

Preventing *Get-Refusal*: From the Beth Din of America to the Israeli Agreement for Mutual Respect

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Preface

In the State of Israel, the procedure of religious divorce and civil divorce are one and the same. For Jews, in accordance with the law¹, matters of personal status are administered by the State Rabbinical Courts in accordance with the halakha. Therefore, beyond the decision of a Rabbinical Court, the assent of both the husband and the wife is needed in order to sever the bonds of marriage. Moreover, the Rabbinical Court recognizes that improper coercion applied against a man to convince him to divorce his wife would invalidate the get.² The result is that the court of jurisdiction lacks the power to change the personal status of the two parties without the explicit agreement of the individuals themselves.

This connection between the civil law and the halakha allows for the phenomenon known as *get-refusal*, in addition to other negative by-products.³ Whereas in Israel, both men and women can become victims of *get-refusal*, the primary problem of the modern-day *agunah*, as it also exists throughout the Jewish World, is most severe for the women. While the Binding Arbitration Agreement of

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¹ 1953 – תשי"ג – חוק שיפוט בתי-דין רבניים (נישואין וגירושין) תשי"ג – 1953. The Jurisdiction of Rabbinical Courts (Marriage and Divorce) Law, 5713 – 1953.

² A *get* given under coercion is rendered as *get me'useh*. Most Rabbinical Courts today share the policy of the *Siftei Cohen* (Poland 1621-1662) as stated in *Gevurat Anashim* 49: For it is simple that we do not remove a wife from her husband's authority by relying on the phrase 'it is possible' where one must fear, for it is a *get me'useh* (a coerced get) and her children *mamzerim*.

³ An example of another negative byproduct is the "race for jurisdiction" between spouses -- to file ancillary suits to a divorce with either the civil Family Court or the Rabbinical Court, based on the perception of which would do better for each spouse.

the Beth Din of America, known as "The Prenup", functions well in the United States,⁴ this paper will discuss a prenuptial agreement for the prevention of *get*-refusal developed in keeping with Israeli law and the needs of Israeli society. This specific preventative solution, which is in use in Israel, is known as the Agreement for Mutual Respect (*Heskem L'Kavod Hadadi*).⁵ A comparison will be drawn with the Binding Arbitration Agreement of the Beth Din of America.

Overview of Sister Agreements

To date, the most widely used prenuptial agreement is that recommended by the Rabbinical Council of America, administered by the Beth Din of America in the United States.⁶ The main section of this "Binding Arbitration Agreement" was drawn up originally by Rabbi Mordechai Willig in the 1990's.⁷ This English document has undergone several revisions and expansions, making it compatible with United States Law (as opposed to Israeli law). The differences between the two agreements have brought about cases in the US where a couple declared their intentions of making aliyah, and the couple signed both the BDA's Binding Arbitration Agreement and the Agreement for Mutual Respect or vice versa---Israeli couples have signed both where the Beth Din of America would be resorted to in the case of life abroad.⁸

As is explicitly stated in the preface to the prenuptial agreement found on the website of the Beth Din of America, there are two purposes to the American agreement:

⁴ As referred by both the website of the Rabbinical Council of America at www.rabbis.org and the website of the Beth Din of America <http://www.bethdin.org/> to the site "The Prenup" at <http://theprenup.org>.

⁵ For the full text of the agreement in Hebrew, English, Russian, French and Spanish, see <http://www.youngisraelrabbis.org.il/prenup.htm>.

⁶ This prenuptial agreement, accompanied by explanations, can be found on the website "The Prenup" at <http://theprenup.org/>, and specifically at <http://theprenup.org/prenupforms.html>.

⁷ The Prenuptial Agreement, Halakhic and Pastoral Considerations, (ed. B. Herring & K. Auman), New Jersey 1996; Some of the information can be found at <http://www.theprenup.org/explainingtheprenup.html>.

⁸ These differences will be delineated further on.

The Prenuptial Agreement provides that in the unfortunate event of divorce, issues relating to the end of the marriage will be adjudicated by the Beth Din. The agreement also contains a support obligation that formalizes the husband's obligation under Jewish law to financially support his wife, thus providing an incentive for the timely delivery of a *get* in the event the marriage fails.⁹

While the American agreement is in essence a binding arbitration agreement, there is no need for assignation of jurisdiction within an Israeli agreement. Matters of personal status —marriage and divorce -- fall under the sole jurisdiction of the Israeli Rabbinical Court for Jews who are citizens or residents of the State of Israel.¹⁰ As such, assigning jurisdiction for the arrangement or adjudication of a *get* is meaningless under Israeli law. In addition, according to Israeli law, the matters inherently connected to divorce – division of assets as well as child custody and support – may be brought before either the Rabbinical court or the civil Family Court¹¹ with rulings to be made in accordance with Israeli law.¹²

Prevention of *get*-refusal via a self-obligation of high spousal support is the second of the purposes of the Beth Din's agreement. In this there is similarity of both purpose and of mechanism shared by the two agreements.

Rabbinic involvement

In the United States the initiative for the development of a prenuptial agreement as a tool for the prevention of *get*-refusal emanated from the rabbinic establishment. Letters were exchanged between rabbis¹³ and public proclamations were made. For example, in December 1999, eleven rabbis who serve jointly as Roshei Yeshiva of the Rabbi Isaac Elchanan Theological Seminary, affiliated to

⁹ Ibid.

¹⁰ The Jurisdiction of Rabbinical Courts (Marriage and Divorce) Law, 5713 – 1953.

¹¹ Ibid. and Family Court Law 5755 – 1995.

¹² The Property Relations Between Spouses Law, 5733 – 1973.

¹³ See Rachel Levmore, "Rabbinic Responses in Favor of Prenuptial Agreements", *Tradition* 42:1 (2009), for a history of the rabbinic development of prenuptial agreements for the prevention of *get*-refusal.

Yeshiva University, published the following call:¹⁴

A Message to Our Rabbinic Colleagues and Students

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

We are painfully aware of the problems faced by individuals in our communities tied to undesired marriages. Many of these problems could have been avoided had the couple signed a halakhicly and legally valid prenuptial agreement at the time of their marriage. We therefore strongly urge all officiating rabbis to counsel and encourage marrying couples to sign such an agreement.

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

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

The urgency felt by the Rabbinical establishment in the United States¹⁵ prior to the proclamation above, led to the composition of Rabbi Willig's agreement which formed the basis and the heart of the prenuptial agreement of the Beth Din of America.

In stark contrast remains the silence of Israeli community rabbis and Roshei Yeshiva. While many privately promote the use of the *Heskem L'kavod Hadadi* (as

¹⁴ <http://www.theprenup.org/pdf/YU%20Roshei%20Yeshiva%20Prenup%20Letter.pdf>. Published in *The Jewish Press* on Feb. 25th, 2000, p. 28; "Chained Women Could Have Used Prenuptial Pacts", *Forward*, Feb. 25th, 2000.

¹⁵ See the three separate resolutions of the Rabbinical Council of America regarding the agunah problem and prenuptial agreements, at www.rabbis.org with the last as late as May 2006 cast in the most stringent language.

the Agreement for Mutual Respect is known in Hebrew) for couples, few will issue a public call. An exception to this rule is the Chief Rabbi of Haifa, Rav Shear Yashuv Cohen who himself composed such an agreement and repeatedly calls for the dissemination of prenuptial agreements.¹⁶ Despite the silence of the Israeli Rabbinical establishment, the need for such an agreement was felt by two community rabbis and a Rabbinical Court Advocate who joined together in a process which produced the Agreement for Mutual Respect.¹⁷

Rabbinic approbation was granted publicly to the prenuptial agreement compiled by Rabbi Willig. As stated in the literature of the Rabbinical Council of America and the Beth Din of America:

The Prenuptial Agreement has been approved for use by leading halachic authorities in America and Israel, including Rabbi Gedalia Dov Schwartz (Av Beth Din of the Beth Din of America), Rabbi Ovadia Yosef, Rabbi Zalman Nechemia Goldberg, Rabbi Yitzchok Liebes and Rabbi Chaim G. Zimbalist.¹⁸

The Israeli Agreement for Mutual Respect was actually accepted as halakhically valid by two of the above prominent Rabbis, but outside pressures were such that assurances were given to them by the team of authors that their names would not be published in writing.¹⁹

¹⁶ Rav Shear Yashuv Cohen was a keynote speaker at a Jewish Law conference held in the Bar Ilan University Law School in January 2008, organized by The Rackman Center for the Advancement of Women, together with this author of the Council of Young Israel Rabbis and Yad La'Isha. The conference was entitled "Prenuptial Agreements and Divorce Agreement: at a Crossroads". At this conference Rav Cohen called for the use of prenuptial agreements in general and the "*Heskem L'Kavod Hadadi*" specifically.

¹⁷ The team of authors of the original Hebrew version, "*Heskem L'Kavod Hadadi*" consists of two Rabbis and a Rabbinical Court Advocate—Rabbi Elyashiv Knohl, Rabbi Dr. David Ben Zazon and myself, Dr. Rachel Levmore—who consulted with tens of experts in various fields (*dayanut*, law, women's organizations, psychology). The original Hebrew version has been translated into English by this author representing the Council of Young Israel Rabbis in Israel, in cooperation with Rabbi Yonah Reiss and Rabbi Prof. Michael Broyde, both of the Beth Din of America and attorney Linda Reiss Wolicki. The agreement has been further translated into French, Spanish and Russian.

¹⁸ See note 7.

¹⁹ This author was present at the composition of the response and along with several others, has in her possession the handwritten agreement of one of these Rabbis, but will not publicize it because of the promise made. The relationship of the Israeli Rabbinical Courts to the signed agreement will be described below.

The mechanism of *get*-refusal prevention

The mechanism shared by both agreements is that of high spousal support, and is that which gives both agreements halakhic justification. It consists of an obligation taken on by the husband to support his wife for as long as they are married in accordance with "the laws of Moses and Israel."²⁰ This is actually a requirement of the halakha²¹ and is promised in the *ketubah*. The two differences between the commitment made in the agreements and the default halakha are the setting *a priori* of a given sum of wife-support and the financial obligation of the husband even in the case where the spouses live separately. The way which a husband can escape this obligation is to dissolve the union, i.e. grant a *get* to his wife. Upon divorce, according to halakha, all ties are severed between the husband and wife, thus there is no alimony following a *get*. When a wife desires to sue her husband for divorce and begins the process of implementing the prenuptial agreement, he comes to understand that if he does not divorce her halakhically, he will be required to support her at a high level even though she does not share his life any longer. The impending loss of funds brings the husband to the realization that he must end the marriage in order to escape the financial obligation which he undertook prior to the wedding.

The specific clause in the prenuptial agreement of the Beth Din of America, which is the English language version of Rabbi Willig's text, is as follows:²²

I hereby now (me'achshav), obligate myself to support my Wife-to-Be from the date that our domestic residence together shall cease for whatever reasons, at the rate of \$150 per day (calculated as of the date of our marriage, adjusted annually by the Consumer Price Index—All Urban Consumers, as published by the US Department of Labor, Bureau of Labor Statistics) in lieu of my Jewish law obligation of support so long as the two of us remain married according to Jewish law, even if she has another source of income or earnings.

²⁰These words are used in the *kiddushin* ceremony under the *huppa*, as well as in Rabbi Willig's agreement.

²¹ Shulhan Arukh Even haEzer 69 and 70.

²² http://www.theprenup.org/pdf/Prenup_Standard.pdf.

Furthermore, I waive my halakhic rights to my wife's earnings for the period that she is entitled to the above stipulated sum, and I recite that I shall be deemed to have repeated this waiver at the time of our wedding. I acknowledge that I have now (*me'achshav*) effected the above obligation by means of a *kinyan* (formal Jewish transaction) in an esteemed (*chashuv*) Beth Din as prescribed by Jewish law.

The mechanism set up in the Agreement of Mutual Respect is a bit more complex, but reaches the same goal—that of high spousal support in the course of separation for the duration of the marriage:²³

The Man hereby now (*me'achshav*) obligates himself from the date of their marriage and as long as they are married in accordance with Orthodox Jewish Law, 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.

Notwithstanding this obligation of maintenance payments by the Man, the Woman agrees that she will be satisfied with the financial support she receives, as customary and lawful from the date of the Marriage until the expiration of the Period and the Extended Period (if applicable).

Avoidance of *get-meuseh*

As mentioned earlier, a *get* which is coerced upon the husband is invalid, leading to dire consequences.²⁴ Believing that her *get* is valid, as it appears identical to a valid writ of divorce, the woman would "remarry" and bear children. However, the second marriage would not be valid, in fact it is considered an adulterous union and the children born from this later union would be classified as *mamzerim* and unable to marry within the community of Israel. Therefore, the difficulty in developing any solution to *get-refusal* or *iggun*²⁵ remains engendering the will of the husband. What

²³ <http://www.youngisraelrabbis.org.il/prenup.htm>.

²⁴ See note 2.

²⁵ A woman is halakhically defined as an *agunah* in the cases where the whereabouts of the

the Rabbinical Courts are carefully avoiding is coercion on the husband. Both the American and the Israeli prenuptial agreements make use of a monetary agreement, as opposed to delving into the halakha of marital relations, in order to provide an incentive to the husband to divorce his wife. Albeit, the monetary incentive is a negative incentive—the possibility of financial loss as opposed to financial gain—but it does not impede upon the husband's free will as physical coercion would. In addition, it is a well known premise that *davar sheb'mamon, tna'o kayyam* -- that which is predicated on money, the condition is valid.²⁶ This is the underlying reason for the choice made to use a monetary tool within a prenuptial agreement, as opposed to a method which would be based on laws of marital relations.

In reality, the monetary obligation which the husband accepts upon himself is simply an expansion on the obligation of *mezonot* which exists for every married man. In fact the preamble to the Agreement for Mutual Respect explicitly states that this is a document which sees to the *mezonot* of a woman when living separately from her husband:²⁷

The main aim of the following agreement is: to ensure that the woman who does not have peace in her household should have a fair existence and proper support.

It is worthwhile noting that neither agreement mentions the word divorce or *get* in connection with the financial obligation which the husband accepts upon himself.²⁸ It is constructed as a commitment for wife-support. The lack of reference to divorce also prevents the possible claim of coercion to do so.

Various religious decisors establish the halakhic validity of a monetary

husband are unknown or he is mentally incapacitated so that he cannot exercise the will to divorce.

²⁶ Ketuboth 56a.

²⁷ <http://www.youngisraelrabbis.org.il/texts/heskem-mavo%203.05.pdf>. (My translation-R. L.)

²⁸ That is in the Beth Din of America's agreement's financial obligation clause VII.

mechanism basing themselves on diverse theories. Rav Yaakov Betzalel Zolty (Supreme Rabbinical Court Judge, Chief Rabbi of Jerusalem, 1920-1982) posited that the validity of the *get* is grounded when given on the basis of a prenuptial agreement which obligates the husband in spousal support, since he is preventing her from marrying another man who could support her, namely *mezonot me'ukevet me-chamato mi-lehinasei*. Rav Zolty authored a response sent to Rabbi Abner Weiss of Riverdale, New York, dated 27th Tishrei 5743, suggesting that the obligation accepted by the husband upon himself in the prenuptial agreement should he refuse to divorce his wife, be \$2,000 weekly—a relatively high amount for wife-support.²⁹

Rabbi Eliezer Yehuda Waldenberg (*Tzitz Eliezer*, Supreme Rabbinical Court Judge, Jerusalem 1915-2006) explained that in a case where a husband is obligated by a court ruling to pay his wife high spousal support for the express purpose of pressuring him to give a *get*, the husband still maintains his freedom of choice. He can choose to pay the spousal support as she remains his wife, or he can choose to grant her the *get* and the spousal obligation will cease. Rav Waldenberg termed this mechanism *kefiyah derekh breira*. His reasoning was stated clearly:³⁰

However, our method of coercion is by a ruling of support, for if the husband does not respond to the court's ruling to divorce, the Court rules support for his wife without obligating the wife to live with the husband. Thus it is not termed actual coercion for a *get*, rather *kefiyah derekh breira* - coercion through choice, either to divorce, or to pay wife-support. And in this manner we are absolved of the fear of causing a *get meuseh*.

Rav Shlomo Amar (present Sephardic Chief Rabbi of Jerusalem), in presenting the halakhic validity of such a prenuptial agreement, elaborated on Rav Zolty's halakhic reasoning of *mezonot me'ukevet me-chamato mi-lehinasei* as well as expounding on the principle of *megureshet v'lo megureshet*—she who is divorced yet

²⁹ Rabbi Zolty's letter is reproduced in full in Rachel Levmore, *Min'ee Einayikh Me'dimah: Heskemi Kdam Nissuin L'Meniat Seiruv Get*, (Jerusalem: 5769/2009), pp. 232-240.

³⁰ Rav Eliezer Waldenberg, *Tzitz Eliezer*, 4: 21. (My translation-R. L.)

not divorced.³¹

Differing approaches

Although the Agreement for Mutual Respect and the prenuptial agreement of the Beth Din of America are based on the same mechanism of spousal support and thus enjoy common lines of halakhic defense, they differ in approach, style, implementation and other actions taken within the agreements.

Binding arbitration vs. contract

The prenuptial agreement of the Beth Din of America, by necessity, is a binding arbitration agreement, while the Agreement for Mutual Respect is a straightforward contract. While autonomy to begin implementation of obligations is afforded by the Israeli legal system, in accordance with US law, jurisdiction must be assigned to a Rabbinical Court in the form of a binding arbitration agreement or the document would be unenforceable. Therefore in the Israeli agreement there is no need for a Rabbinic Court to issue a ruling for divorce, as opposed to the Beth Din of America which plays the pivotal role in implementation of the wife-support obligation. In fact, at the stage where a court ruling is necessary to execute the obligation of spousal-support and continue the process of docking the recalcitrant spouse's wages, or the like, there is no requirement to bring the Israeli agreement specifically before the Rabbinical Court. It can be brought before the civil Family Court or the Rabbinical Court, in accordance with the plaintiff's wishes. This affords the signatories to the Agreement of Mutual Respect autonomy, with no necessity to resort to a Rabbinical Court for any sort of ruling. Each member of the couple can decide on his or her own, when he or she wants to begin the process of dissolving the marriage. Indeed, not only is it possible to commence on the process detailed in the

³¹ R. Shlomo Amar, *Shema Shelomo* (Bnei Brak: 5768), 6: *siman* 19-20.

Israeli agreement without first opening a file in the Rabbinical Court—it is advisable to wait before turning to it. For if the procedure in the Agreement of Mutual Respect reaches its goal, the couple will reach a peaceful accord to divorce. At that point they can turn together to the Israeli Rabbinical Courts and open a joint file for the arrangement of a *get*—absent unnecessary acrimony and without any need for the Rabbinical Court to be involved in the implementation of the agreement. Not so the method employed in the case of the Beth Din of America. In the United States, where jurisdiction for matters of personal status falls to the civil Family Court, neither party is required to appear at a Beth Din to arrange for a religious divorce. The BDA's prenuptial agreement took on the form of a binding arbitration agreement to assure that both spouses would be required to abide by a future ruling of the Beth Din, which since it would take the form of a monetary decision, would be enforceable by the civil State court. The specter of a financial obligation imposed by the Beth Din would ensure that the husband would decide to give a *get* and would appear specifically before the Beth Din named in the agreement. Given this procedure, power is given over to the Beth Din to rule substantively regarding the need to deliver a *get* before the monetary obligation can be executed. To sum up, the signatories on the Israeli agreement can begin the process of implementation on their own recognizance, without any need to turn to any court, while their American counterparts must rely on the rulings of the Beth Din of America to adjudicate and issue a ruling putting the husband's obligation into effect. The Agreement of Mutual Respect affords autonomy to the spouses, while the Beth Din of America's agreement creates dependency. In the Israeli agreement the obligation can be realized following an objective trigger—180 days passing from notification by one spouse to the other. The American agreement requires the opening of a file in the Beth Din of America and asking for its judgment.

Philosophy of mutuality

The Agreement of Mutual Respect is a reciprocal agreement -- the obligations undertaken by the groom are undertaken by the bride as well. These practical steps express the philosophy and intent of the agreement's authors, of *kevod habriyot* – respect for all individuals. In addition, in the Israeli situation where the educational process, of both the public and of the clergy, is at its peak, this reciprocity facilitates acceptance on the part of the groom, since he is afforded identical protection. On the other hand, the agreement of the Beth Din of America's main purpose is to protect women from becoming *agunot*.³² Therefore there is no reciprocity in the standard agreement. Moreover, since the presentation of the agreement is done by a figure of authority in whom the couple chose to put their trust -- the officiating rabbi -- both members of the couple are likely to accept the procedure which he suggests.

No fault divorce

It is given that the Beth Din of America rules in accordance with the halakha. Concurrently, within the Talmudic and the rabbinic literature there is ample discussion of what are acceptable grounds for divorce. Whatever the case may be, it is clear that Rabbinical Courts will rule that a husband "must give his wife a *get*" only when some "fault" is proven to exist. Nonetheless, in the United States when a civil divorce is in place or in process, the Beth Din of America will rule that the husband should give a *get*. This ruling is itself based on "grounds" for divorce. Only following that determination by the Beth Din, can the process specified by their agreement proceed. Not so the implementation of the mechanism within the Agreement for Mutual Respect. The agreement itself specifies that "These Obligations are fully valid

³² See note 7.

and enforceable regardless of any action or omission by the Man" or the woman.³³

There is no need to bring any claim at all before a Court in order to begin the process of realization of the spousal obligation, much less a need to prove "fault". Thus there is more of a "no-fault" basis built into the latter agreement.

Reconciliation

The fact, which is inherent within the structure of their agreement, that the Beth Din of America must be consulted in order to proceed towards a divorce, itself provides for a "review" of an outside body of the couple's relationship. This can be viewed as an opportunity to re-evaluate if the dissolution of the marriage is the only choice left to the spouses. Through engaging the spouse or spouses in a discussion of their relationship, it may become apparent that there is no need to divorce, thus averting a hasty decision. On the other hand, as explained earlier, the Agreement for Mutual Respect specifically does not call for rabbinic intervention. What it does dictate, however, is marital therapy in the case that the spouse being sued for divorce requests it.³⁴ If he or she feels that there is a chance for their marriage to work, then through the mechanism detailed in the agreement, a professional marital therapist will be appointed before whom the spouses are obligated to appear. This affords the spouses a genuine opportunity for reconciliation. The method employed within the Agreement for Mutual Respect, counters the apparent ease with which one can initiate and proceed towards divorce, by compelling consultation with an outside body -- namely a professional marital therapist.

Despite the underlying opportunity for discussion available in the Beth Din of America's agreement, there is no reference or requirement whatsoever for any kind of review or counseling, rabbinic or professional. In contrast lays the philosophy

³³ <http://www.youngisraelrabbis.org.il/prenup.htm>, clause F (4).

³⁴ <http://www.youngisraelrabbis.org.il/prenup.htm>, clause C.

underlying the Agreement for Mutual Respect. Through this arrangement the couple should reach an agreement—either to divorce or to arrive at reconciliation. The spouses are actually compelled to mutually reach a resolution.

Financial arrangements

Both prenuptial agreements have clauses that relate to the future division of assets at the conclusion of the process. For obvious reasons, the Beth Din of America's stipulations are such that the assets be dealt with in accordance with American law, while the Agreement for Mutual Respect specifies the Israeli Property Relations Between Spouses Law, 5733 – 1973. Furthermore, special care was taken in the wording of the Agreement for Mutual Respect while accepting the Israeli civil law as halakha for the couple who signs regarding the division of their assets.³⁵ This sets the scene for the Rabbinical Court to rule in accordance with the Israeli civil law at that time.

The aim of the Agreement for Mutual Respect

First and foremost, the goal of the Agreement for Mutual Respect is the prevention of *get*-refusal through the convincing of a potentially recalcitrant spouse that it is in his or her best interest to quietly arrange for a *get* through dignified negotiation. However (as mentioned earlier), alongside this goal is the prevention of *get*-refusal through the requirement, under given circumstances, to attend marital therapy. The therapy itself serves the purpose of bringing the couple to some sort of agreement—either to divorce or to reach reconciliation. Whether the couple engages in the process of negotiation or in the possible process of therapy, the spouses engage in **personal** negotiation, not adjudication. Thus ugly and drawn-out court procedures

³⁵ <http://www.youngisraelrabbis.org.il/prenup.htm>: 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.

are eliminated.

Inherent in the Agreement for Mutual Respect is the severing of the matter of the division of assets from the *get*. This, in of itself, prevents the granting of a *get* by a recalcitrant spouse from being contingent upon outside stipulations and precludes extraneous demands. The matter of the giving of a *get* is distilled into just that—the halakhic severing of the bonds of marriage.

Merging both Agreements

In recognition of increased global mobility, it is possible, as mentioned above, for a couple to sign both agreements employing a proper bonding clause, so that each agreement would be implemented in its country of origin, as determined by conditions prevailing at that time.

Efficacy and Rabbinical agreement

Several decades of use in the United States of the prenuptial agreement recommended by the Rabbinical Council of America — which as explained, is based on the same mechanism of high spousal support as the Israeli agreement — provide an insight into its effectiveness. The former director of the Beth Din of America, Rabbi Yona Reiss, publicly verified repeatedly that to his knowledge, the "prenuptial agreement is one hundred percent effective. In every case of a couple that had previously signed a PNA and later came to divorce, there was a *get* delivered in a timely fashion."³⁶

The Sephardic Chief Rabbi of Israel and presiding president of the Supreme Rabbinical Court, Rabbi Shlomo Amar, published a lengthy discourse in his latest volume of responsa³⁷, detailing the halakhic rationale supporting the validity of

³⁶ Aside from public lectures and in conversation with this author (as late as March 2007) when this statement was made, Rabbi Reiss is currently thus quoted weekly on the pages of the New York newspaper The Jewish Press.

³⁷ R. Shlomo Amar, *Shema Shelomo* (Bnei Berak: 5768), 6: siman 19-20.

prenuptial agreements which are based on a monetary obligation for spousal support. Rabbi Amar based his halakhic reasoning on Rabbi Yaakov Betzalel Zolty's response in this regard to Rabbi Abner Weiss of Riverdale, New York, dated 27th Tishrei 5743, Rabbi Zolty agreed to the idea of obligating a recalcitrant husband legally separated from his wife to pay alimony based on the fact that his wife was unable to remarry on his account.³⁸

Leaving the theoretical dimension in Israel for the practical -- the Agreement of Mutual Respect (as of May 2009), has withstood three different reality tests, within the Rabbinical Courts:

- a. The Agreement of Mutual Respect was authorized at the time of its signing prior to marriage by the Jerusalem District Rabbinical Court and received the status of a ruling of that court.³⁹
- b. Similar to the experience of the Beth Din of America, there have been several cases of divorce, in which the husband's initial reaction was to refuse the wife's request, but nevertheless did enter negotiations towards a divorce agreement and delivered the *get* within a few months in the Rabbinical Court. This point is worthy of emphasis, being that this is the real test the agreement has to withstand: When a *get* is demanded by the weaker of the spouses⁴⁰ is it delivered within a reasonable period of time? If the spouse who is sued comprehends that he must negotiate with s/he who is demanding a *get* in order to reach a common stand—whether it is to divorce or to live together—then the goal of the agreement has been reached. In that case, the signing of the

³⁸ See note 29.

³⁹ The Agreement has been authorized as well, by the Israeli civil Family Court.

⁴⁰ The spouse suing for divorce is always in a weaker position in the Israeli courts. See my article, Rachel Levmore, "*Heskemei Kdam Nissuin L'Meniat Sarvanut Get B'Yisrael*", *Shnaton HaMishpat Ha'Ivri* 23 (2005), pp. 127-192.

prenuptial agreement prevented the deterioration of the relationship to that of *get*-refusal.

- c. The reaction of the Rabbinical Court itself to the Agreement of Mutual Respect in actual divorce suits, was brought to light by Rabbi Eliyahu Ben-Dahan, director of the Israeli Rabbinical Courts. Rabbi Ben-Dahan publicly stated⁴¹ (and repeated this statement to a newspaper interviewer shortly thereafter⁴²) that the Rabbinical Courts have in the past upheld prenuptial agreements and have arranged *gittin* on the basis of the Agreement of Mutual Respect. He noted explicitly that there has not been any case of an Israeli Rabbinical court declaring the Agreement of Mutual Respect invalid.⁴³ In the newspaper interview, Rabbi Ben-Dahan expanded his view: "Prenuptials can be very helpful in expediting divorce procedures, especially in cases where it is clear that the couple's divorce is unavoidable, but where *halakha* does not give the Rabbinic Court judges the power to obligate the husband to give a *get*."

The combination of the reactions of both the husbands being sued for divorce together with the reactions of the Rabbinical Courts before whom the agreement was brought, leads to a positive assessment of the efficacy of the agreement in Israel and

⁴¹ Rabbi Ben Dahan's remarks were made in the final session of a two-day course for professionals entitled "The Agunah Problem and Halakhic Prenuptial Agreements" which took place May 18th and 25th, 2008. Several organizations collaborated in organizing the course initiated by this author, each one promoting the agreement: The Council of Young Israel Rabbis in Israel, The Rackman Center of Bar Ilan University, MaTaN, Mifnim and Yad LaIsha.

⁴² Matthew Wagner, "Rabbinic Court Head Supports Use of Prenuptial Agreements", *Jerusalem Post*, June 2, 2008, <http://www.jpost.com/servlet/Satellite?pagename=JPost%2FJPArticle%2FShowFull&cid=1212041459905>.

⁴³ This contrary to rumor that Rabbi Shalom Elyashiv does not approve of prenuptial agreements and therefore the Rabbinical Judges would find them invalid. In reality, Rabbi Elyashiv has never made any public statement regarding the validity of prenuptial agreements. The basis of this rumor is a decades-old ruling of his, made in regard to a **divorce agreement**. In fact, a partner to that ruling in the Supreme Rabbinical Court was Rabbi Yakov Betzalel Zolty who authored the response sent to Rabbi Abner Weiss of Riverdale, New York, dated 27th Tishrei 5743, as described above. See note 29.

its effect on divorce.

Summary

Two prenuptial agreement for the prevention of *get*-refusal are in active use in their respective countries—the earlier Binding Arbitration Agreement of the Beth Din of America and the later Israeli Agreement for Mutual Respect. As both are constructed on a similar halakhic mechanism – that of high spousal support during a period of marital separation – both enjoy rabbinic and popular recognition, to one degree or another. Nevertheless, although the halakhic mechanism is the same in both agreements, there are several major differences between the Agreement for Mutual Respect and the Prenuptial Agreement of the Beth Din of America:

- The Beth Din of America agreement is a Binding Arbitration Agreement while an Israeli agreement has no need to and does not assign jurisdiction to a given Rabbinical Court.
- In keeping with the need for protection of both spouses in Israel, the Agreement for Mutual Respect is a mutual agreement, not a unilateral obligation as found in the standard version of the American agreement.
- The Agreement for Mutual Respect provides for autonomy in the decision to implement the obligations within, while the Beth Din of America agreement requires that a Beth Din first decide that a *get* must be given by the husband.⁴⁴
- Those who sign the Agreement for Mutual Respect accept as halakha the future division of property in accordance with the civil law.
- The Agreement for Mutual Respect provides for marital therapy while the Beth Din of America agreement does not.

Both agreements have withstood the test of unhappy marriages which led to a dignified divorce process with a delivery of the *get* in a timely fashion. This tool has indeed entered into the world of halakha and will hopefully serve to eradicate the problem of the modern-day *agunah* all over the Jewish world.

⁴⁴ As mentioned above, nonetheless, in the United States when a civil divorce is in place or in process, the Beth Din of America will rule that the husband should give a *get*.

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