

The Florence Melton Adult Mini-School  
Section: Rhythms of Jewish Living  
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## Topic: Divorce

**Key Idea:** Because the biblical concept of marriage is predicated exclusively upon a man's acquisition of a woman (and not vice versa), the right to terminate the marriage is an exclusively male prerogative, effected through a document of divorce known as a *get*. Rabbinic and post-rabbinic texts introduced important changes in marriage and divorce laws, some of which protected women and granted them some recourse in cases of domestic violence and/or personal or sexual incompatibility. In recent centuries, however, these rights have been severely circumscribed by the privileging of the *halakhic* requirement that a man divorce his wife of his own free will over the right of a woman to petition the Beit Din (religious court) to exercise its power to compel her husband to divorce her under certain circumstances. Since any subsequent children of an *agunah* ("anchored" woman whose husband will not or cannot give her a *get*) are regarded by *halakha* as *mamzerim* (illegitimate), with serious consequences for their future marriage prospects and acceptance into the Jewish community, the general inability or unwillingness of the Orthodox rabbinate to free a woman whose husband has left her remains a serious issue in Jewish law.

*Our discussion of the texts:*

**Suppl.text:** Talmud, Sanhedrin 7a.

When our love was strong, we could have slept on the blade of a sword. Now that our love is no longer strong, a bed sixty cubits wide is not large enough for us.

**Text 1: Deuteronomy 24:1-2.** A man can divorce his wife if he finds a *dvar erva* in her. Her bill of divorce frees her to marry another man.

**Suppl. text:** Talmud, Gittin 90 a-b.

Bet Shammai say: a man should not divorce his wife unless he has found her guilty of some sexual misconduct [*matza ba dvar erva*] as it is said: "because he has found some matter of indecency in her." Bet Hillel, however, say: [he may divorce her] even if she has merely spoiled his food, since it says: "because he has found some matter of indecency in her." Rabbi Akiva says: [he may divorce her] even if he simply finds another woman more beautiful than she, as it is said: "and it comes to pass, if she finds no favor in his eyes."

**Text 2: Rashi on Deuteronomy 24:1.** It is a mitzvah for a man to divorce his wife for unseemly behavior.

**Text 3: Babylonian Talmud, Ketubot 82b.** One way the rabbis tried to discourage quick and arbitrary divorce was by making it expensive for the husband.

**Text 4: Mishna, Ketubot 7:10.** A woman may appeal to the Jewish court to compel her husband to divorce him if a) he is afflicted by any one of a number of physical ailments or characteristics his wife finds unendurable; b) when a husband violates or neglects his marital obligations [financial support and sex]; c) where there is sexual incompatibility (division of opinion).

**Suppl text:** Talmud, Ketubot 63a.

What is meant by a “rebellious woman”? Ameimar said [One] who says “I like him but I wish to torment him.” If she said, however, “He is repulsive to me,” no pressure is to be brought to bear upon her.” Mar Zutra ruled: “Pressure is to be brought to bear upon her. [For] such a case once occurred and Mar Zutra exercised pressure upon the woman and [as a result of the reconciliation] Rabbi Hanina of Sura was born of their reunion. This, however, was not [the right thing to do], [The successful result] was due to the help of Heaven.”

**Text 5: Maimonides, Mishneh Torah, Laws of Matrimony (Hilkhot Ishut) 14:8.** If a woman denies her husband sexual intercourse she is called rebellious [*moredet*]. If this is because she finds him too repulsive to have sex with, they compel him to divorce her, but she does not receive her *ketubah*.

**Suppl. text: Tosafot on Ketubot 63b.**

The Kuntres [Rashi] interpreted this passage [‘he is repulsive to me’] [as follows: we do not compel her to remain under him but rather let him give her a *get* and put her out without her *ketubah*: That would mean he is compelled to divorce her. And this does not seem right to Rabbenu Tam for then we would have to worry that she might have set her sights on another man...And therefore Rabbenu Tam interprets this that we do not compel the husband to divorce her. And, in fact, the Kuntres itself does not explicitly say that you compel the husband to give her a *get*.

**Suppl. text: Jacob ben Asher, Arba Turim.**

A question was brought before my father the Rosh [Asher ben Yehiel] of blessed memory [and he ruled]: In the case of a man who acts insane [*mishtateh*] every day and his wife says, “My father was a poor man and because of his poverty he married me to this man and I had thought that I could accept [his behavior] but it is impossible because he is crazy [*metoraf*] and I am afraid he might kill me in his rage,” we do not force him to divorce her because we only compel those who are cited by the Sages as ones who are compelled [to divorce]. Rather, let her persuade him to divorce her or let her accept him and live from his estate.

**Suppl text: Joseph Karo, Bet Yosef, Even ha-Ezer 154:15 :**

I found in a responsum of Rabbenu Simhah that “it is an accepted view that we have to treat a man who beats his wife more severely than we treat a man who beats a fellowman, since he is not obligated to honor him but is obligated to honor his wife more than himself. And a man who does this should be put under a ban and excommunicated and flogged and punished with various forms of torment; one should even cut off his hand if he is accustomed to it [wife-beating]. And if he wants to divorce her let him divorce her and give her the *ketubah* payment.

Further on he wrote: “You should impose peace between them and if the husband does not fulfill his part in maintaining the peace but, rather, continues to beat her and denigrate her, let him be excommunicated and let him be forced by gentile authorities to give her a *get*.”

**Suppl. text: Moshe Isserles, Darkhei Moshe**

...For, if he is the cause [for the beating] he must divorce her. Only, let Bet Din warn him first once or twice [not to persist]. But if she is the cause of it, for example, if she curses him or denigrates his father and mother and he scolds her calmly at first and it does not help, then it is obvious that he is permitted to beat her and castigate her. And if it is not known who is the cause, the husband is not considered to be a reliable source

when he says that she is the cause and portrays her as a harlot, for all women are presumed to be law-abiding [*kesherot*].

**Text 6: Responsum of R. Meir of Rothenberg.** Cites the prohibition of the late 10<sup>th</sup> century Rabbi Gershom on giving a woman a divorce against her will. (Rabbi Gershom also prohibited polygamy among Ashkenazic Jews for a period of 1000 years.)

**Text 7: Rabbi Mendell Lewittes, Transfer of the Get.** The contemporary procedure for giving and receiving a *get*.

**Text 8: Solomon Freehof, Divorce in Judaism (1963).** The initial Reform approach to Jewish divorce was that it should be a civil matter.

**Text 9: CCAR. New American Reform Responsa.** The development of a Document of Separation to meet the needs of Reform Jews wanting a religious resolution and recognition of their divorces.

**Suppl. text: David ben Zimra, Responsa 25.**

And you can see with your own eyes that every wise man [*hakham*, i.e. rabbi] must seek out arguments for releasing [the *agunah*], since it is like a situation of danger [*ke-makom sakanah*]... And whoever seeks out speculations and exacting details in order to rule strictly and forbid [remarriage] and to make the woman an *agunah*, the rabbis [*hakhamim*] are displeased with him.

**Suppl. text: "Finding Solutions For The Aguna Dilemma" by Gail Lichtman**

<<http://www.jafi.org.il/arts/2001/jan/2.htm>>

"We want the public to be aware that there are solutions within Jewish law to the dilemma of the modern-day *aguna*, a woman whose husband refuses to give her a Jewish bill of divorce. This issue speaks to the heart of the Jewish people," states Rabbi Monique Susskind Goldberg. She is one of the primary researchers and scholars behind the publication of the Jewish Law Watch, a new semi-annual journal which aims to help break the deadlock surrounding the *aguna* problem by presenting halachic (Jewish law) solutions to free these women.

According to Jewish law, a husband must consent to give his wife a bill of divorce (*get*). If he refuses, the wife remains locked in a non-existent marriage, unable to remarry. There are hundreds, possibly thousands, of women trapped in this situation in Israel and throughout the Jewish world.

The Jewish Law Watch is a bold move on the part of the Center for Women in Jewish Law of the Schechter Institute of Jewish Studies in Jerusalem, an academic center affiliated with the Jewish Theological Seminary and the Masorti/ Conservative Movement in Israel. Funded by the Jewish Agency for Israel and the Ford Foundation, the Law Watch takes actual case studies which have languished for years in the rabbinical courts without resolution and presents detailed halachic bases for solutions, with legal substantiation.

According to Rabbi David Golinkin, president of the Schechter Institute and the leading posek (arbiter) of the Masorti Movement in Israel, the Law Watch is meant "...to encourage the rabbinical courts to use the halachic tools which are at their disposal to free modern-day *agunot*... We want to put the anguish of *agunot* on the public agenda. And

we want to show that within halacha there are many ways of solving the problem, that there are many roads not being taken."

During the last decade and a half, the problem of *agunot* has come to the forefront in both Israel and the Jewish world, and was in fact one of the first issues the Israel Women's Network took up when it started in 1984, says Prof. Alice Shalvi, former president of the Schechter Institute and one of the founders of the Israeli feminist movement. "I was amazed at the response we got. We had no idea at the time of how universal and painful the problem was."

When Shalvi joined the Schechter Institute she founded the Center for Women in Jewish Law (in 1999) to study the status of women in the synagogue, as well as to find halachic solutions for *agunot*. The Center is doing this in two ways. One is through a book currently in progress, to be published in two years, which will present all the halachic solutions that have been suggested in the 20th century. "There is no other comprehensive work of this nature available today," claims Rabbi Diana Villa, Susskind Goldberg's co-researcher. The second is through the Jewish Law Watch, two issues of which have been published in 2000. Each issue presents a different halachic point that could be used to free women.

The first case involved a woman who, as an underage minor, married under duress, only to discover that her husband was a violent person. The journal presented two halachic solutions for releasing her. One was that a marriage under duress is null and void. The other was that since she would never had married her husband had she known he was violent, then the marriage was a mistaken transaction and the marriage contract should be considered null and void. The second case involved a battered wife. The team recommended compelling a divorce through the use of sanctions against the husband or considering the marriage a mistaken transaction.

Four months after the first issue of the Jewish Law Watch was sent out, the Schechter Institute received a 10-page reply from the Rabbinical Courts in Israel. One was addressed to Rabbi Monique Susskind Goldberg and the other to Rabbi David Golinkin. The replies went through all the halachic points made in the Law Watch, refuting each and every one. The Jewish Law Watch team is now preparing its counter-response to the rabbinical courts.

"I was very pleased," Shalvi remarks. "Even a rebuttal means that they read the Law Watch through. It also means that our work is being taken seriously. This reply is an acknowledgement of the halachic expertise of the Conservative Movement."