

## **Romance vs. Prenuptial Agreements to Prevent *Get*-Refusal: A Practical Guide for Presenting the Topic**

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### **The Question**

In conversations with rabbis or professionals who provide marriage counseling, as well as in journals<sup>1</sup> on related subjects, the same question arises over and over again, expressed at times with a note of hopelessness: “How does one present an agreement to prevent *get*-refusal to a couple in love, dreaming of a long and happy life together, without causing problems?” In fact, a better and more productive formulation of the question would be, “How do I go about presenting a prenuptial agreement without spoiling the atmosphere of love and good-will that prevails between the couple?”<sup>2</sup>

When our children approach marriage, we want the ideal of married life as a full partnership to guide the forging of the new relationship and household. In deciding any question or problem that may arise, we defer to this ideal along with the good will of the bride and the groom. We expect this same view to guide the couple throughout their marriage and – if, heaven forefend, it should become necessary – at its conclusion.

However, this is not always how things turn out. Reality shows us that there is a great chasm separating the dreams that envelop us as we set out on the road of marriage and the complexity of the reality that comes crashing around us should we reach the end of the road. In truth, though, proper precautions at the outset can prevent much of the agony that may otherwise await us at the end. The best time for this is while the family unit is being created. However, this is not our subject for now. We address here the difficulties – emotional, halakhic, and practical - involved in persuading engaged couples to sign prenuptial agreements.

The big question is, how do we raise the topic of prenuptial agreements to prevent *get*-refusal to a couple in love, sharing a strong bond, and looking forward to a good, strong, long-lasting marriage? How do we avoid shocking them at the mention of divorce? How do we avoid possible offense, which may lead to friction? Is there an

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<sup>1</sup> Rabbi Eliezer Igra, “On Prenuptial Agreements – A Practical View”, *Tzohar* 20, Tevet 5765, p. 117: “Will the involvement in an agreement not complicate matters for the couple and cause them to think about divorce before they are even married? Sometimes it will not be to their benefit.”

<sup>2</sup> Or, as Rabbi Yisrael Rosen declared, in an article entitled, “Prenuptial Agreements in Israel – Social Catastrophe”, *Hatzofeh* March 18<sup>th</sup>, 2005: “Such an agreement, signed just prior to the wedding, creates a feeling that the marriage is temporary, precarious, etc.”

optimal way of presenting the subject of a possible separation in the future at a time when two independent families are being joined together?

### **Raising Public Awareness**

The task of publicizing the topic and raising awareness of it is an extensive and complex one. Educating the public at large is not the same as a private discussion between a couple and a parent or rabbi. The promotion of prenuptial agreements to prevent *get*-refusal is a challenge that must be addressed on three distinct but interconnected levels:

- a. public discussion;
- b. key personalities/professionals (rabbis in various positions, teachers of brides and grooms, principals of schools and seminaries, lawyers, social workers);
- c. the couple and their respective parents.

The first step consists of introducing the subject into the public arena. It is quite natural that an unfamiliar idea is greeted with a certain degree of hesitancy and suspicion. As the idea becomes increasingly familiar and is freely discussed, the opposition to it gradually diminishes. Through conferences, lectures at various institutions and before diverse audiences, and the publication of articles and books, it is possible to educate different sectors of the population – each according to its needs and norms. This is a multi-year process, and we are in the midst of it.

The key to the manner in which the subject is presented lies with the rabbis who perform wedding ceremonies. They represent a special sector that comes into contact with Jews who choose to marry in accordance with *halakha* in the Diaspora and with the entire spectrum of Jewish couples who marry in Israel: religious, traditional, and even those whose contact with Judaism is limited to the ceremonies surrounding life-cycle events. Every couple approaches a rabbi personally, with a request that he perform their wedding ceremony and also advise and prepare them. The rabbi, then, is ideally placed to explain to the couple the need for and advantages to signing up a prenuptial agreement.<sup>3</sup> At present, many rabbis who perform marriages are unfamiliar with such agreements, and some are even opposed to them. Our aim is to bring about a change in attitude, such that no rabbi will be prepared to accept the responsibility of marrying a couple without a signed prenuptial agreement.<sup>4</sup> In this respect, the rabbi may be compared to a teacher who sets out with his class on a lengthy hike: first he must ensure that each of his charges is suitably equipped and protected against the sun, with a hat, water, sunscreen lotion, etc.

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<sup>3</sup> Laypersons can bring their rabbis to an understanding of their important role. For example, the synagogue membership can accept a synagogue resolution requiring the community rabbi, when marrying couples, to recommend and support the signing of an agreement to prevent *get*-refusal.

<sup>4</sup> The Rabbinical Council of America has led a significant initiative in this regard. At an RCA conference held in May 2006, member rabbis passed the following resolution (based on two earlier resolutions addressing the problem of *get*-refusal):

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

<http://www.rabbis.org/news/article.cfm?id=100772>

Similarly, the rabbi – in advising and preparing the couple for the long road of married life ahead of them – is personally responsible for ensuring that they adopt the proper protective measures against possible harm. The fulfillment of this task is, in fact, a fulfillment of the ideal of *להבאת שלום בין אדם להבירו* - “bringing about peace between man and his fellow”: the signing of a prenuptial agreement may prevent considerable pain and anguish for both partners in the future, should the marriage – heaven forefend – be terminated

Furthermore, when it is the officiating rabbi who raises the subject of a prenuptial agreement and supports it, the danger of personal insult or mutual suspicion that may arise when it is proposed by one or both sets of parents is neutralized. For the rabbi, it is simply standard procedure – not only in his officiating capacity, but also as a measure consistent with the ideals and values of the Torah. A declaration reflecting this perception was issued in 1999 by eleven Roshei Yeshiva of Yeshiva University’s Rabbi Isaac Elchanan Theological Seminary<sup>5</sup>, (“A Message to Our Rabbinic Colleagues and Students”), and published in the Jewish press<sup>6</sup>, in scholarly literature<sup>7</sup>, and on the Internet<sup>8</sup>. The statement appeals to all rabbis officiating at wedding ceremonies to advise couples to sign a prenuptial agreement. Significantly, their call concludes with the words: **“By encouraging proper halakhic behavior in the sanctification and the dissolution of marriage, we will illustrate *שלום וכל נתיבותיה שלום*, *all the Torah’s paths are peaceful.*”**

As to the parents’ role, it is a good idea to prepare the groundwork long before the happy day when one’s daughter or son announces that she or he is to be married. In fact, the subject should be raised in the private, family sphere well before any of our children (and especially our daughters) enters into a serious relationship. Raising the subject on the theoretical level, or the mention of an interesting article that one has read, serves to introduce the prenuptial agreement into the family’s consciousness. I recommend to every parent that children should be taught, “The custom in our family is that sons and daughters alike sign prenuptial agreements”. If this approach is developed and established in time, then when a daughter introduces the young man she wishes to marry to her family, the matter is not personal: it has always been clear that this is what is done, regardless of the identity of the groom or the bride.

## Dispelling fears

What of parents – or a bride and groom themselves – who are already in the midst of wedding preparations? Obviously, it is most uncomfortable for the request for a

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<sup>5</sup> Rabbi Norman Lamm, Rabbi Zevulun Charlop, Rabbi Hershel Schachter, Rabbi Moshe Dovid Tendler, Rabbi Mordechai Willig, Rabbi Yosef Blau, Rabbi Michael Rosensweig, Rabbi Yaakov Neuberger, Rabbi Yonason Sacks, Rabbi Meir Goldwicht, Rabbi Jeremy Weider.

<sup>6</sup> The Jewish Press, Feb. 25<sup>th</sup>, 2000, p. 28: “Chained Women Could Have Used Prenuptial Pacts”, Forward, Feb. 25<sup>th</sup>, 2000.

<sup>7</sup> Rachel Levmore, *Minee Einayikh MeDim'ah: Heskemei Kedam Nissuin L'Miniyat Seiruv Get*, Mosdot Ariel and the Council of Young Israel Rabbis: Jerusalem 2009. p. 73.

<sup>8</sup> Website of the Rabbinical Council of America: [http://www.rabbis.org/Prenuptial\\_Agreement.cfm](http://www.rabbis.org/Prenuptial_Agreement.cfm) and its prenuptial site: <http://www.theprenup.org/pdf/YU%20Roshei%20Yeshiva%20Prenup%20Letter.pdf>

prenuptial agreement to be presented to the groom by the bride, or by parents to the young couple. Whoever it is that raises the idea is apparently already concerned about the very possibility of divorce, and this exacerbates the difficulty involved. Fear of the “evil eye” or “inviting bad luck”, along with the prospect of an angry response on the part of the groom, the bride, or the future in-laws may well intimidate any parent – and certainly a bride or groom.

First of all, let us address the irrational fears. It is worth keeping the following points in mind:

1. Fear of the “evil eye” and the like can be countered with solid faith in our Sages. Parents might broach the topic with an introduction along the lines of, “I would like to talk with you about a particular subject which has been addressed by a great number of rabbanim.” Depending on where the couple stand on the broad religious spectrum, names of community rabbis, Roshei Yeshiva and/or *dayanim* may be mentioned. It may also be pointed out that there are Torah scholars who recommend the drawing up of a prenuptial agreement as a practical act of “bringing peace between man and his fellow”.
2. It is important to relate to the agreement as an extension of the obligations undertaken in the *Ketubba*. If the “evil eye” has no power over the *Ketubba*, which includes provisions in the event of divorce and even death, heaven forefend, then a prenuptial agreement will likewise not represent a source of bad luck.
3. As a further argument to counter the fears of bad luck, one may cite the common practice of taking out insurance on our property, our homes, etc. An adult is obligated to take care of himself and those for whom he is responsible, and to make provisions for certain eventualities. A person whose initial response to the idea of a prenuptial contract is intensely negative will almost certainly turn out to have taken out a comprehensive insurance policy in the event of an accident involving his car; he may well have insured his house and its contents for theft or fire, heaven forefend; he may have a life-insurance policy, too. At the very least, he is insured by a health-fund, through which he expects to be paid out in full for expenses beyond basic medical treatment, in the event of illness. No-one would dream of suggesting that joining a health-fund means opening the door to bad luck and future illness. Likewise, the prenuptial contract should be viewed as a form of insurance. One signs it in case it should ever be needed, although we certainly pray never to reach such a situation.
4. A prenuptial agreement is not an invitation to the evil eye. On the contrary, it represents a *segula* (good luck) for a good and happy marriage.

### **How to present the agreement to the couple**

The agreement may be presented from within a variety of different approaches: the ideological/social dimension; the personal/emotional aspect, or the historical angle. No matter which approach is selected, the discussion should be introduced in a positive, warm atmosphere. Whether it is a parent who raises the topic or the rabbi who will be conducting the wedding ceremony, it is important to convey to the bride and groom one’s

recognition and acceptance of their profound love and respect for one another. It must be emphasized that one is confident that the marriage that they are about to enter into will be a long and happy one. Their relationship is already bringing joy to both of their extended families, and will hopefully continue to be a source of happiness to all those who care about them, and also with God's help, to their future children. After expressing this fundamental confidence in the success of their partnership, the subject of a prenuptial agreement may be introduced as the basis for their future happiness. The advantages of such an agreement may be set forth according to one or more of the following perspectives:

Ideological: Here the parent/rabbi points out to the couple their social responsibility, with a deliberate attempt to keep the personal connection between the couple separate from the content of the agreement. One might explain that the subject is a sensitive one, and one's intention is certainly not to imply any connection between this particular couple and the problem that the agreement comes to address. Rather, the agreement represents a way of dealing with an acute communal problem. In fact, the couple has the opportunity to make a real, tangible contribution to advancing the personal status of Jewish women – and perhaps men, too. The explanation should include information about instances in which women – and sometimes men – find themselves unable to obtain a *get* from a spouse, although it is clear to everyone that it would be preferable for both of them to divorce. In Israel as well as in the Diaspora, the party that files for divorce is at a disadvantage and may be subject to extortion. The respondent party may make things unbearable for the spouse requesting the divorce, and cause untold grief and suffering not only to the spouse but also to him/herself, as well as to the entire extended family, including the children. However, there is a document that would go a long way towards solving the problem, if only every couple that got married would sign it. This document is a product of *halakha* and was composed by halakhic scholars. Signing this document is not a sign of any doubt as to the resilience of the relationship or the authenticity of the love between the couple. It simply demonstrates commitment to *halakha* along with an assumption of social responsibility for strengthening the Jewish family unit. This act is a practical realization of the principle that “All Jews are responsible for one another”. Through their personal example, this couple will influence their friends, their relatives, their students, to sign – and thereby ultimately make this a concept that is taken for granted. At this stage, it represents a pioneering social act of which the couple should be justifiably proud.

On the personal, emotional level, we present the couple with an opportunity to demonstrate their love and sensitivity towards one another, and realizing their personal responsibility.<sup>9</sup> Here the agreement is depicted as the basis for mutual respect and as a gesture of giving, enabling the two partners to trust one another fully and completely. The discussion may be introduced with a direct question: “Do you love one another?” The couple will almost certainly respond that they love each other and therefore wish to marry. “In other words,” we continue, “you intend to take care of one another's needs?”

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<sup>9</sup> The basis for the explanation presented here may be found in an article by Rabbi Robert Hirt, Rabbi Haskel Lookstein, Rabbi Abner Weiss, and Rabbi Jeffrey R. Woolf, “Introducing the Prenuptial to the Bridal Couple”, *The Prenuptial Agreement, Halakhic and Pastoral Considerations*, (ed. B. Herring & K. Auman), New Jersey 1996, [http://www.rabbis.org/pdfs/PNA\\_Booklet.PDF](http://www.rabbis.org/pdfs/PNA_Booklet.PDF).

Once again the response is sure to be in the affirmative. As a next step, one might ask, “Would you deliberately hurt one another?” The answer is certainly in the negative. Continuing, we ask, “Wouldn’t you do anything in your power to prevent harm from befalling your partner?” Clearly the response would be, “certainly.” At this point, the common problem of *get*-refusal is raised. The rabbi/parent explains that in the event of a divorce, heaven forefend, both parties must be in agreement and allow each other to go on to build a new life. This is the most ethical and civilized way to close the door on a relationship that has not flourished. However, the unfortunate reality is that couples often do not behave with mutual respect during the course of a divorce. The husband may refuse to grant a *get*; the wife may refuse to accept it. There are instances where one party resorts to extortion before agreeing to cooperate. Experience has shown that there is no way of knowing who may end up in this situation, even when the bride and groom are both known to be fine, upstanding individuals, and truly in love. Therefore, it is a good idea to use this love and the good will that prevails between them at this moment as a basis for mutual respect that will continue throughout their lives – through good times as well as bad. Real concern and commitment at this stage to norms of behavior at times of crisis may serve to alleviate tension in the future, and lessen ongoing pain and anguish. After all, with God’s help the couple will have children, and even if the couple decide to sever their relations, some time in the future – an eventuality which we hope and pray will never come about – they both still remain parents to the same children. Their joint parenting will require some level of cooperation, for the children’s sake. The prenuptial agreement is formulated very carefully, based on extensive halakhic and legal experience. Each of the partners is encouraged to consult with a rabbi and/or lawyer. The agreement provides an incentive to avoid extortion or acts of revenge. Often, in life, we take measures to protect ourselves, although we believe and hope that nothing bad is going to happen. We fasten seat belts every time we get into our cars; we make regular payments to a health fund, even when we are completely healthy. In fact, the point of the prenuptial agreement is similar to that of taking out life insurance: it is an act of responsibility and a demonstration of maturity, showing concern for the future of each of the partners in the event of a misfortune which we hope will never come about. If it does, however, we will be prepared for it, and the unavoidable pain will therefore be kept to a minimum.

The historical perspective involves making the couple aware of their religious responsibility and the historical opportunity afforded to them to become part of the development of *halakha*. Here one may begin by asking the couple about their understanding of the *Ketubba*. The *Ketubba* is, in effect, a prenuptial contract that dates back some two thousand years. Its purpose is to reinforce the woman’s status in an area which, in Mishnaic times, was in need of attention. Women at the time were liable to find themselves outside of the marriage framework as a result of a husband’s death or his decision to divorce her, with no source of livelihood. In the *Ketubba*, the groom undertakes a commitment that his wife will be paid a sum of money equal (in Mishnaic times) to an average yearly income, in the event of his death or divorce.<sup>10</sup> This obligation

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<sup>10</sup> According to the Mishna in Ketubot 1,2 the sum fixed in the *Ketubba* for a woman marrying for the first time is 200 ‘zuz’. This amount is calculated on the basis of the laws of charity. See Shulhan Arukh, Yoreh De’a 253:1 – “A person who has sufficient food for two meals should not take from the *tamhui* (free food offered to the destitute). If he has enough food for 14 meals, he should not take from the *kuppa*. And if he

has a dual purpose: firstly, it ensures that “he will not take lightly [a decision] to divorce her”<sup>11</sup>, and also to provide her with financial security for a year, so that she has time to find a way to support herself. One then asks the couple if they are familiar with the Enactment of Rabbeinu Gershom, which was instituted some 1,000 years after the *Ketubba*.<sup>12</sup> This enactment, too, came about with a view “to equalize the woman’s power to that of the man” (as the Rosh writes)<sup>13</sup>. The prevailing social problems that Rabbeinu Gershom sought to address through his enactment were polygamy and the phenomenon of divorce against the wife’s will. Rabbeinu Gershom ruled that a woman could not be issued with a divorce against her will, and thereby made a significant contribution to the status of women at his time. Over the course of the generations, on the occasion of an engagement, the couple – or their parents – would draw up “*tena'im*” – a document addressing the needs of the two parties and the agreements between them. Today, another 1,000 years after Rabbeinu Gershom, we find ourselves confronting a phenomenon for which no satisfactory solution has yet been devised. There are women – and sometimes also men – seeking to conclude a chapter of their lives by means of a quiet and dignified divorce, who become trapped in their marriage with no possibility of obtaining a *get*. Over time, new social and legal situations have arisen in many spheres. These situations have demanded halakhic responses on the part of the rabbinical establishment no less than by the people dealing with these situations on the personal level. It is at such a juncture that we find ourselves today. What is required right now is a response to this social problem, just as a response was necessary in the times of the Mishna and in the generation of Rabbeinu Gershom. We – officiating rabbis and couples about to be married – have at our disposal a device that allows us to advance such a response; a device much like the “*Ketubba*” and the “*tena'im*”. The commitments undertaken in a prenuptial agreement to prevent *get*-refusal have a dual purpose, like the *Ketubba*. Firstly, should a divorce become necessary, heaven forefend, then it will be conducted in a dignified, considerate manner, without excessive foot-dragging or the exercise of unfair pressure by one party on the other. Secondly, the agreement sets down the financial rights of each party, so that each will be able to live independently and to build a new life. All of this is ensured by a prenuptial agreement which adopts, as its point of departure, our own view of partnership in marriage and mutual respect, and anchors it within *halakha*. By signing this agreement we are contributing directly to the historic development of *halakha* relating to this scourge of our generation.

After presenting the topic, the rabbi (or parent) should encourage the couple to ask whatever questions they may have, and to explain that they may continue to ask. It is also a good idea to review the agreement and to suggest, as noted above, that each party consult with a rabbi or a lawyer. The raising of questions by the couple may open up a discussion about relations between husband and wife and strategies for solving minor and

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has 200 ‘zuz’ and he does not trade with them, or if he has 50 ‘zuz’ and uses them for commerce, then he should not receive charity.

<sup>11</sup> Ketubot 39b; 11a; Yevamot 89a; Bava Kama 89a.

<sup>12</sup> Shulhan Arukh, Even ha-Ezer 1,10 and Rema ad loc.

<sup>13</sup> Responsa of the Rosh, rule 42, concerning Rabbeinu Gershom: “When he saw that the generation was wanton, and they were showing disrespect to Jewish women in casting divorces at them, he made an enactment in order to equalize the woman’s power to that of the man. Just as a man does not divorce his wife unless he wishes to do so, so a woman is not divorced unless she is agreeable to it.”

major problems within the marriage. It is advisable that the discussion conclude on an optimistic note, with an expression of confidence that their marriage will be long and happy, since they are full of love and mutual appreciation, and clearly well-suited.

A final reminder to rabbis and parents: addressing the matter of a prenuptial agreement should not be left for the “last minute”. It is always better that the discussion be raised in a relaxed setting – which is hardly the atmosphere surrounding the final weeks preceding the wedding! Rabbis and parents should also devote some thought as to which couples may benefit from the presentation of more than one version of an agreement, and which are likely to find the alternatives confusing.

As noted, recognition of the necessity of an agreement, for each sector of the population, depends on the success of the publicity effort in each of the other sectors. In any event, the main message may be summarized as follows:

It is specifically at this time, at the beginning of the marriage, that a window of opportunity exists through which a couple may set out together with confidence on the path of happiness, founded on trust. The harmony to which we aspire and which we are trying to bring about will now prevail even if, to our great sorrow, the “togetherness” comes to an end. A prenuptial agreement allows good people to maintain their goodness and their respect for themselves and for each other.