

A Prenuptial Agreement by and for the Haredi Community

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Introduction

A prenuptial agreement has long been viewed as a valuable tool to help streamline the divorce process and prevent *agunah*. While the Modern Orthodox in conjunction with the Rabbinical Council of America and their Beth Din of America have successfully implemented a prenuptial agreement, it did not gain wide acceptance within *haredi* communities.

As the number of divorces in the *haredi* community began to multiply, however, the *haredi* communities realized that they too would need to address the problem. On May 2016 a seminar was held in New York City with the purpose of producing a prenuptial agreement that would be acceptable to the *haredi* community in the United States.¹ By January 2019 the prenuptial agreement had been finalized² and three major *haredi poskim* had given their written *haskamot*: Rabbi Shomo Miller; Rabbi Hillel David; and Rabbi Yaakov Forscheimer.³

* Disclosure: Heshey Zelcer is on the Yashar Coalition board, the organization that helped create the new *haredi* prenuptial agreement.

¹ On May 23, 2016 the “Yashar Coalition Symposium” was held at 353 Bowery, in New York City. Opening remarks were given by R. Dr. Abraham Twerski. Speaking about the psychological perspectives on *get* refusal as emotional abuse were: Debbie Gross, founder of Tahel Crisis Center for Religious Women and children of Israel; Lisa Twerski, LCSW; and Keshar Starr, Esq., Director of Advocacy and Legal Strategy of ORA. A call to action for a new prenuptial agreement was presented by the following attorneys: Nat Lewin; Alyza Lewin; Martin Friedlander; and Talya Faigenbaum. Halakhic overview was provided by: R. Yehoram Ulman, Senior Dayan, Sydney Beit Din; and R. Simcha Feuerman, LCSW-R, Senior Director of Operations, OHEL Children and Family Services.

² The Yashar Coalition *Prenuptial Agreement between Chosson and Kallah* can be downloaded at http://www.yasharcoalition.org/docs/Yashar_Prenup.pdf.

³ For the complete text of the three *haskamot* with English translation see: <http://www.yasharcoalition.org/index.php/haskamos>.

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The Problems

Halakhah declares that a Jewish divorce, a *get*, is valid only when given by the husband to the wife. If the husband refuses to give his wife a *get* there is nothing the wife can do to force him.

In the news we read about extreme cases of *agunah* in which years pass and a husband still refuses to give his wife a *get*. It is not, however, just the extreme long-term *agunah* cases that are problematic. Whenever a divorce process continues over an extended period it generates grief, heartache and trauma for the husband, the wife, and perhaps worst of all, the children. The *get* process drags on due to various issues including:

1. The respective sides are not sure what an equitable agreement looks like: What are the usual custody arrangements? Which parent gets primary custody? How much time should each parent have with the children? How should the marital assets be divided? How much monetary support should the parent with primary custody responsibility receive from the other parent?
2. Well-meaning friends, relatives and advisors often give conflicting and bad advice to the husband and/or wife.⁴
3. The couple is not sure which venue to use to end the marriage: Should they go to Beit Din, court, arbitration or a mediator? Deciding this often takes many months.
4. While one party may believe the marriage is over and should be terminated, the other may feel betrayed: "I want the marriage to continue. Why can't we work it out?"

The longer a divorce process drags on the more psychological pain and damage is inflicted upon the family. Even when both sides enter the divorce proceedings with a willingness to come to an equitable separation agreement, the reality changes as the negotiations drag on and one or both sides feel they are getting a bad deal.

How widespread is the *agunah* problem? In Israel estimates range from 500 to 1,200. In the United States the number of *agunah* cases has been estimated at 462, which is likely an underestimate of the true number (Methodology, p. 1).

⁴ I was once called by the mother of a wife who had just separated. The mother asked if I could recommend an aggressive attorney who would fight the other side and get justice for her daughter. (Attorneys love these types of battles; they generate much revenue.) I tried explaining that that is the wrong approach. She would be much better served by an attorney who could compromise and would work toward an equitable (i.e., a usual) and quick settlement.

Case Study

In an effort to justify the use of a prenuptial agreement to reduce the time spent negotiating the divorce and prevent *agunah*, the Yashar board decided that a scientific study would be performed to quantify the emotional pain and damage inflicted on the family by a drawn-out divorce process.⁵ To accomplish this Dr. David Pelcovits was engaged to oversee the study. The specific questions that the study aimed to address were:

1. What are the emotional and social correlates of going through the *agunah*⁶ process?
2. Does physical violence take place in association with being an *agunah*?
3. Does emotional abuse take place in association with being an *agunah*?

Some of the results from the Case Study (Results, p. 1) show the following effects on the *agunah*:

| Table 1: Percent of alteration in regulation present since becoming an <i>Agunah</i> | |
|---|------------------------------------|
| Alteration in Regulation | Percent Since <i>Agunah</i> |
| Difficulty modulating sexual involvement preoccupation | 94.4% |
| Self-destructiveness | 82.9% |
| Suicidal preoccupation | 80.9% |
| Modulation of anger | 66.7% |
| Amnesia | 57.5% |
| Affect regulation ⁷ | 40.4% |
| Excessive risk taking | 31.1% |

Does physical violence take place in association with being an *agunah*?

⁵ Two documents were produced by this study: 1. “The Psychological Correlates of Being the Child of an *Agunah*,” hereinafter, Methodology; 2. “Preliminary Analysis of the *Agunah* Study,” hereinafter, Results.

⁶ *Agunah* is a Jewish legal term for a Jewish woman who is trapped in a marriage against her will because her husband refuses to grant her an official religious bill of divorce known as a *get*. For the purposes of the study the term *agunah* was limited to the following definition: 1. A minimum of a year has passed since the woman has asked her husband for a religious divorce and was refused. 2. The functional marriage has ended with the woman subjectively feeling “trapped” in a marriage that she wants to end. 3. The couple is no longer experiencing themselves as functioning in any way as a couple.

⁷ Affect regulation refers to the ability of an individual to modulate their emotional state to meet the demands of their environment, i.e., to adapt to a range of stressful situations.

Only 32% of women report that their ex-husband never physically abused them in any way. Nearly half (47%) of women reported that their husbands physically abused them in at least three different ways (Results, p. 3).

What are the effects on the children?

The emotional and behavioral symptoms (difficulties) present in children of *agunot* at above average levels are: 33% had higher than average difficulty scores, 38% have higher than average emotional symptoms (with 27% of the total being very high), 15% have higher than average conduct problems, 23% have higher than average hyperactivity scores, 27% have higher than average peer problems, 49% have higher than average impact scores (Results, p. 5).

The Beth Din of America's *Binding Agreement*⁸

Rabbi Mordechai Willig, Rosh Yeshiva RIETS and *dayan* of the Beth Din of America⁹ has been the halakhic force behind the Rabbinical Council of America Prenuptial Agreement which was published approximately 25 years ago. Their Prenup is accepted by many *poskim* in Israel, such as R. Asher Weiss, the late R. Ovadia Yosef, and in the United States by R. Gedalia Dov Schwartz, R. Hershel Schachter and many others.¹⁰

On May 18, 2006 the RCA declared “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.”¹¹

⁸ The *Beth Din of America, Binding Agreement* can be downloaded at <https://bethdin.org/forms/>.

⁹ On Sunday, May 19, 2019 Martin Friedlander, Eli Goldbaum and Heshey Zelcer of Yashar met with R. Mordechai Willig in an office at Yeshiva University and asked him if Beth Din of America would agree to arbitrate a Yashar Prenuptial Agreement if a couple designated the Beth Din of America as the arbitrating authority. The answer was yes, pending approval from the board of Beth Din of America.

¹⁰ “Up Close with Rabbi Elazar Muskin: On the 25th anniversary of the RCA’s prenuptial agreement,” *Jewish Action* (Spring 2019). This article also notes that Rabbi Shmuel Fuerst, *dayan* of Agudath Israel of Illinois, now supports signing the RCA prenuptial agreement. For a more complete list of rabbis who support the RCA agreement see <https://rabbis.org/i-support-the-use-of-a-halachic-prenuptial-agreement/>.

¹¹ See <https://rabbis.org/use-of-prenuptial-agreement/>.

According to the RCA there has never been an *agunah* issue with a couple who had signed their prenuptial agreement.¹²

The RCA Prenuptial Agreement states that the husband undertakes to “support my Wife-to-Be from the date that our domestic residence together shall cease for whatever reason at the rate of \$150 per day...” Some in the *haredi* community have objected to this, saying that some husbands may not be able to afford to pay this amount and thus a *get* given under this condition may be invalidated as a *get meusah*, a forced *get*.¹³

Another objection to the RCA agreement from the *haredi* community is that it stipulates that the *get* process must be arbitrated by the Beth Din of America. *Haredi* communities need the flexibility to specify their own Beit Din.

The Group Involved in the Yashar Prenuptial Agreement

The people involved in formulating the Yashar Coalition prenuptial agreement included *poskim*, legal professionals, businessmen, and health professionals:

- R. Shlomo Miller and R. Hillel David were the *poskim* involved in reviewing the various drafts, suggesting changes and additions, and signing off on the final document.
- The Executive Board of Yashar consists of: Martin Friedlander, Esq., a long-time divorce attorney; and Eli Goldbaum, a businessman and fierce advocate for *agunot*.
- The Board of Directors includes: Talya Faigenbaum, Esq.; Simcha Feurerman, LCSW; Debbie Gross; Anne Neuberger from Sister to Sister; Dr. David Pelkovitz; Dr. Bentzion Twerski, therapist; Lisa Twerski, LCSW; Rachel Pill, LCSW; and Heshey Zelcer.

A *Haredi* Precedent in the US for a Prenuptial Agreement

R. Moshe Feinstein, in 1979, in his *Iggerot Moshe, Even ha-Ezer* 4:107, p. 108 writes:

¹² In “Up Close with Rabbi Elazar Muskin: On the 25th anniversary of the RCA’s prenuptial agreement,” *Jewish Action* (Spring 2019) R. Muskin states, “In my experience there has never been a problem for those who signed the Prenup.”

¹³ The author of this article takes no position on whether or not this criticism is valid. For more information regarding this see in this volume of *Hakirah*, א. יהודה וורבורג, "הסכם קדם-נישואין של ב"ד של אמריקה: יסודות הלכתיים".

Regarding adding to the *Tannaim* that should they [the husband and wife] separate he [the husband] will not refrain from giving a *get*.

23rd day of Heshvan, 5740 [November 11, 1979]

My honorable friend, *mehutan*, *ha-Rav ha-Gaon*, *Moreinu ha-Rav* Yehiel Yitzhak Perr, *sblit" a*, Head of *Mesivta Derekh Ayson*, wishing you well.

Regarding the question of the honor of his exalted Torah whether it is proper to add to a *Tannaim* the following language: "If after the marriage they [the couple] will separate, G-d forbid, the husband will not refrain from giving a *get*, and the woman will not refuse to accept it, when the specific Beit Din so orders." By adding this addendum, the secular courts will force the two sides to listen to the Beit Din.

Adding this is permitted and the *get* will not be a 'forced *get*.' It also has the benefit that it will save her [the wife] from the chains of *agunah*. It is advisable that he [the rav] meet with the groom and bride and get to know them well to determine whether such a clause might, G-d forbid, based on their nature cause any arguments or feuds between them.

His friend,
Moshe Feinstein

Highlights of the Yashar Agreement

Following are some of the highlights of the Yashar Prenuptial Agreement:

1. A specific Beit Din chosen by the *hattan and kallab* is designated to oversee the separation/divorce process.
2. Attorneys and *toanim* must follow *Protocols for Professional Conduct before Beit Din*.
3. Beit Din will determine whether *shalom bayit* (reconciliation between the husband and wife) is a viable option.
4. The parties agree to *Protocols of Kosher Home and Sabbath Observance in Custody Matters* (i.e., that their children will continue to be raised in a Kosher and Sabbath-observant home).
5. Beit Din will schedule the initial Beit Din session within approximately two weeks of request by either party.
6. Within its first session, Beit Din will set an interim payment amount that the husband must pay the wife for the continuation of the household, and for the children to continue to attend *yeshivot*.
7. Beit Din may continue to hear testimony, consider evidence and arguments and arrive at temporary decisions in the absence of a defaulting party who refuses to appear before Beit Din.

8. Beit Din must record all proceedings at its sessions.
9. Beit Din's award may not be appealed, but the award may be submitted to a secular court of law for enforcement.
10. Except for the Beit Din fees, which are split evenly between the parties, the defaulting party shall pay all fees necessary to enforce the rulings of Beit Din.
11. The parties agree not to resort to *Heter Meab Rabonim*, *Heter Nisuin* or *Bitul kedushin* if the wife is willing and able to accept a *get*.
12. The proceedings should be finalized as quickly as possible: 6–8 months for non-custody cases, and 1 year to 18 months for cases involving child custody.

Two Protocols Imbedded within the Yashar Agreement

There are two protocols attached as addendums to the Yashar Prenuptial Agreement: *Protocols for Kosher Home and Sabbath Observance* which describes the parents' obligation to their children post-divorce; and *Protocols for Professional Conduct* which describes the proper conduct for all who attend Beit Din sessions. These two protocols are described in the following two sections.

Protocols for Kosher Home and Sabbath Observance.¹⁴ The couple, before the wedding, undertake that in the event of a divorce the children will continue to be raised in a Sabbath observant, kosher household.

1. Both parties agree that the children will be raised in homes that adhere to Orthodox Jewish tradition defined pursuant to what is expected in practice and spirit by the schools the children will/are currently attending.
2. The parties agree that when they are with the children, they will observe Orthodox Jewish tradition of observance of Sabbath, Kashrut and other laws as set forth by Orthodox Jewish Halakha.
3. Kashrut, as defined by Orthodox Jewish tradition, includes separate dishes and utensils for both milk and meat, as well as not cooking milk and meat together, and therefore all products given to the children to eat and/or found in the parties' residences (while children are there) must bear an approval of a recognized Orthodox kosher supervision agency, such as OU, OK, COR or KOF-K. The parties' respective kitchens shall always be maintained (while the children are

¹⁴ P. 7, Addendum 2 of *Prenuptial Agreement between Choson and Kallab* available at http://www.yasharcoalition.org/docs/Yashar_Prenup.pdf.

unemancipated) under the tenets of Orthodox Jewish tradition as prescribed by the Orthodox Union.

4. The Parties will observe the Sabbath when that party is with the children and will ensure that the Sabbath is observed in their respective residences by all residents and guests when the children are there. Furthermore, neither party will send the children to homes that do not observe the Sabbath, under Jewish Orthodox tradition, for any portion of the Sabbath or religious holidays, nor shall either party permit the children to eat at the home of anyone who does not observe Jewish Orthodox kashrut laws. Each parent shall ensure compliance with this provision of the agreement prior to sending the children to a friend on the Sabbath or a religious holiday.
5. Furthermore, the children shall not be permitted to eat at the home of anyone who does not observe Orthodox Jewish traditions regarding the laws of Kashrut as defined by the Orthodox Union (known as the OU). This shall apply to religious holiday observance as well. Sabbath observance shall be in compliance with Orthodox Jewish tradition including but not limited to the prohibition of turning on or off electrical appliances or lights; cooking or baking; using a computer; watching television; using the Internet; driving or traveling in a car, train or other vehicle; using a telephone; carrying in an area not covered by an Eruv approved by Orthodox Jewish law; and making purchases at a store, as well as ensuring the overall observance of the spirit of the day.
6. Should the children attend religious services, said Synagogue shall be an Orthodox Synagogue as defined by the regulations of the Agudath Israel of America, such as having a *mehitza* valid by its standards.

Protocols for Professional Conduct.¹⁵ All parties who appear before Beit Din agree to conduct themselves in a professional and dignified manner while at the Beit Din.

1. The parties including all attorneys, *toanim* and representatives, who appear before the Arbitration Panel pursuant to the Prenuptial Agreement shall abide by rules of professional conduct before the Arbitration Panel. The parties appearing before the Beit Din shall comport themselves with respect to the panel and their adversaries.
2. There shall be no raising of voices or usage of foul language in this matter.

¹⁵ P. 6, Addendum 1 of *Prenuptial Agreement between Choson and Kallab* available at http://www.yasharcoalition.org/docs/Yashar_Prenup.pdf.

3. The Arbitration Panel, which is a signature to these protocols, the attorneys, *toanim* and representatives, agree that should any of the parties' representatives behave in conduct that the Arbitration Panel believes unbecoming for a professional, they shall be notified in writing and disqualified from further appearances in this matter before the panel.
4. Should the above occur, the parties shall have a reasonable amount of time, not to exceed thirty days, to obtain replacement counsel or *toanim*.

Benefits of the Yashar Agreement

Following are some of the benefits of signing the Yashar Prenuptial Agreement:

- The Prenuptial Agreement establishes a forum to address marital conflict for a Jewish family in a healthy environment under the guidelines of Halakha. The agreement is signed before the wedding but, according to Ha-Rav Elyashiv א"ת, it should not be signed on the day of the wedding.
- When signing the Prenuptial Agreement, a specific Beit Din is designated. If marital conflict arises, the designated Beit Din must, within two weeks of request by either party, assess the viability of *shalom bayit*. Additionally, at the first session the Beit Din must address maintaining the financial viability of the household, thus minimizing the conflict that currently destroys any hope of *shalom bayit*.
- Currently, when marital conflict arises, the process of agreeing on a venue, whether Beit Din, secular court or *Zabla*,¹⁶ takes many months and oftentimes years. The pain and damage done during this time period would be eliminated.
- The *Zabla* option with all of its inherent conflict is waived.
- Protocols for the religious observance of any future children are specified in the Prenuptial Agreement to avoid potential conflict if one parent is no longer observant at the time marital difficulties arise.
- *Toanim* who appear before the Beit Din must follow proper and ethical etiquette or they will be barred from further appearances.
- The financial costs that arise from non-compliance with the directives of the Beit Din including the fees and costs of *toanim*, lawyers, etc.,

¹⁶ *Zabla* is an ad hoc Beit Din created by each side picking one *dayan* (a judge), and these two *dayanim*, in turn, picking a third *dayan*.

can be assigned by the Beit Din to the non-compliant spouse, and are enforceable in a secular court.

- The Prenuptial Agreement specifies mechanisms for choosing a replacement Beit Din if a situation warrants it.
- The agreement was established to greatly reduce the current lengthy timeframes of divorce proceedings. Many of the delay tactics are addressed, undoubtedly minimizing the time, pain and damage caused under current situations.

Limitation on Signing the Yashar Agreement

R. Hillel David writes in his *haskama*:

I come also to make you aware of what I heard from *Maran*, the *posek* of the generation, the great Gaon, R. Yosef Shalom Elyashiv, *atzek*: that the signing of such documents shall not be implemented on the day of the *huppah*, so that common folk not err, saying that this is an integral part of the *huppah*.

Conclusion

To date, the attitude of much of the *haredi* community is that prenuptial agreements, even if halakhically valid, should not be signed because they put a damper on the happiness of the *batan* and *kallah*. There is also some belief that prenuptial agreements may not be valid because they imply an element of coercion which may invalidate the *get*.

Three major *haredi poskim* have now given their written approval for the *haredi* community to use the new Yashar prenuptial agreement¹⁷ and many more will surely follow. What is currently lacking is public awareness of this. The *haredi* community needs to be educated on the halakhic permissibility of signing the agreement prior to the wedding, and on its benefits. May the Yashar Prenuptial Agreement help prevent heartache and pain, and may it help minimize *agunah*. ❧

¹⁷ For more information on the Yashar Coalition *Prenuptial Agreement* see www.YasharCoalition.org.