling a divorce. The *Mishnah*\* enumerates a list of defects and professions that evoke a noxious odor which makes living together difficult. If a woman claims that she cannot tolerate those defects, the husband is compelled to divorce his wife, even if these defects existed before marriage. We have learned in *Mishnah Ketubot* 7:9-10:

A man in whom bodily defects have arisen cannot be compelled to divorce [his wife]... The following are compelled to divorce [their wives]: a man who is afflicted with boils, or has a *polypus*, or gathers [excrement] or is a coppersmith or a tanner, whether they were [in such conditions or positions] before they married or whether they arose after they had married.<sup>18</sup>

There are some other reasons that many decisors agree can be grounds for compelling divorce:<sup>19</sup>

- a) The husband does not want to support his wife. According to most decisors, the husband is forced to support her, and if he does not do so, he is compelled to divorce her.<sup>20</sup>
- b) The wife claims her husband disgusts her (*ma'is alai*) and she cannot live with him. Most decisors are not willing to compel the husband to divorce his wife in this case. But, if the wife's claims are based on facts, not only on a subjective feeling (the decisors apply the term *ma'is alai be'amatlah mevoeret*)<sup>21</sup>, some decisors will take this into consideration when ruling.
- c) The husband is violent towards his wife. Some decisors (beginning in the thirteenth century) are willing to compel a violent husband to divorce his wife, because it can be life-threatening.<sup>22</sup>

Some decisors claim that the reasons for compelling a divorce cannot be expanded beyond those mentioned in the sources. On the other hand, other decisors rely upon inherently sound *halakhic* logic and therefore permit the addition of new reasons for compelling a husband to divorce his wife.

18 *Polypos* is a Greek word which refers to someone who has a growth on his nose, but the Talmud (*Ketubot* 77a) explains that it is someone who has "bad breath". The person who gathers excrements (*mekametz*) collects dog excrement for the purpose of processing animal hides (*ibid*). A coppersmith purifies or smelts copper. A tanner makes leather from animal hides. The skin of those who work in these professions absorbs the bad odors and it is difficult to live with them.

19 For more details, see Goldberg and Villa, pp. 265-300 and English abstract, pp. xxiv-xxv.

20 *Ketubot* 77a.

21 See *Shulhan Arukh, Even Ha'ezer* 77:3 and in the Rema's gloss.

22 For more details, see Goldberg and Villa, chapter 7, pp. 294-300.

Unfortunately, Rabbinic Courts in Israel are usually strict regarding compelling a divorce. Because they are fearful of the possibility of a *get*\* given under compulsion and the birth of *mamzerim*\*, courts are very reluctant to apply pressure on a recalcitrant husband.<sup>23</sup> Most women therefore prefer not to begin a new chapter in their lives and start a new family as long as they have not obtained a *get*. Thus, they lose the opportunity to have children and proceed with their lives.

## II. The *Agunah*\* Problem in Israel

In Israel, Family Law is administered by the official religious institutions of the various communities (Jewish, Christian, Muslim, Druze and Bahai). The following is the the law that applies to Jews living in Israel:

Matters of marriage and divorce involving Jewish residents or nationals in the State of Israel will be under the exclusive jurisdiction of Rabbinic Courts. Jewish marriage and divorce in Israel will be performed according to Jewish law.<sup>24</sup>

In other words, legal authority regarding matters of marriage and divorce is in the hands of the Rabbinic Courts. According to *halakhah* (Jewish law), it is the husband who divorces his wife and he must do so of his own free will: a *get*\* given against the husband's will is called "*get me'useh*"\* and is usually invalid. The woman remains a married woman (*eshet ish*\*). She cannot remarry and, if she has children from another man, they will be considered *mamzerim*\* (bastards according to Jewish law). In many cases, the husband takes advantage of the power given to him by Jewish law to prevent the wife from receiving the *get*\*. He does this out of revenge or in order to extort property from his wife or force her to give him child custody. As we mentioned above, as long as the husband does not give her the *get*, she cannot remarry, even though she and her husband no longer live together any more as husband and wife. This woman, who is attached to her husband against her will, is called an "*agunah*"\*.

Statistics reveal that the family framework is much less stable in modern times than it was in the past. Approximately one third of all couples in Israel will go

23 We must point out that Israeli law allows the Rabbinic court judges to apply a long list of civil sanctions to give a husband incentives to divorce his wife: confiscating his passport, freezing his bank account, suspending his driver's license, prohibiting election to public office, suspending a professional or business license. The husband can also be sent to jail, and if he is already in jail, he can be placed in solitary confinement. See Rabbinical Courts Jurisdiction Law (1995 and 2000). The mere threat that sanctions will be applied can convince the husband to divorce his wife, yet the rabbinic court judges rarely apply these sanctions.

24 The Rabbinic Courts Jurisdiction (Marriage and Divorce) Law 5713-1953, par. 1-2.

through a divorce.<sup>25</sup> Therefore, the *agunah* problem increases and it is vital to find a solution to this dreadful reality.<sup>26</sup>

In the classical sources, the term “*agunah*” is reserved mainly for a woman whose husband disappeared and his fate is unknown.<sup>27</sup> Such a woman is neither a widow nor a divorcee. She is chained to her missing husband until she dies, and the sources describe her as a “living widow”.<sup>28</sup> Nowadays, cases of a husband’s disappearance are rare and the Rabbinic makes every effort to solve them.<sup>29</sup>

Most of the cases of *agunot*\* today refer to women whose husbands’ whereabouts are known, yet they refuse to give their wives a *get*\*. These women are in the same situation halakhically as classical *agunot*: they are neither widows nor divorcees and remain chained to their husbands.

Rabbinic Courts, certain Orthodox organizations and much of the press, prefer to call these women “*mesoravot get*” (women denied a *get*\*). They limit the use of the term “*agunah*” to its original meaning. Rabbinic Courts also narrow the definition of “*mesoravot get*” to include only those cases in which the husband refuses to give a *get* even after the Rabbinic Court ruled that he is obligated or will be forced to give a *get*.<sup>30</sup> According to this narrow

25 According to the New Family website ([www.newfamily.org](http://www.newfamily.org)), 26% of the couples that marry in Israel get divorced. This fact is based on Jean Paul Sardon and Glenn D. Robertson, “Recent Demographic Trends in the Developed Countries”, *Population* (English edition) 57/1 (Jan.-Feb. 2002), pp. 111-156. See also the Central Bureau of Statistics’s “Statistical Abstract of Israel” ([www.cbs.gov.il](http://www.cbs.gov.il)) that details the number of couples that get married and divorced in Israel. In the United States, about one half of married couples divorce.

26 The Geocartographic Institute conducted a survey for the Ruth and Emanuel Rackman Center for the Advancement of the Status of Women in 2005, that determined that 40% of the women involved in divorce proceedings found themselves in situations in which their divorce is denied by a recalcitrant husband.

27 *Iggun* occurs when: a) the husband cannot be located; b) it is unknown whether he is alive or dead; c) he is unfit to deliver a *get* (for example, he is insane); d) the wife requires *halitzah*\* from the husband’s brother, and for some reason (one of the above or additional reasons), it cannot be performed.

28 See *Responsa of the Rashbash*, No. 513; *Responsa of the Maharshakh*, Part 2, No. 80; *Piskei Uziel be-She’elot Hazman*, No. 69. This expression is based on II Samuel 20:3.

29 Rabbinic Courts send emissaries to track “missing” husbands and manage to do so in most cases. Even in Israeli wars, when soldiers disappeared and their fate was unknown, the Rabbinic managed to find proof in most cases in order to declare them dead and release their wives. According to Rabbinic Courts’ reports, there are approximately 30 *agunot* in Israel today. See the Rabbinic Courts’ website (in Hebrew): [http://www.rbc.gov.il/abandoned\\_wives/index.asp](http://www.rbc.gov.il/abandoned_wives/index.asp).

30 Rabbinic Courts can write divorce rulings in one of three ways: “You are commanded to divorce”, “You are obligated to divorce” or “You will be forced to divorce”. If the ruling is written in command language, sanctions cannot be applied (see note 23) and everything is up to

definition, the Rabbinic Courts report that there are only two hundred “*mesoravot get*” in Israel.<sup>31</sup>

By avoiding the use of the term “*agunah*” in cases of recalcitrance, the Rabbinate is able to claim that the *agunah* problem in Israel is not so severe. However, women’s organizations that support *agunot*,<sup>32</sup> do not distinguish between two types of *agunot*. They consider a woman *agunah/mesorevet get* not only when she fits the categories defined by the Rabbinate, but also when: a) the husband demands conditions for divorce that are outside the scope of what is provided by law for related issues such as property and child custody,<sup>33</sup> and the wife is not willing to accept those conditions; b) the husband refuses to give the wife a *get* after a long period of time (at least a year) from the day the divorce case was filed; c) The Rabbinic Court rules that the husband should divorce his wife<sup>34</sup> and yet he refuses to do so.

It is clear that according to the definition adopted by women’s organizations, the number of *agunot/mesoravot get* is not as limited as the Rabbinate claims. There are thousands of divorce files that languish for years within the system while no ruling is made.<sup>35</sup>

The recalcitrance phenomenon becomes more severe because rabbinic Courts are fearful of a *get me’useh\** and therefore are unwilling pressure husbands to grant a *get\**. They often drag out proceedings, suggest *shlom bayit* (reconciliation) or a mutually accepted agreement between the parties, even in circumstances in which the couple has not been living together for a long period of time and there

the husband’s good will. On the other hand, if he is under an obligation or can be forced and still refuses to do so, the husband is considered recalcitrant and sanctions can be applied against him according to the law.

31 According to data provided to the Knesset’s Committee for the Advancement of Women’s Status by the advisor to the Rabbinic Courts’ Director (November 28, 2005). See [www.knesset.gov.il/MMM/data/docs/m01242.doc](http://www.knesset.gov.il/MMM/data/docs/m01242.doc)

32 See the list of organizations belonging to I.C.A.R. – International Coalition for Agunah Rights – in Appendix 1.

33 See note 24 above.

34 See note 30 above regarding the various wordings that may be applied.

35 It is hard to determine the exact number of *agunot/mesoravot get* in Israel today. Women’s organizations estimate that there are thousands. Some of these cases, represented by lawyers and rabbinic pleaders throughout the country, appear in the journal “*Hadin Ve-hadayan*”. In the May 22, 2006 Rabbinic Court judges’ national convention, Justice Minister Hayim Ramon reported that 23,522 files are pending in Rabbinic Courts (among them about 20% were filed before 2003 and 25 were filed back in the year 1991). See (<http://www.nfc.co.il/001-D-101462-00.html?tag=21-58>). Most of the files are divorce cases. Even if only a fraction of the recalcitrance cases are open for more than a year, we are dealing with thousands of women who are in a state of *iggum\**.

is no chance that they can rehabilitate their shared life. The wife is left in an insufferable situation due to interminable and indecisive court proceedings. According to Israeli law, the divorce proceedings are usually carried out in the Regional Rabbinic Court (near the couple's residence). If the Regional Rabbinic Court decides not to require the husband to divorce his wife, the wife remains an *agunah*\* and she can appeal to the High Rabbinic Court for *Agunot*<sup>36</sup> that often manages to free *Agunot*. But, as long as the Regional Rabbinic Court does not rule, the woman cannot appeal to the *Agunah* tribunal.

Another problem is that in order to convince the husband to grant the divorce, Rabbinic Courts often demand that the wife give up her legal rights<sup>37</sup> in exchange for the *get*, even when the family court has already ruled in other related issues (like property and child custody).<sup>38</sup>

In most cases, one cannot rely on the Rabbinic courts to urge the husband to divorce his wife within a reasonable amount of time. Due to the increase in cases of recalcitrance, a series of alternative solutions were proposed over the last hundred years.<sup>39</sup> In our opinion, there is an efficient solution that can reduce the *agunah* problem significantly: the couple can sign a prenuptial agreement. This agreement, which is signed prior to the marriage, determines the couple's behavior in case of separation, in order to ensure that each partner will give or receive the *get*\* honorably.

### III. Prenuptial Agreements<sup>40</sup>

*Mishnah Yebamot* 14:1 states: "A woman may be divorced with her consent as well as without it; a man can give a divorce only with his full consent". In other words, the husband initiates divorce, and when he gives the *get*\*, the wife is divorced. There are many Talmudic passages indicating that when a woman wants to get divorced she has to present her claims to a Rabbinic Court,<sup>41</sup> which then rules if there is a basis for divorce; in other words, the decision is the court's and not the woman's, and even then the husband must agree to give her a *get*.

Over time, the rabbis made efforts to protect the wife, who was totally dependent on her husband, and to ensure that she would have means of support

36 Regarding appeals to the High Rabbinic Court, see Rabbinic Courts Regulations, 5753-1993, chapter 15 ([www.rbc.gov.il/laws/index.asp#](http://www.rbc.gov.il/laws/index.asp#)). The *Agunot* Rabbinic Court is a special forum of the High Rabbinic Court dealing with appeals by *agunot* and *mesoravot get*. See [www.rbc.gov.il/subjects/index.asp#abandon](http://www.rbc.gov.il/subjects/index.asp#abandon).

37 See above, note 24.

38 It is only the *get* itself that must be arranged in rabbinic courts – related issues can be dealt with in Family Courts. This is established in the Family Courts Law, 5755-1995.

39 See Goldberg and Villa for a survey of most of the solutions that have been proposed.

40 This chapter is based on Goldberg and Villa, pp. 3-100, English abstract, pp. xiii-xiv.

41 See examples of women's arguments in Rabbinic courts in *Yebamot* 65a and 65b, *Ketubot* 63b, etc.

in case she found herself alone, due to her husband's death or divorce. As previously noted, the *Ketubah* was enacted for this purpose.<sup>42</sup> The decree attributed to Rabbeinu Gershom, also mentioned above, was instituted for the same reason. It established that a man cannot take a second wife and that a wife cannot be divorced against her will.<sup>43</sup>

Yet these preventive measures did not modify the basic inequality between men and women insofar as determining their marital status. For example, if a woman does not want to accept a *get* from her husband, the Rabbinic Court can allow the husband to take a second wife, as this is not a Biblical prohibition.<sup>44</sup> However, when a husband does not want to divorce his wife, she remains bound to him, and, if she has children from another man before she obtains a divorce, they will be *mamzerim*\*, as we explained above (p. 14).

Various proposals have been suggested in the last few years to prevent difficulties when a couple decides to split up. All these proposals have the couple sign an agreement before or at the time of the marriage, that prevents the partners to the marriage from harming one another by refusing to give or accept the writ of divorce. The purpose of prenuptial agreements is to help the couple avoid undue suffering, when there is no chance for reconciliation. These agreements also take modest steps towards correcting the inequality between husband and wife in matters of divorce, a situation that causes the wife much suffering.

There are those who claim that it is not appropriate to deal with the possibility of separation at the time of marriage. It must be reiterated however, that the traditional *Ketubah* signed at the time of the wedding, is also an agreement that was designed to protect the wife in case of separation.

## 1) Formulation

A prenuptial agreement must be formulated so that it is valid under Jewish law and so that it presents a practical solution to prevent *iggun*\*. It is therefore necessary to deal with the three problems presented below:

42 See above, pp. 9-10.

43 See above p. 12 and note 16. See Elon, pp. 783-786; *Takkanot Ha-Rabbanut Harashit Le-Israel* (Shevat 18-21, 5710-1950), and *Responsa Heichal Yitzhak, Even Ha'ezer*, Vol. 1, No. 8, paragraph 2.

44 According to Jewish law, a hundred rabbis must sign in order for a man to be allowed to marry a second wife. Therefore, this is known as *Heter Me'ah Rabbanim* (the permission of 100 rabbis). See Schereschewsky, p. 69. The rabbinic approval is required in Israel, and the husband must deposit a *get* for his wife in case she decides to accept it in the future (*ibid.*)

### a) The *asmakhta* problem

In order for the commitment to be valid according to Jewish law, the person who commits him/herself must be aware of the decision he/she is making. When the decision lacks this awareness, it is considered an *asmakhta*\*. For example, a person promises to do a certain thing and commits him/herself to paying a fine if he/she does not keep that promise. This person may try to avoid paying the fine by claiming that, when the promise was made, he/she never expected to be in the situation that would require the fine to be paid. The Rabbis called this kind of commitment *asmakhta* and they disagree regarding its validity. For example, we learned in *Mishnah Baba Batra* 10:5:

[In the case] where [a person] paid a part of his debt and the bond was deposited with a third party to whom [the borrower said] “If I will not pay you [the balance] between now and a certain date, give him [the creditor] his bond”.

The date arrived and he did not pay – Rabbi Jose said: he shall give [it to the creditor]; Rabbi Judah said: he shall not give [it].

In other words, a man paid a part of his debt to his creditor, and transferred the (whole) bond to a third person. The borrower told the creditor that if he [the borrower] did not pay the rest of the debt by a certain date, this third party, who held the bond, should give it to the creditor (who will thus collect the complete debt and receive twice the part that was already paid). The *tannaim*\* disagreed as to whether the third person was to hand over the bond or not. Therefore, the Talmud explains the argument (*ibid.* 168a):

Wherein [on what principle] lies the difference between them?

Rabbi Jose holds [that] *asmakhta* conveys possession and Rabbi Judah holds [that] *asmakhta* does not convey possession. Rabbi Nahman said in the name of Rabbah bar Abbuha in the name of Rab: the *halakhah* is according to Rabbi Jose.

When they came before Rabbi Ammi, he said: “Since Rabbi Johanan has taught us ... [that] the *halakhah* is according to Rabbi Jose, what can I do? The *halakhah*, however, is not according to Rabbi Jose.

That is, even though according to Rabbi Johanan the *halakhah* is according to Rabbi Jose when he disputes Rabbi Judah,<sup>45</sup> Rabbi Ammi rules that regarding the *asmakhta* issue the *halakhah* is *not* according to Rabbi Jose.

45 See, for example, *Erwin* 46b.

The argument between Rabbi Jose and Rabbi Judah is whether a commitment that is an *asmakhta* is valid. The *amoraim*\* disagreed on this question as well.<sup>46</sup> The *halakah* determined that an *asmakhta* does not convey possession.<sup>47</sup> In order for it to be valid, the person making the commitment must be aware precisely of what he/she is committing to.

It is natural for the *asmakhta*\* problem to surface when a prenuptial agreement is formulated. Rabbi Mishlov describes the situation as follows: "How can one have someone commit himself of his own free will to do something in the future that he does not expect to do, and that if he finds himself in that situation, he will not wish to do?"<sup>48</sup>

One kind of *asmakhta*\* is the *guzmah* (exaggeration): when someone commits to paying an exorbitant sum (an "exaggerated" fine) if he/she doesn't live up to an agreement. It is reasonable to assume that awareness is lacking in prenuptial agreements, especially when someone agrees to pay an exaggerated sum if he decides to divorce his wife and he does not expect the conditions that would require him to do so to actually come about. Such a commitment is an *asmakhta*\*.<sup>49</sup>

*When a prenuptial agreement is written, it is important to ensure that there is no exaggeration, and to pay particularly close attention to the wording so as to prevent the agreement from being an asmakhta\*, which would render it invalid according to Jewish law.*<sup>50</sup>

## b) The *get me'useh*\* problem

*Mishnah Yebamot* 14:1 cited above (pp. 12 and 17) noted that "a man can give a divorce only with his full consent". Therefore, according to Jewish law, if a husband is coerced to divorce his wife, the *get* is *me'useh* (given under compulsion) and invalid.<sup>51</sup>

46 See also *Baba Metzi'a* 66a.

48 See Mishlov, p. 77.

49 Jewish law developed a series of technical means when formulating an agreement that circumvent the *asmakhta*\* dilemma. For example, establishing that the commitment applies "from this moment" (from the moment the agreement is signed). For our purposes it is not necessary to expand on this complicated subject. For more details, see Goldberg and Villa, pp. 4-9.

50 We must point out, though, that as long as prenuptial agreements are not required and routine, as long as the couple can choose whether or not to sign a certain agreement, we can affirm that there is no *asmakhta*\*. The couple agrees to sign a particular agreement because they are aware of the difficult social situation which can arise and sincerely wish to avoid being in such a situation. It will only be necessary to carefully choose an agreement that avoids this halakhic problem if prenuptial agreements become a routine part of the marriage process.

51 See also *Mishnah Gittin* 9:8; Babylonian Talmud *ibid.* 88b; and above, p. 12.

The husband might divorce his wife as a result of financial or other pressures imposed on him due to his commitment to a prenuptial agreement. In that case, the divorce will be coerced and invalid. The *Rishonim*\* disagree regarding the validity of the *get*\* even when the husband imposed a fine upon himself by having signed the agreement. Several opinions on this matter appear in the Rema\* (*Shulhan Arukh*\*, *Even Ha'ezer* 134:4):

If he accepted fines upon himself if he does not divorce [his wife], this is not considered *force majeure*, since the divorce is linked to something else, and he can pay the fines and not divorce...

There are those who are stricter in such cases... and it is preferable to be cautious *a priori* and to release him from the fine.

But, if he has already divorced for that reason, and even if he divorced because he swore on his own account to do so, the *get* is valid, since he was not forced to do so.

According to the first opinion, since the husband was not forced to divorce and can choose between divorcing and paying the fine, the *get* is not considered to have been compelled.

The Rema\* then describes the stricter opinion.<sup>52</sup> If a *get* is given because the husband feels pressured by the fine, even if he took the fine upon himself, the *get* is *me'useh*\* (compulsory) and invalid. Therefore, says the Rema\*, it is good *a priori* to release the husband from the fine before he gives the *get*, so that there is no connection between giving the *get* and the fine.

The Rema\* further explains that if the husband gave the *get* in order to be free of a fine he initiated himself, the *get* is valid after the fact.

The *Piskei Din* of the Regional Rabbinic Courts follow the stricter opinion, at least *a priori* (Vol. 2, p. 9):

A husband who committed himself to giving his wife a *get* and if he changed his mind he would pay a fine – if he did change his mind because he is forced to do so due to the fine, the *get* is invalid because it is a *get me'useh* (compulsory)...

*A priori* a divorce settlement should not be approved when a husband commits himself to paying a fine if he changes his mind about giving the *get*.

*Therefore, when a prenuptial agreement is formulated, precautions must be taken not to directly link the sanctions imposed on the recalcitrant husband to giving the get.*

52 The Rema quotes the *Responsa of the Rashba*, Part 4, No. 40. Cf. Goldberg and Villa, p. 10.

### c) The problems of efficacy

There are a wide variety of agreements intended to minimize or correct the inequality between men and women which stems from the power granted to men by Jewish law in matters related to divorce. These agreements work towards preventing injustice towards women. However, there are prenuptial agreements that not only fail to correct the inequality in laws of marriage and divorce, but even work against women's interests.

Adv. Susan Weiss distinguishes between two kinds of agreements.<sup>53</sup> She calls the first kind "legitimizing agreements": these agreements give the rabbinic court the authority in matters of divorce, based on Jewish law which is non-egalitarian. In her opinion, these agreements perpetuate injustice towards women. Women who sign such agreements believe that they will be protected. However, experience has repeatedly demonstrated that Rabbinic Courts usually are more open to the husband's arguments and do not help women who are *mesoravot get*.

Susan Weiss calls the second kind of agreements "circumventing agreements". These agreements recognize the pitfalls within the *halakhic* system and try to find solutions that circumvent it.

*Every agreement must be reviewed thoroughly to guarantee its efficacy in preventing the husband from leaving his wife in a state of iggun.*

The agreements can be classified according to their guiding principles. The most common types are arbitration agreements and financial agreements.<sup>54</sup>

## 2) Arbitration Agreements

In these agreements, which couples commit to at the time of their wedding, the parties agree that should any conflict between them arise in the future, they will go to a Rabbinic Court and comply with its ruling.

Arbitration agreements were suggested primarily abroad to compel couples to go to a Rabbinic Court, since divorce takes place in a civil court. Unless there is a prior commitment to submit to the jurisdiction of a Rabbinic Court, either party can refuse to appear there.

Arbitration agreements were not effective, however, in preventing *iggun* problems in cases of a recalcitrant husband. This type of agreement is most useful in assisting a couple whose relationship is reasonable to separate honorably and justly, providing that the Rabbinic Court judges listen to both

<sup>53</sup> Weiss, p. 49.

<sup>54</sup> For other kinds of agreements, see Goldberg and Villa, pp. 17-30.

sides with the same degree of empathy. According to Susan Weiss, arbitration agreements are best categorized as “legitimizing agreements”. They expand the power of Rabbinic Courts instead of finding new solutions to prevent injustice.<sup>55</sup>

### 3) Financial Agreements

Financial agreements seem to be the most effective type of agreements both from a *halakhic* standpoint and as a way to prevent women from becoming *agunot*.

The principle guiding financial agreements is that the husband guarantees at the time of the wedding to pay his wife a large sum of money in the future should she want a divorce and should he refuse to give her a *get*, even though their life together has ended. The purpose of the agreement is to have the husband give the *get* quickly in order to be rid of the heavy debt.

#### a) The *halakhic* principles on which financial agreements are based

##### *Mezonot* (sustenance)

The rabbis established that a husband must support his wife. *Ketubot* 77a states: “Rav said: He who says I will neither maintain nor support [my wife] – he must divorce her and pay her *ketubah*”. In other words, if the husband does not support his wife, he must divorce her and give her the *ketubah* money. And so Maimonides ruled in his Laws of Marriage 12:2:

Of the ten [things a man obligates himself to his wife when he gets married], three are found in the Torah: “her food, her clothing and her conjugal rights”.<sup>56</sup> “Her food” signifies her maintenance; “her clothing”, what the term implies; “her conjugal rights”, sexual intercourse with her, according to the way of the world.

Even if the man and his wife do not live together, the husband is obligated to support her as long as they are married. As it is written in the *Shulhan Arukh\** (*Even Ha’ezer* 70:12): “If a woman left her husband’s home and went to another home... he must support her there”.

##### **Sustenance based on the law of *me’ukevet lehinasei mehamato* (she is prevented from getting married because of him)**

We have learned in *Mishnah Ketubot* 6:1: “A wife’s finding and her handiwork belong to her husband”. In other words, whatever a wife earns belongs to her

55 For more details, see Goldberg and Villa, pp. 13-16.

56 Based on Exodus 21:10.

husband.<sup>57</sup> *Ketubot* 47b (and parallel sources) teaches that they “established her sustenance in place of her handiwork” i.e., in exchange for supporting her, the husband keeps her earnings.

When a couple lives separately and run separate households, one could reasonably assume that the husband is no longer obliged to support his wife since she does not give him “her handiwork” and “her findings” as she did before. But in addition to the obligation to support her because she is married to him, the Rabbis imposed another obligation on him which is due in special cases in which the couple does not live together but the wife is bound to her husband against her will. The Rabbis called this obligation *mezonot midin me’ukevet lehinasei mehamato* (sustenance because she is prevented from getting married because of him).

One case in which this law is applied is when the wife is “divorced and yet not divorced”. *Baba Metzi’a* 12b states: “For Rabbi Zeira said in the name of Samuel: Wherever the Sages have said [that a woman is] ‘divorced and yet not divorced’ – her husband is obliged to support her”. In other words, when a woman’s divorce is in doubt,<sup>58</sup> she remains bound to her husband, and he is therefore obligated to support her.

The obligation to pay special support exists not only in cases of “divorced and yet not divorced”, but also in cases in which the woman’s marital status is clear yet her husband is preventing her from marrying somebody else. According to some authorities, these cases include situations in which the wife has been unfaithful to her husband and is therefore forbidden to him.<sup>59</sup> The *Piskei Din* (Vol. 4, pp. 157-158) describe a case in which the wife claims that her husband is impotent and therefore she left him. She also claims that she is forbidden to her husband because she had sexual relations with another man. The Rabbinic Court ruled that the husband is obligated to pay support monies because she cannot remarry. This decision is grounded in the law establishing the husband’s duty to support his wife as long as she is legally attached to him.

This Rabbinic Court ruling is based on a responsum by the Maharit\* (Part 1, No. 113, s.v. *uleinyan mah*), who ruled that an epileptic husband who did not divorce his wife had to pay her support money even though they lived separately:

57 See also *Ketubot* 65b-66a.

58 Rashi brings an example (*Baba Metzi’a* 12b, s.v. *bemegureshet*): “For example, he threw the *get* at her in the public domain, it is not clear whether it was close to her or close to him – he is obligated to support her”.

59 This is also the *Magen Avraham’s* opinion in his responsum about a woman who was unfaithful to her husband in front of witnesses and he does not want to divorce her. He says: “Even though she is forbidden to him, he must still give her food and clothing as long as he does not divorce her”. This is quoted in the *Piskei Din*, Vol. 4, p. 163. The *Aharonim\** explained that the obligation is based on the fact that she is *meukevet lehinasei mehamato*. See Bleich, p. 65, note 10.

And she also receives support as long as he does not divorce her... since it says in the first chapter of *Baba Metzi'a* [12b] that whenever the Rabbis said "she is divorced and yet she is not divorced", the husband is obliged to support her... as long as she is prevented from marrying because of him...

In other words, as long as the wife is bound to her husband, he is responsible for providing financial support since "she is prevented from getting married because of him".

We should add that the expression "prevented from getting married because of him" is a legal description of a woman, who, for any reason cannot marry someone else according to the laws of Moses and Israel, since her husband refuses to divorce her. This expression does not determine who is responsible for the couple's breakup. Thus, even if the husband is a total "saint" and the wife is the "criminal", the wife can be considered to be "prevented from getting married because of him". Even if the husband wants reconciliation and she is not interested, the woman is considered to be "prevented from getting married because of him".

## **b) Analysis and explanation of a prenuptial agreement**

In order to ensure the *halakhic* validity of the agreement and to prevent problems of *asmakhta*\* and *get me'useh*\*, the version used must separate the monetary debt from the divorce itself.

Many versions of prenuptial agreements are financial agreements. We have chosen to explain the "Agreement for Mutual Respect",<sup>60</sup> which is, in our opinion, effective in preventing *iggun*, valid *halakhically* and compatible with Israeli law. We will now explain this agreement's main provisions.

### **The notice**

If the husband or wife wishes to live apart from the other one, s/he must notify the other party requesting that s/he exercise his/her obligations (see below). The date of delivery of the notice shall be called the "Notification Date".

### **Rehabilitation of the marriage**

The party receiving notice may request the opportunity to rehabilitate the marriage with the assistance of a professional counselor.

60 See the agreement in Appendix 2.

### **The period**

One hundred and eighty days after the notice has been sent, the sender can take legal action to execute the obligations of the other party. This one hundred and eighty day period can be extended for an additional ninety days, if the a marriage counselor considers that additional therapy may rehabilitate their marriage.

### **Obligations of the man**

According to the agreement, the man is obligated from the beginning of the marriage to pay his wife increased monthly financial support, beyond what is required by Jewish law. According to the agreement, the husband agrees to give his wife about half of his monthly earnings. The agreement intentionally does not mention divorce, but it is clear that payment of financial support will end when the *get* is given. It is presumed that the woman will not demand the increased financial support as long as the couple lives in harmony. She will demand execution of these obligations when she wants to separate from her husband (see “the notice” above). It is also reasonable to assume that once the couple has decided to separate permanently the husband will be inclined to give the *get* in order to avoid paying increased financial support.

According to the agreement, if the attempt to rehabilitate the marriage fails 180 days after the notification date (or 270 days from the notification date in cases in which there was an additional period), the woman can take legal steps to exercise the man’s obligation. But the woman cannot exercise the husband’s obligation if she opposes ending the marriage and does not accept the *get*.

We must emphasize that the expression “the end of the marriage” in this agreement means the end of the marriage according to the laws of Moses and Israel, by giving and receiving a *get*.

### **Obligations of the woman**

When the agreement is egalitarian as the one presented in Appendix 2, the woman has a parallel obligation, to prevent a situation in which the man wants a divorce and the woman refuses to accept the *get*.

Since under Jewish law the woman has no financial obligation to support her husband, her obligation is slightly different: the woman obligates herself to pay her husband beginning from the end of the “period” or after the additional period, a large amount of monthly support.

The man cannot exercise the woman’s obligation if she agrees to end the marriage (to accept the *get*).

## Property division

The Law of Property Relations Between Spouses (5733-1973) arranges property division among the partners. According to this law, the property division takes place “when the marriage ends due to divorce or the death of one of the spouses.”<sup>61</sup> In other words, as long as the husband does not give the *get* to his wife, she has no right to their joint property. Therefore, even if the Rabbinic Court accepts the division of property according to civil law, this division will only be considered after the *get* is given.

In many cases, the husband demands that the wife relinquish her financial rights as a condition for giving her the *get*. Therefore, in order to avoid a situation in which giving or receiving the *get* becomes a tool for monetary extortion, proponents of the prenuptial agreement suggest that in addition to the prenuptial agreement, the couple should consider signing a financial agreement that establishes the division of property as soon as the couple’s life together is over, without waiting for the divorce itself. Thus, monetary and property issues will be independent of the divorce itself. Moreover, with this agreement in place, the division of property will not impede going forward with the divorce proceedings.

## Judicial authority

According to the above mentioned Law of Property Relations Between Spouses (5733-1973), the authenticating party for a prenuptial agreement must be one of the following authorities: the marriage registrar,<sup>62</sup> the Regional Rabbinic Court, the Family Court or a Notary Public. In order to prevent the possibility that the agreement should be brought under the jurisdiction of a Rabbinic Court, it is preferable that the couple sign it before a Notary Public or in Family Court.

## Summary and Conclusions

1. According to Jewish law, it is the husband who divorces his wife, and he must do so on the basis of his own free will. In many cases, when the wife wants a divorce, the husband takes unfair advantage of the power given to him by Jewish law and – either out of revenge or to blackmail her – prevents her from receiving the *get*.
2. So long as the husband does not give his wife the *get*, she cannot marry anyone else, even if she and her husband are no longer living together as

61 *Ibid.*, chapter 2, paragraph 5(a).

62 When the *messader kidushin* is not an Orthodox rabbi, it is impossible to register the marriage through a marriage registrar at the Rabbinate.

husband and wife. A woman, who is bound to her husband against her will, is called an "agunah"\*.

3. The recalcitrance phenomenon by the husband grows even more acute because Rabbinic Courts are wary of applying pressure to the husband and requiring him to give a *get*. Rabbinic Court proceedings are often protracted, accompanied by suggestions of *shlom bayit* (reconciliation) or a consented agreement between the parties, even when the couple has not been living together for a long time. Therefore, there are numerous *agunot* and *mesoravot get* in the State of Israel today. Thousands of women cannot rehabilitate their lives because they are hostages to cruel husbands and to impotent courts.

4. The prenuptial agreement is a solution that can be effective in limiting this sad situation. In order to avoid difficulties in case a couple separates, the partners should sign an agreement before the wedding, that prevents one of them from harming the other one by not giving or not receiving the *get*. An example of such an agreement is found in Appendix 2. We hope that more and more rabbis and couples will be convinced not to marry or be married without signing the type of agreement presented in this booklet.

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**Weiss**, Susan Metzger, *“Sign at Your Own Risk: The ‘RCA’ Prenuptial May Prejudice the Fairness of Your Future Divorce Settlement”*, *Cardozo Women’s Law Journal*, 6:49 (1999), pp. 49-102.

## Glossary of Authors

*Bertinoro, Rabbi Obadiah of* (Italy and Israel, ca. 1450 - ca. 1516): author of the classic, comprehensive commentary on the *Mishnah*\*, based on Rashi and Maimonides.

*Caro, Rabbi Joseph* (Spain and Israel 1488-1575): wrote a commentary on the *Tur*\* called *Beit Yosef* and the *Shulhan Arukh*, to which the Rema's\* glosses were added, making it still the most influential code to date.

*Gershom, Rabbeinu, The Light of the Exile* (Germany 960-1028): major halakhic authority of his time, wrote glosses and a commentary on the Talmud as well as many responsa and liturgical poems. Best known for his *takkanot*\* (ordinances), two of which deal with matrimonial law: prohibiting polygamy (also known as *Herem de-Rabbeinu Gershom*) and eliminating the husband's right to divorce without the wife's consent.

*Maimonides (Rambam), Rabbi Moses ben Maimon* (Spain and Egypt, 1135-1204): physician, philosopher and halakhic authority. Author of the *Mishneh Torah*. Maimonides also wrote commentaries on the *Mishnah*\* and the Talmud\*, responsa, philosophical works (such as *The Guide of the Perplexed*) and medical works.

*Rema, Rabbi Moses Isserles* (Poland, 1525-1572): author of *Darkhei Moshe* on the *Arba'ah Turim* (see *Tur*\*) by Jacob ben Asher, and his glosses to Caro's *Shulhan Arukh*\* known as the *Mappah* (Tablecloth). These glosses supplemented Caro's code with the laws and customs of Germany and France. In this way, they contributed to its becoming authoritative throughout the Jewish world in the sixteenth century and a major code to this day.

*Maharit, Rabbi Joseph ben Moses of Trani* (Safed 1568-Constantinople 1639): head of *yeshivot* in both communities and also leader of the Constantinople community. He wrote numerous responsa.

*Rashba, Rabbi Shlomo ben Aderet* (Spain 1235-1310): Talmudic commentator and Jewish law decisor.

*Rashi, Rabbi Shlomo Yitzhaki* (France 1040-1105): his commentaries to the Bible and Talmud became vital instruments for understanding these texts.

*Tur, Rabbi Jacob ben Asher* (Germany 1270-Spain 1343): author of the *Arba'ah Turim*, in which he edited the halakhic\* material up to the fourteenth century and ruled in matters of *halakhah*\*, placing his father, the Rosh, in a privileged position.

## Glossary of Terms

*Agunah*: from the word *oggen* (anchor), that is dropped into the water to prevent a ship's motion. An *agunah* is a woman whose husband left her and disappeared without giving her a *get*\*; in modern times also a husband who refuses to give his wife a *get*\*. Such a woman is tied to her husband by law and cannot marry anyone else. Plural: *agunot*. State of being an *agunah*: *iggun*.

*Aharonim*: Talmudic interpreters and halakhic sages from the *Shulhan Arukh*\* (sixteenth century) to our days.

*Amoraim*: Rabbis of the Talmudic (see *Talmud*\*) period (220-500 CE), who taught and studied in the academies in Israel and Babylonia.

*Asmachta*: literally "reliance". If someone undertakes to fulfill a commitment as a formality relying on the fact that s/he will never have to keep that commitment, that is considered an *asmachta*.

*Eshet Ish*: the wife of a particular husband; she requires a *get*\* to be able to marry somebody else.

*Get*: Jewish writ of divorce.

*Get Me'useh*: a *get*\* given by the husband against his will.

*Gezerah Shavah*: one of the basic midrashic rules. When the same word, combination of words or root appears in two Biblical verses, we can make inferences from one verse to the next, especially in halakhic subjects.

*Halakhah, halakhic*: Jewish law, pertaining to Jewish law.

*Halitzah*: ceremony that frees a wife from the obligation of marrying her dead husband's brother (*yibum*\*). This ceremony includes the removal of the *yabam's*\* shoe, as part of the ritual due to his unwillingness to marry this woman (see Deuteronomy 25:5-10). It is only after this ceremony that she is free to marry somebody else.

*Iggun* – see *Agunah*.

*Magen Avraham*: one of the principal commentaries on the *Shulhan Arukh*\*, written by Rabbi Abraham Gombiner (Poland, 1637-1683).

*Mamzer, mamzerim*: a child born from a forbidden union (an adulterous relationship or involving relatives whom one is forbidden to marry). A *mamzer* can only marry another *mamzer* or a convert.

*Mishnah*: collection of mostly legal sources, edited by Rabbi Judah Ha-Nasi, around 200 CE.

*Perutah*: The smallest coin in the country. Whatever is worth less than a *perutah* has no monetary value according to Jewish law.

*Rishonim*: Talmudic interpreters and halakhic sages from the end of the Geonic period (eleventh century) until the *Shulhan Arukh*\* (sixteenth century).

*Sanctified things*: prayers and blessings that sanctify God's name and are said in a prayer quorum.

*Shulhan Arukh*: sixteenth century law code, written by Rabbi Joseph Caro\* (Spain and Israel 1488-1575), to which the Rema's\* glosses were added, which helped make it the most influential code to this day.

*Takkanah*: Rabbinic enactment that changes *halakhah*\* due to changing historical and social circumstances.

*Talmud*: a series of tractates which include the *Mishnah*\* from tannaitic (see *Tannaim*\*) times and the *Gemarah*, the discussions of the *Mishnah* by the *Amoraim*\*. The Babylonian Talmud became the basic source for all future halakhic development.

*Tanna, Tannaim*: rabbis of the *Mishnah*\*. They studied and taught in the land of Israel from the Second Temple Period until 220 CE. Besides the *Mishnah*, they authored many *baraitot* (tannaitic dictums not included in the *Mishnah*\*), such as halakhic midrash and the *Tosefta*\*.

*Tosefta*: a collection of *baraitot* (tannaitic dictums not included in the *Mishnah*\*), which was edited according to the order of the *Mishnah*\* during the following generation.

*Yebum, yabam*: If a man dies childless, one of his brothers must marry his wife to build his brother's name in Israel. This marriage is called *yebum* (levirate marriage) and the brother is the *yabam* or *levir* (see Deuteronomy 25:5-10). If he does not wish to marry his brother's widow, he must do *halitzah*\*, so that the woman can marry somebody else. Nowadays, it is not customary to do levirate marriage; the *halitzah*\* ceremony takes place in such cases.

*Zuz*: a silver coin that was the equivalent of a fourth of a *shekel* in Talmudic times. Two hundred *zuz* were considered sufficient income for an entire year.

**Appendix 1: List of Organizations in I.C.A.R.  
(International Coalition for Agunah Rights)**

I.C.A.R. – 33 Pierre Koenig St., P.O.B. 68131, 91680, Jerusalem.

Tel: (02) 6721401, fax: (02) 6728901, e-mail: [icar@barak.net.il](mailto:icar@barak.net.il),

website: [www.icar.org.il](http://www.icar.org.il)

Achoti – 70 Matalon St., 66857 Tel Aviv.

Tel: (03) 6870545. website: <http://www.achoti.org.il>

Center for Women in Jewish Law at the Schechter Institute of Jewish Studies,  
P.O.B. 16080, 91160 Jerusalem.

Tel: (02) 6790755, fax: (02) 6790840, e-mail: [diantami@netvision.net.il](mailto:diantami@netvision.net.il);

[goldsuss@netmedia.net.il](mailto:goldsuss@netmedia.net.il), website: <http://www.schechter.edu/women/law.htm>

Center for Women's Justice, 14 Emek Refa'im St., 93104 Jerusalem.

Tel: (02) 5664390, fax: (02) 5663317, e-mail: [cwj@cwj.org.il](mailto:cwj@cwj.org.il), website: [www.cwj.org.il](http://www.cwj.org.il)

Crisis Center for Religious Women, P.O.B. 10207, 91101 Jerusalem.

Tel: (02) 6730002, fax (02) 6730725, e-mail: [ccrw@netvision.net.il](mailto:ccrw@netvision.net.il),

website: <http://ccrw.1202.org.il/template/default.asp?siteId=8>

Emunah – National Religious Women's Organization, 14 Nissenboim St, 51581  
Bnei Brak. Tel: (03) 5785278, fax: (03) 5781523,

e-mail: [emunah@emunah.co.il](mailto:emunah@emunah.co.il), website: [www.emunah.org.il](http://www.emunah.org.il)

Granit – Organization for Women During and After Divorce Proceedings,  
13 Keren Hayesod St., 54054 Givat Shemuel.

Tel: (03) 5320035, fax: (03) 5329686, e-mail: [tikvar@zahav.net](mailto:tikvar@zahav.net),

website: [www.granit.starwebz.com](http://www.granit.starwebz.com)

Hadassah Israel, 24 Strauss St., P.O.B. 5031, 91050 Jerusalem.

Tel: (02) 6231411, fax: (02) 6240768, e-mail: [post@hadassah-israel.org.il](mailto:post@hadassah-israel.org.il),

website: [www.hadassah-israel.org.il](http://www.hadassah-israel.org.il)

Hemdat – the Council for Freedom of Science Religion and Culture in Israel,  
22 Agnon St., P.O.B. 46077, 91460 Jerusalem.

Tel: (02) 6796272, fax: (02) 679-6289, e-mail: [hemdat@actcom.co.il](mailto:hemdat@actcom.co.il)

International Council of Jewish Women – I.C.J.W., 13 Tel Hai St., 92017  
Jerusalem. Tel: (02) 5619218, fax: (02) 5619112, e-mail: [sshenhav@zahav.net.il](mailto:sshenhav@zahav.net.il),

website: <http://www.icjw.org>

Isha Le'ishah – Haifa Feminist Center, 118 Arlozorov St., 33275 Haifa.

Tel: (04) 8650097/8660951, fax: (04) 8641072, e-mail: [ishafc@netvision.net.il](mailto:ishafc@netvision.net.il)

Israel Religious Action Center of the Israel Reform Movement, P.O.B. 31936,  
91319 Jerusalem. Tel: (02) 6256261, fax: (02) 6256260,  
e-mail: info@irac.org, website: www.irac.org

Israel Women's Network, 9 Habonim St., 52462 Ramat Gan. P.O.B. 3348,  
52136 Ramat Gan. Tel: (03) 6123990, fax: (03) 6123991,  
e-mail: office@iwn.org.il, website: www.iwn.org.il

Kol Ha'ishah, 38 Ben Yehuda St., P.O.B. 3715, 91371 Jerusalem.  
Tel: (02) 6222455, fax: (02) 6256187, e-mail: kolishao@netvision.net.il,  
website: www.kolhaisha.israel.net

Kolech – Religious Women's Forum, 31 Yehuda St., 93467 Jerusalem.  
Tel: (02) 6720321, fax: (02) 6730595, e-mail: kolech@kolech.org,  
website: www.kolech.org

Lev La'am – Organization to Help Agunot and their Children,  
116/22 Haganah Rd., P.O.B. 30953, 61316 Tel Aviv.  
Tel: (03) 7391164, fax: (03) 6316005

Masorti Movement – 13 Ben Yehuda St., P.O.B. 7559, 91074 Jerusalem.  
Tel: (02) 6246510, fax: (02) 6246869, e-mail: masorti@masorti.org,  
website: www.masorti.org

Mavoi Satum – P.O.B. 8712, 91086 Jerusalem.  
Tel: (02) 6712282, fax: (02) 6711314, e-mail: agunot@netvision.net.il,  
website: www.agunot.org

Na'amat – Movement of Working Women and Volunteers, 93 Arlozorov St.,  
62098 Tel Aviv. Tel: (03) 6291990, fax: (03) 6090373,  
e-mail: naamat@naamat.org, website: www.naamat.org.il

National Council of Jewish Women – The NCJW Research Institute for  
Innovation in Education, Room 267, School of Education, The Hebrew  
University of Jerusalem, Mt. Scopus, 91905, Jerusalem.  
Tel: (02) 5882208, fax: (02) 5813254, e-mail: msnjwi@mscc.huji.ac.il,  
website: http://www.ncjw.org

No 2 Violence Israel – Combat Violence Against Women, P.O.B. 5941,  
46101 Herzliah. Tel: (09) 9505720, fax: (09) 9551022,  
e-mail: contact@no2violence.co.il, website: www.no2violence.co.il

Ruth and Emanuel Rackman Center for the Advancement of the Status of  
Women – Bar Ilan University's Law School, 52900 Ramat Gan.  
Tel: (03) 5318895, fax: (03) 7360499, e-mail: rackman.center@mail.biu.ac.il,  
website: http://www.law.biu.ac.il/rackmancenter

PRENUPTIAL AGREEMENTS

Shatil – The New Israel Fund’s Empowerment and Training Center for Social Change, 9 Yad Haharutzim, P.O.B. 53395, 91533 Jerusalem.

Tel: (02) 6723597, fax: (02) 6735149, e-mail: [shatil@shatil.nif.org.il](mailto:shatil@shatil.nif.org.il),  
website: [www.shatil.org.il](http://www.shatil.org.il)

WIZO, 38 King David Ave., 64237 Tel Aviv.

Tel: (03) 6923783/6923797, fax: (03) 6923784,  
e-mail: [shoshi@wizo.org](mailto:shoshi@wizo.org), [tsilae@wizo.org](mailto:tsilae@wizo.org), website; [www.wizo.org](http://www.wizo.org)

Women’s League for Conservative Judaism – P.O.B. 7559, 91074 Jerusalem.

Tel: (02) 672-0266, e-mail: [friedgut@zahav.net.il](mailto:friedgut@zahav.net.il), website: <http://www.wlcv.org>

Yad L’ishah – Max Morrison Legal Aid Center, 33 Pierre Koenig St., 93469 Jerusalem.

Tel: (02) 6780876, e-mail: [yad.lisha@ohrtorahstone.org.il](mailto:yad.lisha@ohrtorahstone.org.il),  
website: [www.legalaid.org.il](http://www.legalaid.org.il)



**Appendix 2: Prenuptial Agreement for Mutual Respect<sup>63</sup> (Yaltha/  
Kneset Harabbanim/Masorti Movement version)<sup>64</sup>**

Entered into in \_\_\_\_\_ on the date of \_\_\_\_\_

Between \_\_\_\_\_ I.D. \_\_\_\_\_ (to be called hereinafter: the "Man")

**As one party;**

And \_\_\_\_\_ I.D. \_\_\_\_\_ (to be called hereinafter: the "Woman")

**As the second party;**

**Whereas** The Man and the Woman (hereinafter: the "Couple") have mutually agreed to be married under Jewish law (hereinafter: the "Marriage"),

**Whereas** The Couple desire to act with respect for each other and resolve disputes among themselves with fairness in an agreeable manner,

**Whereas** The Couple have agreed to base their married life together on the grounds of love, harmony, peace, equality, respect, consideration, fairness and mutual concern,

63 This agreement is based on the "Prenuptial Agreement for Mutual Respect" that was formulated mainly by Rabbi Elyashiv Knohl, Rabbi David Ben-Zazzon and Rabbinical Court Advocate Rachel Levmore (see [www.ykd.co.il](http://www.ykd.co.il)). Adv. Varda Brief adapted the agreement to our requirements. The agreement is meant for personal use and not for commercial purposes. The original agreement in English is available at [www.youngisraelrabbis.org.il](http://www.youngisraelrabbis.org.il). See also Levmore. The Hebrew version of this agreement has been published in the Hebrew version of this booklet: *Lilmod U'lelamed 4*, 2007.

We must emphasize that the present agreement has been written according to the requirements of Israeli law and therefore can only be used in Israel. Those who wish to use a similar accord in another country, must have a lawyer redact a new agreement based on the present one, in accordance with the laws of that country. A rabbi must verify such an agreement to ensure that it is valid according to Jewish law.

64 The Masorti (Conservative) Movement is a movement within Judaism that is committed to Jewish law and to his historical development based on the needs of the time. Yaltha is an organization that includes Conservative female rabbis and rabbinical students and is active within Kneset Harabbanim (the Israeli branch of the Rabbinical Assembly, worldwide Conservative rabbinical organization).

**Therefore, the Couple agree as follows:**

**Preamble**

- A. The preamble to this agreement constitutes an integral part thereof.

**The Notice**

- B. A party who desires to live apart from the other may deliver written notice to the other party wherein the sending party requests to exercise the obligations of the other party as set forth in clauses E or F, as the case warrants (hereinafter: the *"Notice"*).

The sending of a Notice by one party shall not prevent the sending of a Notice by the other party as well.

The Notice shall be hand-delivered or dispatched by registered mail or an alternative method of delivery in accordance with the Rules of Civil Procedure, 5744-1984.

The date of delivery of the Notice shall be called herein: the *"Notification Date"*.

The Sender may revoke the Notice in writing and may independently choose to resend it, as long as the delivery takes place as described above.

The revocation of a Notice shall not affect the validity of a Notice sent by the other party.

**Rehabilitation of the Marriage**

- C. 1. The Notice Recipient may request to rehabilitate the Marriage with the help of a professional counselor accepted by both parties (hereinafter: *"Marriage Counselor"*). In the absence of an agreement among the parties as to the identity of the Marriage Counselor, the Marriage Counselor shall be appointed by the Israeli Association for Marital and Family Therapy and Family Life Education.
2. The Couple undertake to appear before the Marriage Counselor for up to three sessions (unless the counselor considers it will be useless to complete the number of sessions). The Couple shall share equally in the payments for the sessions with the Marriage Counselor.

### **The Period**

D. If 180 (one hundred and eighty) days passed since Notice was delivered by one party on the Notification Date (hereinafter: the “*Period*”) and the Couple had not reached an agreement to rehabilitate the Marriage, then the Sender may take all actions to exercise the obligations of the other party as set forth in clause E or F herein, as applicable (hereinafter: the “*Obligations*”).

If the Marriage Counselor had stated in writing (at the end of the Period) that, in his opinion further counseling would assist the Couple in rehabilitating their marriage – the Period shall be extended by an additional 90 days (hereinafter: the “*Extended Period*”) and clause C (2) shall apply to the Extended Period.

The Sender may, *in writing*, extend the Period or reduce the extension. The extension of the Period by one party shall not extend the relevant period in respect to the notice by the other party.

The Couple expressly agree that:

1. The duration of the marriage counseling, as set forth in clause C, is included as part of the aforementioned Period, and shall not be extended even if three sessions with the Marriage Counselor were not held.
2. Notwithstanding clause C (2), the Sender of the Notice may take all steps to exercise the Obligations at the expiration of the Period and the Extended Period (if applicable) in any event, except in the event that a Marriage Counselor was appointed and the Sender of the Notice failed to appear upon a summons by the Marriage Counselor, as stated above.

### **The Obligations of the Couple**

#### **E. Obligations of the Man:**

1. The Man hereby now (*me’achshav*) obligates himself, to make monthly maintenance payments to the Woman in the greater of the following two sums:
  - A. The shekel equivalent of \$1,500 (one thousand five hundred U.S. dollars) according to the representative rate of the dollar published at the time of actual payment.
  - B. A sum constituting 50% (fifty percent) of his mean monthly (net) income of the year preceding the Notification Date.

2. This obligation by the Man is not dependent on earnings received by the Woman from a salary, wages, property or any other source, and may not be deducted from any type of debts owed to him by the Woman.
3. Notwithstanding the Man's obligation to make monthly maintenance payments as set forth in subclause 1, the Man, hereby now *me'achshav*) waives all lawful rights to income generated by the Woman during the period in which the Woman is entitled to implement/exercise the Obligations, including earnings, bonuses, found money and usufruct.
4. These Obligations are fully valid and enforceable regardless of any action or omission by the Woman.
5. Notwithstanding subclause 4, these Obligations are rescinded if the Woman refuses to terminate the Marriage as defined in clause G ("*Termination of the Marriage*") or if she or her representative fails to appear in the Beit Din at the designated time without a justifiable reason for such absence.

**F. Obligations of the Woman:**

1. The Woman hereby now (*me'achshav*) undertakes, to make monthly maintenance payments to the Man from the expiration of the Period and the Extended Period (if applicable), in the greater of the following two sums:
  - A. The shekel equivalent of \$1,500 (one thousand five hundred U.S. dollars) according to the representative rate of the dollar published at the time of actual payment.
  - B. A sum constituting 50% (fifty percent) of her mean monthly (net) income of the year preceding the Notification Date.
2. This obligation by the Woman is not dependent of earnings received by the Man from a salary, wages, property or any other source, and may not be deducted from any kind of debts owed to her by the Man.

3. Notwithstanding the Woman's obligation to make monthly maintenance payments as set forth in subclause 1, the Woman, hereby now (*me'achshav*), waives all lawful rights to income generated by the Man during the period in which the Man is entitled to implement the Obligations.
4. These Obligations are fully valid and enforceable regardless of any action or omission by the Man.
5. Notwithstanding subclause 4, these Obligations are rescinded if the Woman agrees to terminate the Marriage as defined in clause G ("*Termination of the Marriage*") and if she or her representative appear in the Beit Din, at the designated time, unless there is a justifiable reason preventing her from doing so.

#### **Termination of the Marriage**

- G. For purposes of the Obligations set forth in Clauses E and F above, "*Termination of the Marriage*" shall mean: the end of the Marriage between the Couple under Jewish Law without any reference or stipulation in any manner or form to other matters that are associated with or are related to the Termination of the Marriage. This includes: child custody, maintenance and education issues, financial support, judicial authority, or any other related matters (hereinafter: "*Other Matters*"). It is understood that a woman who consents to end the marriage in accordance with Jewish law, even if she does not consent to the terms or demands of the Other Matters, shall not be deemed as refusing to terminate the Marriage.

#### **Reservation of Rights**

- H. With the exception of the foregoing, this agreement shall not impair from the rights of the Man and/or the Woman and/or the children and/or any other relief available to any of the Couple and/or the distribution of property between the Couple, as obligated by law and/or by an agreement among the parties and/or the practice of the State. The initiation of legal proceedings shall not derogate from the provisions of this agreement.

In order not to disrupt marital harmony, any action granting authority to a juridical body shall be made upon mutual consent only. The couple agrees that any issue that can be determined in Family Court will remain under the jurisdiction of the Family Court. If no consent is given, jurisdiction shall

remain with the Family Court. In order to forestall any possible doubt, it should be clarified that nothing mentioned in this agreement can be understood as compelling maintenance payments after the marriage has ended according to the laws of Moses and Israel.

### **Property relations**

- I. 1. Each of the Couple undertakes to pay the other all payments and grants the other party all rights as obligated from the provisions of the Property Relations Between Spouses Law, 5733-1973 and the competent interpretations thereof as of the date of the division of the property, including the Resources Balancing Arrangement.
- J. Notwithstanding the provisions of the aforementioned law, the Couple expressly agree that:
  - 1. The division of the property shall be effected at the expiration of the Period and the Extended Period (if applicable) as defined in clause D of the prenuptial agreement.
  - 2. This agreement shall not affect the Woman's right to the basic standard sum of the Ketubah (*ikar ktuba k'din*), nonetheless, this sum is part of the amount to which she is already entitled pursuant to the foregoing clause I.
  - 3. The Woman hereby waives the additional discretionary sum of the Ketubah (*tosefet l'ketubata*). If the Woman anyhow accepts any sum as an additional sum (*tosefet ketuba*) in the future, she is hereby obligated to pay the Man immediately the sum she received as an additional sum (*tosefet ketuba*).

### **Validity of the Agreement**

- K. If a disagreement arises among the decisors of Jewish law regarding the validity of the agreement or any provision therein under Jewish law, the Couple shall adopt the method that grants validity to the surviving clauses of the agreement. Each of the Couple undertakes to pay the other side any sum, and grants the other party all rights in accordance with the method granting validity to the surviving provisions of the agreement, such that the Jewish law mechanism of *kim li* may not be asserted.

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- L. The Couple agree that if any section of the agreement is disqualified, stricken, rendered invalid, unable to be performed or effectuated, the surviving sections of the agreement shall remain intact and fully enforceable.
- M. The refrain, postponement or delay by one of the Couple from claiming and/or acting to effectuate a right granted to said party under this agreement, shall not be considered a waiver or pardon of any such right, unless such waiver or pardon is made in writing.
- N. All of the obligations in this agreement are effective immediately as obligations creating personal liability (*shi'abud haguf*), executed in an Esteemed Beit Din (*Beit Din Chashuv*) and should not be regarded as an indecisive contractual obligation (*asmachta*) or as a stereotyped form (*ketufsei shtarot*). Rather this document shall be regarded as a valid monetary document like those customarily used according to the traditions of Israel, in proper form and in accordance with the rulings of our rabbinic sages of blessed memory. All of the above stated conditions are made in accordance with the laws of the Torah, as derived from the Book of Numbers Chapter 32 (*tna'ei bnei gad v'reuven*). Both parties have stipulated that they will not invoke the release of obligations of the Sabbatical Year. The validity of this agreement shall be as the validity of all documents legislated by our sages of blessed memory, and the parties hereby render null and void any previous declarations (*modaot*) and/or implied statements (*moda'ei modaot*) that they may have made, no matter how far-fetched or distantly implied, that could harm the validity of this agreement and declare invalid any witnesses that may testify to any such declarations or implied statements. The parties have accepted all of the above obligations via an accepted effective halachic means of transaction (*kinyan hamo'il*), and by an oath of the Torah (*shivua*). The signatures of the parties on this document shall be an admission (*hoda'a*) to the declarations stated herein.
- O. The Couple desire to validate this agreement in accordance with Jewish law, the Property Relations Between Spouses Law, 5733-1973 (hereinafter: the "Law") and all other laws. The Couple understands that the provisions of the Law will apply to them unless stipulated otherwise in a financial agreement that they have signed and certified or authenticated according to legal requirements. They want the provisions of this agreement to supersede those of the Law.
- P. A clause that is rejected may be deleted by the drawing of a line through the clause accompanied by the abbreviated signatures of the Couple next to the

deletion. Changes to this agreement shall not be effective unless made in writing with the approval of the competent judicial body.

- Q. The headings in this agreement are for convenience sake only and shall not be accorded any significance in the translation of the agreement.
- R. Any agreement or document that will be executed by the Couple subsequent to the signing of this agreement, which does not contain an explicit reference to this agreement, shall be interpreted in accordance with and subject to the wording and provisions of this agreement.
- S. The Couple acknowledge and represent that they have read the agreement, that it was explained to them and that they understood all the contents therein, and that they are signing this agreement of their own free will.

**IN WITNESS WE SET OUR HAND:**

\_\_\_\_\_

The Man

\_\_\_\_\_

The Woman

**CERTIFICATION/AUTHENTICATION OF THE AGREEMENT**

After having been proved to me that the Couple who signed the appended agreement, executed the agreement of their own free will, with an understanding of the significance and implications of the agreement, I hereby certify/authenticate the agreement as a property settlement.

This day: \_\_\_\_\_

\_\_\_\_\_

Stamp

\_\_\_\_\_

Signature

The certifying/authenticating party: the Family Court *or* a Notary.

If signed after wedding, the certifying/authenticating party can only be the Family Court.

## PUBLICATIONS OF THE INSTITUTE OF APPLIED HALAKHAH

David Golinkin, ed., *Proceedings of the Committee on Jewish Law and Standards of the Conservative Movement 1927-1970*, three volumes, Jerusalem, 1997 (co-published by The Rabbinical Assembly)

David Golinkin, ed., *Responsa of the Va'ad Halakhah of the Rabbinical Assembly of Israel*, Volume 6 (5755-5758) (Hebrew) (co-published by The Rabbinical Assembly of Israel and the Masorti Movement)

### THE MEYER AND TIRZAH GOLDSTEIN HOLOCAUST MEMORIAL LIBRARY

No. 1 David Golinkin, *Halakhah for Our Time: The Approach of the Masorti Movement to Halakhah*, Jerusalem, 5758 (Hebrew)

No. 2 David Golinkin, *Halakhah for Our Time: A Conservative Approach to Jewish Law*, Jerusalem, 5758 (Russian)

No. 3 David Golinkin, *Responsa in a Moment*, Jerusalem, 2000

No. 4 David Golinkin, *Insight Israel — The View from Schechter*, Jerusalem, 2003

No. 5 Isaac Klein, David Golinkin and Mikhael Kovsan, *A Time to Be Born and a Time to Die*, Jerusalem, 2004 (Russian)

No. 6 Robert Bonfil, *The Rabbinate in Renaissance Italy*, Jerusalem, 2005 (Hebrew) (co-published by the Bialik Institute and The Schocken Institute)

No. 7 Rivka Horwitz, Moshe David Herr, Yohanan Sillman, Michael Corinaldi, eds., *Professor Ze'ev Falk Memorial Volume*, Jerusalem, 2005 (co-published by Meisharim)

No. 8 David Golinkin, *Insight Israel — The View from Schechter, Second Series*, Jerusalem, 2006

No. 9 Bat-Sheva Margalit Stern, *Redemption in Bondage: The Women Workers Movement in Eretz Yisrael 1920-1939*, Jerusalem, 2006 (co-published by Yad Itzhak Ben-Zvi)

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### THE RABBI ISRAEL LEVINTHAL CENTER FOR CONTEMPORARY RESPONSA

- No. 1 Shmuel Glick, *Education in Light of Israeli Law and Halakhic Literature*, Volume 1, Jerusalem, 5759 (Hebrew)
- No. 2 Shmuel Glick, *Education in Light of Israeli Law and Halakhic Literature*, Volume 2, Jerusalem, 5760 (Hebrew)
- No. 3 Hayyim Kieval, *The High Holy Days*, Jerusalem, 2004
- No. 4 Isaac Klein, *Responsa and Halakhic Studies*, second revised and expanded edition, Jerusalem, 2005
- No. 5 Shmuel Glick, ed. *Kuntress Hateshuvot Hehadash: A Bibliographic Thesaurus of Responsa Literature published from ca. 1470-2000*, Vol. I, Jerusalem, 2006 (Hebrew)
- No. 6 Hayyim Hirschenson, *Malki Bakodesh: Responsa*, Part One, second revised edition, edited by David Zohar, Jerusalem, 2006 (co-published by Bar-Ilan and Hartman; Hebrew with English summaries)

### THE CENTER FOR WOMEN IN JEWISH LAW

- David Golinkin, ed., *Jewish Law Watch: The Agunah Dilemma*, Nos. 1-7, January 2000 - July 2003 (Hebrew and English)
- David Golinkin, *The Status of Women in Jewish Law: Responsa*, Jerusalem, 2001 (Hebrew with English summaries)
- David Golinkin, ed., *To Learn and To Teach: Study Booklets Regarding Women in Jewish Law*, Nos. 1-4, April 2004-February 2007 (Hebrew, English, French, Spanish, Russian)
- Monique Susskind Goldberg and Diana Villa, *Za'akat Dalot: Halakhic Solutions for the Agunot of Our Time*, Jerusalem, 2006 (Hebrew with English summaries)

PUBLICATIONS OF THE INSTITUTE OF APPLIED HALAKHAH

BOOKS IN PREPARATION

Samuel Dresner and David Golinkin, *Kashrut: A Guide to its Observance and its Meaning for Our Time* (Hebrew)

David Golinkin, ed., *Responsa of the Va'ad Halakhah of the Rabbinical Assembly of Israel*, Volume 7 (Hebrew)

Yossi Turner, ed., *Halakhot Olam: Responsa on Contemporary Halakhic Problems* by Rabbi Hayyim Hirschenson (Hebrew)

David Zohar, ed., *Malki Bakodesh*, Volume 2, by Rabbi Hayyim Hirschenson, second edition (Hebrew)