THE CENTER FOR WOMEN IN JEWISH LAW

JEWISH LAW WATCH

THE AGUNAH DILEMMA

NUMBER FOUR

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THE SCHECHTER INSTITUTE OF JEWISH STUDIES

The Schechter Institute of Jewish Studies in Jerusalem, with its Graduate School of Advanced Jewish Studies, Rabbinical School, and Center for Jewish Education, is one of Israel's leading academic centers for modern Jewish learning. The school is affiliated with the Jewish Theological Seminary of America and the Masorti/Conservative Movement in Israel. Over 500 students, coming from secular, traditional and observant bacgrounds, learn Jewish studies side-by-side within a pluralistic environment. The Schechter Institute is also responsible for the TALI Education Fund which provides enriched Jewish studies to 20,000 schoolchildren in over 100 state schools and kindergartens, and for Midreshet Yerushalayim which provides Jewish education to new immigrants from the FSU in learning centers throughout Israel.

THE CENTER FOR WOMEN IN JEWISH LAW

The Center for Women in Jewish Law was established at the Schechter Institute of Jewish Studies in Jerusalem in 1999 with the assistance of a grant from the Ford Foundation. The first purpose of the center – to study the status of women in the synagogue – is presented in my book *The Status of Women in Jewish Law: Responsa* published in 2001. The second purpose is to find halakhic solutions to the problem of modern-day *agunot* (anchored women) who are compelled to wait many years to receive a *get* (religious divorce) from their husbands. Since Jewish law requires that the husband must grant his wife a divorce, a shameful situation has developed whereby some greedy and vindictive husbands withhold their consent. In most *agunah* cases, the husband refuses to give his wife a *get* until she pays him a substantial amount of money. Should she be unable or unwilling to give the husband the cash or property he demands, the woman remains an *agunah*, or ''anchored woman'', forbidden to remarry or have children with another mate until the husband agrees to release her.

The Center for Women in Jewish Law will present solutions to the problem of modern-day *agunot* in two ways: in a book entitled *Halakhic Solutions to the Agunah Dilemma in the Twentieth Century,* which will review all the halakhic solutions that have been suggested during the last century; and in the bi-annual *Jewish Law Watch*, which will examine actual *agunot* cases that have languished for years in the rabbinic courts without resolution.

The goal of the *Jewish Law Watch* is to pressure the rabbinic courts to publish their decisions in a timely and orderly fashion, much as civil court decisions are published, and to encourage rabbinic courts to use the halakhic tools which are at their disposal in order to free modern-day *agunot*.

As our Sages have taught: ''the rabbis were lenient in order to prevent *agunot*'' (*Yevamot* 88a). Maimonides ruled (Laws of Divorce 13:28) that ''one does not examine the witnesses thoroughly in *agunah* cases because the Sages said to be lenient in order to release *agunot*''. Rabbenu Asher, the Rosh, stated that ''it is worthy for every halakhic authority to examine all sides [of the case] in order to allow [an *agunah* to remarry]'' (*Responsa of the Rosh* 51:2). These sources dealt with a husband who disappeared, but in our day there is a new type of *agunah* – women who are blackmailed by their husbands – and there is no doubt that the Sages and the rabbis would have examined all sides of each case in order to allow them to remarry. Indeed, that is one of the main goals of The Center for Women in Jewish Law.

THIS BOOKLET

This issue of *Jewish Law Watch* does not analyze a new case but is, rather, a direct continuation of Issue No. 3 which was published in July 2001. That issue dealt with the case of ''Rachel''* who waited more than six years to receive a *get* from her husband, including a year *after* he wrote the *get*, when the Jerusalem rabbinic court refused to give her a divorce certificate because they received an anonymous fax which attempted to annul the *get*. We maintained that the rabbinic court could have released her from her anchored status during the first five years by annulling her betrothal on the grounds that it was a mistaken transaction. Furthermore, we maintained that the rabbinic court should have ignored the anonymous fax because ''one court does not look closely at the actions of another court'' and because of Rabbeinu Tam's ban, which prohibits questioning a *get* after it is has been given. Finally, we maintained that in this specific case, when there was a *get* along with an anonymous fax which attempted to annul the *get*, the rabbinic court could have, and should have, used its authority to annul the betrothal, based on the principle of ''whoever betroths [a wife], does so with the agreement of the Sages''.

In the Introduction to Issue No. 3 we wrote that ''we welcome the responses of rabbis, religious court judges, judges, lawyers, scholars and the public at large to this case study''. We received such a ''letter to the editor'' from Advocate Asher Roth, the Legal Advisor of the Rabbinic Courts Administration. We are publishing here his ''letter to the editor'' along with the reply of the staff of the Center for Women in Jewish Law and every reader is free to compare the two.

* The names ''Rachel'', ''Levi'' and ''Argentina'' in this booklet are ficticious names used in order to protect those involved in the case.

Indeed, this is the second time that we have exchanged letters with the Rabbinic Courts Administration and we are pleased at the existence of this halakhic dialogue. We hope and pray that this dialogue will publicize the anguish of modern-day *agunot* and will spur the rabbinic courts to free these women from their chains.

We thank Ms. Dahlia Friedman for the initial English translation, and Prof. Alice Shalvi for correcting the English style.

Rabbi David Golinkin
Schechter Institute of Jewish Studies
Jerusalem
April, 2002

THE STATE OF ISRAEL

Rabbinic Courts Administration

17 October 2001

To

The Schechter Institute of Jewish Studies

P.O. Box 8600

Jerusalem

Shalom,

Re: Jewish Law Watch – The Agunah Dilemma – Case Study Number Three

I have decided to answer your request in the introduction to the booklet and to react to the halakhic solutions suggested there to release ''Rachel'' from her status as an *agunah*.

I wish to emphasize that I have no intention of debating the facts of the case as they are presented in the booklet, even though I could do so, given my familiarity with the details of the case.

My argument below stems from the assumption that the facts as they were presented were proved before the court and that, based on them, a ruling should be issued regarding the case of this unfortunate woman.

I will therefore respond to the suggested halakhic solutions in the order in which they were presented in the booklet.

1. A. The claim that one court does not look closely at the actions of another court

1. This argument is aimed at the court in Israel, which took upon itself the authority to question the legitimacy of the *get*, after the court in Argentina approved it.

   In this argument, the *To'anot Rabbaniyot* (female rabbinic court pleaders) base themselves on the above-mentioned principle as found in the tractate of *Bava Batra* and as codified by Maimonides.

2. Before I comment on the essence of this argument, I cannot refrain from expressing surprise at the attempt, which recurs in other permissive rulings in previous booklets, to release a woman from her status as an agunah, i.e.,

to permit a married woman to be with another man, based on what is stated in the Talmud and codified by Maimonides. And this, while wittingly or unwittingly ignoring all the other *Rishonim* (early authorities) and *Aharonim* (later authorities), as if none of the vast and rich responsa literature had existed upon which **generations of halakhic authorities** have relied!

3. Indeed, the opinions of the great halakhic authorities cited below prove how absurd the approach of the *To'anot* is.

   A. The *Responsa of the Rashba*, Part I, no. 1149, cited in the *Beit Yosef*, *Hoshen Mishpat*, no. 39, rules that today it can no longer be said that ''one court does not look closely at the actions of another court'' because:

      > We are witnesses that most of the *dayanim* (rabbinic court judges) now sitting in judgment are not experts in these matters, and therefore we should be concerned [about their rulings]...

   B. And the Radbaz elaborated on this (he is quoted in *Responsa Avkat Rokhel*, no. 21 by the author of the *Beit Yosef* and in the *Responsa of the Mabit*, no. 144) as follows:

      > And even though the Talmud states that we are not concerned about a mistaken court, and that judges should should not look into the actions of another judge, that was in their time, but now, when the judges are not as well-versed in the laws, it is necessary to look at the actions of another court closely, and if that was the case during the time of the Rashba, then how much more so is that the case in our time and especially in this case...

   C. So ruled the *Hattam Sofer* (part 6, no. 50). See also the article by the president of the Supreme Rabbinic Court, Rabbi Yisrael Meir Lau, in the *Rabbi Shilo Refael Memorial Volume*, pp. 498-512.

   I hope it is not necessary to translate the above sources and it is unfortunate that the *To'anot* did not know of their existence.

1. B. The Ban of Rabbeinu Tam

There is validity to this argument and, indeed, it was raised by one of the great scholars who was asked for his opinion on the legitimacy of the *get*.

2. The Mistaken Transaction Argument

In arguing that the betrothal was a mistaken transaction, the *To'anot* note **two errors** made by Rachel:

A. She knew that he was divorced before she married him, ''but she did not know that he had also **apparently** been married to a non-Jewish woman in Argentina, that they had had a son together... Had Rachel known these things before the wedding, **she would probably** have thought twice about binding her life to a religious man who had married a non-Jewish woman.'' (*Jewish Law Watch*, No. 3, p. 13).

B. During the course of the hearings Rachel discovered that her husband's army medical file stated that he suffers from severe neurosis and therefore ''there is no doubt that Rachel would not have consented to marry him had she known of this illness before the betrothal'' (ibid., p. 14).

Based on the two parts of this argument, the *To'anot* unequivocally determine that ''a betrothal under these circumstances is considered a mistaken betrothal and **there is no need for a *get***''. No less!

Let us, therefore, review this argument and its two errors, and see if the situation is really as they claim it is.

2. A. The mistake from the fact that the husband was married in the past to a non-Jewish woman

1. The booklet's description of the facts, which I have already said I do not dispute, states:

> ... In Argentina, **there were rumors** that he had married a non-Jewish woman, fathered a son, and divorced again... (p. 7)
>
> ... she did not know that he had also **apparently** been married to a non-Jewish woman in Argentina... Had Rachel known these things before the wedding, **she would probably have thought twice about binding her life** to a religious man who had married a non-Jewish woman. (p. 13) (the emphasis is my own. – A.R.)

It is hard to believe that this is the level of the argument of the *To'anot* who presume to be rabbis and with this explanation dare to rule that a married woman may be permitted to others ''**without the need for a *get***''.

As a lawyer with over 40 years of experience in the profession, I can definitively and unhesitatingly say that no lawyer worthy of the name would ever consider arguing for the annulment of a transaction and **no court would annul any transaction** on the basis of the argument that ''there were rumors'' or that ''apparently'' or that Rachel ''would probably have thought twice''.

It is a pity that they – the distinguished *To'anot* – **did not think twice** before requesting that a married woman be permitted to other men without a *get* on the basis of this strange argument!

2. Moreover, before the *To'anot* admonish the court for not making use of their lenient ruling, they should kindly provide **some source**, even just from the Talmud or Maimonides, in support of the argument that the fact that a man was married to a non-Jewish woman is a defect that is powerful enough to annul his marriage without the need for a bill of divorce. There is no such source!

   Do the learned *To'anot* believe that as long as a woman or a man has second thoughts about their marriage, because they discovered that their spouse sinned before the marriage and the other did not know about it, and had the spouse known he or she would have ''thought twice,'' it is possible to annul a marriage ''without the need for a *get*''? How surprising!

2. B. The mistake related to a pre-existing illness

1. The facts presented about the case indicate that:
   A. The couple lived together for approximately a year and a half and Rachel did not detect any illness in her husband, although she did claim to have been ''subjected to verbal and emotional abuse''.
   B. During the proceedings of the suit to obtain a *get*, Rachel discovered that her husband's army medical file stated that he ''suffers from severe neurosis''.
   C. Rachel did not mention the mistaken transaction argument to the court, i.e., had she known she would not have agreed to marry him, as the *To'anot* claimed.
2. If I have understood correctly, then the above-mentioned diagnosis in the husband's medical file did not refer to mental illness, because in that event, he would have been discharged from military service as a matter of course.

   ''Severe neurosis'' is defined also as a ''strong worry or fear''. It is beyond my capacity to understand how this case can be compared to the one

discussed by the author of the *Igrot Moshe*, which refers to a man with a mental illness who, after his marriage, ''became very ill again and then became **a complete lunatic**''.

Is that what happened in the case under review?!

Is this a serious approach to halakhic rulings; is this the way to rule on marital issues?

3. As stated, **Rachel** should have mentioned the mistaken transaction argument and **she** should have argued that had I known, I would not have married him. **She alone and no one else** should have done that, not the two women rabbis in an attempt to attack the rabbinic court. No one disputes the fact that Rachel did not raise this argument.
4. However, even if Rachel herself had raised the mistaken transaction argument during the proceedings, it is still highly doubtful in the circumstances described that any halakhic weight could have been attributed to it.
   A. The halakhah distinguishes between the defects listed in *Even Ha'ezer* 39:4.

      These defects lead to annulment of a betrothal ''and it doesn't matter if the one betrothing has reservations about a certain defect, because the Sages' determination that these are defects which people are careful about is sufficient''.

   B. On the other hand, in the event of other defects, ''it is necessary to provide unequivocal proof that one indeed has reservations about the betrothal because of this defect and that this is **the only reason for annulling the marriage** and not merely that one found a pretext to cling to in order to annul the marriage using some other reason which is not the real cause''.

      That is how the courts have ruled on several occasions, based on *Yerushalmi Ketubot*, Chapter 7, halakhah 7.

      Needless to say, ''strong worry or fear'', even if it was the result of an illness, is not part of the first group of defects cited and the laws specified in section 2 above apply to it.

3. The Possibility of Annulling the Betrothal

The authors survey at length the various Talmudic passages in which the Sages annulled a betrothal, either because ''whoever betroths, does so with the

agreement of the Sages'' or because ''the Sages have the power to uproot something from the Torah''.

A. The authors are also aware of the *Responsa of the Rashba*, Part 1, no. 1185 which states that the principle of annulling a betrothal is used only in cases found explicitly in the Talmud, and the late Rabbi Herzog explained his words as follows:

> After the completion of the Talmud we do not have the ability to annul a betrothal. When the sources discuss doing so ''with the agreement of the Sages'', they mean with the agreement of a *Beit Din Gadol* in every generation. However, after the completion of the Talmud, the Sanhedrin ceased to exist and there is no *Beit Din Gadol* for the entire Jewish people. (*Hahukah L'Yisrael Al Pi Hatorah*, Vol. 1, Mossad Harav Kook, pp. 68-69)

B. The authors note ''there is no mention in the responsa literature of the use of annulling a betrothal in order to free *agunot*'' (ibid., p. 20).

This is a grave mistake on their part! **The greatest halakhic authorities of every generation** have discussed at length the possibility of annulling a betrothal in various cases, including when it is necessary to free *agunot,* and all of them rejected this halakhic solution, each one for his reasons.

The learned authors seem to think they invented the wheel and tried to advise and teach the rabbinic court how it would have been possible to free Rachel from her status as an *agunah* by annulling her betrothal. Therefore, it behooved them to do their homework and to fulfill the obligation of proper disclosure, by presenting the reader with the opinions of the halakhic authorities with whom they disagreed.

Since the authors did not do so, I will do so below.

4. Halakhic Authorities' opinions on annulling a marriage

A. The Tosafot in *Gittin* 33a (catchword V'afk'inhu) raised the possibility that ''*mamzerim* can be purified'' using Rabban Gamliel's enactment, i.e., the husband will appoint a messenger to divorce his wife, then cancel this action not in the presence of the messenger and, because of Rabban Gamliel's enactment, the betrothal will be retroactively annulled because ''whoever betroths does so with the agreement of the Sages'' and, as a result, the child that is born will not be a *mamzer* because he was born to an unmarried woman...

B. The Rashba on *Ketubot* fol. 3 says in response to the above question in the Tosafot on *Gittin*, that since he has no intention of taking her back (as in the case of Rabban Gamliel's original enactment) and only wants to annul the betrothal – the *get* is not annulled!

C. The late Rabbi Shlomo Zalman Auerbach, who needs no introduction, devotes thirty-four pages in his book *Minhat Shlomo* (no. 76) to this question and concludes that since *Rishonim* – including Nahmanides, the Rashba, the Ra'avan, the R'ah – and the important *Aharonim* – among them the *Hakham Zvi* and the *Pnei Yehoshua* – reject the option of annulling a betrothal, ''we must be very apprehensive in this matter of permitting a biblical prohibition''. Rabbi Auerbach had also published his opinion many years earlier in *Moriah*, Vol. 2, Elul, pp. 6-24.

D. The late Rabbi Herzog discussed this issue in 5710 (1950) in the *Or Hame'ir* Jubilee Volume honoring Chief Rabbi Uziel. Rabbi Herzog concluded that **a betrothal should not be annulled** other than in the cases specified by the Sages ''due to the severity of matters related to a married woman''.

E. Rabbi Eliezer Waldenberg, one of the greatest halakhic authorities of our generation, discusses this issue in two volumes of his monumental work, *Tzitz Eliezer*. In Vol. 1, he devotes **three sections** covering 16 pages to this issue and in volume 15, no. 58, he discusses a tragic question. A woman divorced, remarried and gave birth to a son by her second husband and then it was discovered that the *get* was invalid. There was, of course, a great desire to prevent the boy being declared a *mamzer*. It was suggested to annul the betrothal, but, unfortunately, the idea was rejected.

   Inter alia, Rabbi Waldenberg relies on a responsum of Rabbi Isaac Elhanan Spector, the rabbi of Kovno, a great scholar in his generation and the greatest halakhic authority of the nineteenth century, in his book *Ein Yitzhak, Even Ha'ezer*, no. 72, who also rejected the possibility of annulling a marriage.

   The *Tzitz Eliezer* also notes there that Maimonides **makes no mention at all of the possibility of annulling a betrothal!**

F. It is worth noting that Rabbi Ovadia Yosef, who also needs no introduction, also appears in this illustrious list. On two occasions, in his book *Yabia Omer*, Part II, *Even Ha'ezer*, no. 9 and in *Sinai*, vol. 48 (5721) he comes out against the possibility of annulling a marriage.

G. In conclusion, I refer the distinguished *To'anot* to the Decision of the Supreme Court in Civil Appeal 164/67 220/67, The Attorney General *v.*

Yehiye and Ora Avraham, 22 (1) P.D. 29. In this ruling, the late Judge Zilberg discusses at length the question:

> How will the rabbis of Israel find a way to untie a bond of marriage between a husband and his wife, when there is no trace of the husband who ran away, or when he illegally and unjustly refuses to release his wife by granting her a *get*? (ibid., section 11).

After very ably reviewing the various opinions on the possibility of annulling a marriage, he concludes:

> The question of whether one may add annulments to those in the Talmud **was answered in the negative** and if that is the case, it is hard to imagine that the Chief Rabbinate of Israel would adopt a policy of annulment (ibid., p. 40)

5. I can understand that Rabbi Diana Villa and Rabbi Monique Süsskind Goldberg disagree with **all** the halakhic authorities – both *Rishonim* and *Aharonim* – cited above.

There is no way I can accept that they ''researched the case in depth under the guidance of Rabbi Richard Lewis'', as Rabbi David Golinkin writes in his introduction to the booklet.

If that were so, then basic fairness would have obligated them to present the reader with the above-mentioned halakhic authorities, or at least some of them, and to argue with them in order to refute their opinions.

In his introduction, Rabbi Golinkin writes that the purpose of the booklet is ''to pressure'' the rabbinic courts to examine halakhic directions in order to free Rachel from her status as an *agunah* and to use the halakhic tools which are at their disposal to do so.

I am amazed. Isn't it pretentious or worse ''to pressure'' the rabbinic court to issue a ruling siding with Rabbis Diana and Monique and not to rule according to Rabbi Isaac Elhanan, Rabbi Shlomo Zalman, Rabbi Herzog, Rabbi Ovadia Yosef, Rabbi Waldenberg and many others?

How then can you complain that in the ''dispute'' between the two above-mentioned female rabbis and the greatest scholars of the generations, the rabbinic court chose to follow the path paved and illuminated by our illustrious Sages?

Sincerely,

Advocate Asher A. Roth

Legal Advisor to the Rabbinic Courts Administration

22 January 2002

To

Adv. Asher Roth

Legal Advisor to the Rabbinic Courts Administration

Rabbinic Courts Administration

P.O.B. 35333

Jerusalem 91353

Shalom,

We thank you for your response to *Jewish Law Watch – The Agunah Dilemma, Case Study Number Three* and apologize for the delay in sending our reply. (Our letter was written a long time ago, but was held up for technical reasons.)

I) Firstly, we regret the general tone of your letter and the disrespect shown to Rabbis Diana Villa and Monique Süsskind Goldberg who supposedly did not thoroughly study the subject. We shall prove below that people are blind to their own faults and that your remarks stem from a lack of understanding of what was written in the above-mentioned booklet and from a careless reading on your part of the sources which you yourself cite.

II) In several places in your letter, you express surprise that we relied on the Talmud and some of the *Rishonim* and not on ''all the other *Rishonim* and *Aharonim*.'' You believe that doing so is a sign of ignorance or boorishness. That is not the case. It is a case of taking a **different** approach to halakhah than that which is common among many contemporary halakhic authorities. This approach maintains that it is permissible to make halakhic rulings based on the Babylonian Talmud, even if this contradicts *Rishonim* and *Aharonim*. We did not invent this method. It is a practice accepted for generations by many halakhic authorities. The Rosh determined in the early fourteenth century that:

> ... ''Yiftah in his generation is like Samuel in his generation'' (*Rosh Hashana* 25b). There is only ''the judge that shall be in those days'' (Deuteronomy 17:9) and he may contradict the words [of the *Geonim*] **because all things that are not explicitly stated in the Talmud compiled by Rav Ashi and Ravina, a person may contradict and build on and even dispute the Geonim's words** (*Piskei Harosh* on *Sanhedrin* Chapter four, paragraph 6).

In sixteenth-century Poland, Rabbi Shlomo Luria ruled:

> **That from the days of Ravina and Rav Ashi there is no tradition of ruling according to one of the early or later authorities, but rather one must base one's rulings with clear proofs on the [Babylonian] Talmud**, and on the Yerushalmi and Tosefta in a place where there is no clear decision in the [Babylonian] Talmud (the Maharshal's Introduction to *Yam Shel Shlomo* to tractate *Hullin*).

Rabbi Chaim of Volozhin related the following in the name of his teacher, the Vilna Gaon, who lived in the eighteenth century:

> I was warned by my teacher and rabbi, a sainted Gaon of Israel, our great and pious rabbi, **not to be partial when ruling, even to the authors of the *Shulhan Arukh,*** and he also wrote in a responsum not to take action [in the case under discussion] according to the *Shulhan Arukh's* ruling (*Responsa Hut Hameshulash*, no. 9, Vilna, 5649, according to the complete version found in *Aliyot Eliyahu*).

And so wrote Rabbi Chaim David Halevy, late Chief Rabbi of Tel Aviv-Yaffo:

> And if your intention... is to hint to me that since that great rabbi already ruled, no change should be made, and that it was inappropriate for me to dispute him, I will tell you that this is the power of the halakhah, **and there never has been a ruling by any great Sage of Israel after the completion of the Talmud that was a binding ruling, and permission is granted to any person to dispute with proper and straightforward proofs even with his own teachers...** and even the rulings of Maimonides and Rabbi Yosef Karo were disputed by scholars in their generation and in the following generations and in many cases we do not follow their rulings... (*Aseh Lekha Rav*, part 2, pp. 146-147)

And now we shall respond in detail to three sections of your letter:

III) A response to the claim that one court does not look closely at the actions of another court

1) Regarding the general comment on using the Talmud and Maimonides as precedents, in addition to the general sources cited above, it is permissible to rely on them to free *agunot* from their chained status, since the Rosh ruled: "how many lenient rulings did the Sages make in order to free *agunot*... and so it behooves every halakhic authority to examine

all sides [of the case] in order to allow [an *agunah* to remarry]'' (*Responsa of the Rosh*, 51:2). Similarly, Maimonides determined (*Responsa of Maimonides*, Blau edition, no. 350) that ''all of these things can be traced to one basic principle, that one does not look too closely at the testimony regarding a chained woman, and whoever takes the strict approach and inquires into and investigates these things, **is acting improperly and the Sages are ill at ease over his actions, because they were lenient regarding an *agunah*** (and so ruled the Rema in the *Shulhan Arukh, Even Ha'ezer* 17:21).

2) Regarding Rabbi Lau's article *(Rabbi Shilo Refael Memorial Volume*, Jerusalem, 5758, pp. 498-512), which refers to the authority of an Appeals Court, we would react as follows:

   A) Rabbi Lau refers (on p. 511) to a person who was found guilty in court and who demands that the other party appear before a different court. In a case of divorce, it is unclear whether it is correct to treat a husband and wife as if one is **guilty** and the other is **innocent.**

   B) Even if we view a divorce case as one involving two parties, where one emerges guilty and the other innocent, it is unclear that the anonymous fax attributed to the husband can be treated as an appeal, as the *Av Bet Din* (Chief Judge) of the court wrote (Ruling of the Supreme Rabbinic Court in Jerusalem, December 18, 2000):

      > The fax sent to the court, which argued for an annulment of the *get*, is unacceptable to me as a valid document. Even if we assume that there is an option of a written annulment, the husband must make the annulment and there should be no doubt that he did so. This does not apply to an unsigned fax sent from the husband's home (according to the address on the fax paper). Annulling a *get* is a very serious matter and the Sages made it contingent on various restrictions. I do not believe that a random piece of paper with no signature or clear identification is considered an annulment of a *get*.

      In the same ruling, one of the rabbis described the contents of the fax. In addition to the annulment of the *get*, the husband ''states that the *get* was written under threats, deadly torture, electric shocks, etc. a *get me'useh* (forced divorce) and a complaint was filed with the police''. One may question the credibility of the fax to the same

extent that it is possible to question the husband's credibility regarding ''the facts''.

C) Even if we accept the possibility that the fax is valid, it was sent to the **District** Rabbinic Court in Jerusalem and not to the **Supreme** Rabbinic Court. Only the latter, according to the opinion of Rabbi Lau, has the authority of an Appeals Court and his remark that ''there is no concern for disgracing the [lower] court, because that is, after all, the reason why this court was created'' applies only to it (p. 509).

D) The Supreme Rabbinic Court in Jerusalem was established as a Court of Appeals for all courts **in the State of Israel**. Even according to Rabbi Lau's opinion, it is doubtful whether its authority applies to a *get* written in Argentina.

3) You cited *poskim* (halakhic authorities) who supposedly determined that one court **may** look closely at the actions of another court, but this is not accurate. **Most of the *poskim* cited by you accepted the Talmudic determination that one court does not look closely at the actions of another court,** especially if it is known that the original court is an expert court.

A) The Rashba's comments (*Responsa of the Rashba*, Part 1, no. 1149) were made about his contemporary judges: ''We are witnesses to the fact that most of the *dayanim* **now** sitting in judgment are not experts in these matters,'' i.e., in the matter of the contract under discussion. However, in our case, the court in Argentina is considered an expert court and the *Av Bet Din* is a well-known and respected scholar in the Orthodox world.

Several sentences after the one cited in your letter, the Rashba adds: ''we should be concerned and ask them if they are knowledgeable or not, for in all matters such as this, we are concerned and we check and investigate in order to issue a true ruling''. As we wrote in the previous booklet (p. 10), the court in Argentina related in writing to the concerns of the Jerusalem Region Rabbinic Court in their letter of June 5, 2000, when they said ''We did not exert any form of coercion against the said husband'' and added that ''he did not annul [the *get*] orally, neither in front of witnesses nor before the court''.

B) You refer to Rabbi Yosef Karo (*Responsa Avkat Rokhel*, no. 21) who quotes the Radbaz, who takes a stringent approach on this matter.

However, Rabbi Yosef Karo says in his gloss ad loc. that the Radbaz was not precise in his reading of the Rashba: ''(Rabbi Yosef Karo said: He was not precise, as the Rashba only said so in that case which was uncommon or unusual, **but in all other cases, even in our times, one court does not look closely at the actions of another court**, and this is clear in the Rashba's responsum which I quoted in the *Beit Yosef*...)''. (You point out that the Radbaz's words are also quoted in the *Responsa of the Mabit*, no. 144, but the correct citation is ibid., Part II, no. 172, in an appendix at the end of the responsum.)

Furthermore, the Radbaz himself writes in another responsum dealing with the release of an *agunah* on the basis of an apostate who innocently said that her husband was killed (*Responsa of the Radbaz*, Part II, no. 657): ''And all the more so in the case under discussion, we argue in favor of taking the lenient approach, because everything was done properly, because it was done with the knowledge of a great scholar, and because **one court does not look closely at the actions of another court. The general rule is not to be strict, but to be lenient because a woman could be made an agunah**'' (and cf. ibid., Part IV, no. 1129 (57) for a similar ruling).

C) You stated: ''And so ruled the *Hatam Sofer*, Part 6, no. 50'', but one who reads his words carefully will see that you were not precise in your remarks. Indeed, at the beginning of the responsum, the *Hatam Sofer* supports Rava's approach in *Bava Batra* 130b, whereby ''the *dayan* can rely only on what he himself sees''. In other words, if we are presented with a decision and we know the reasons why it was decided thus and we have a question about it – in such a case, the *dayan* can only judge based on what he himself sees, because it is obvious to us that the original judge erred. But the *Hatam Sofer* continues: ''But the rabbi and the leaders of the community only served to testify that this is what happened'' and in such a case ''we must not try to defend the suspect and thereby discredit a Sage''. This is very similar to the case under discussion. The court in Argentina simply testified about the veracity of the facts, that the *get* was not forced, and therefore the Hatam Sofer would have ruled that the validity of their testimony should **not** be questioned.

Therefore, most of your ''proofs'' prove the validity of our approach! Based on the Talmud, Maimonides and most of the *poskim* cited by you, we can

now rule that ''one court does **not** look closely into the actions of another court''!

IV) A Response to the Mistaken Transaction Argument

1) Levi's Previous Marriage

Our argument was not that ''the fact that a man was married to a non-Jewish woman is a defect,'' but rather that in the case under review, it would have been possible to say ''we are witnesses'' that a religious woman would not marry a man who presents himself as religious, married a non-Jewish woman, fathered a son with her, and kept this information from his Jewish bride. Moreover, we know that Rachel married Levi **specifically** because he presented himself as an observant Jew. In other words, **in her eyes, it was a totally mistaken transaction**.

We were very careful in our wording of the facts (''there were rumors'', ''apparently'') because we did not have the opportunity to check these things, but the details of Levi's marriage to a non-Jewish woman and the birth of a son in Argentina were presented by the wife's *To'enet Rabbanit* as facts and, in our opinion, the court should have checked their veracity.

2) Levi's Severe Neurosis

A) It is unclear whether Levi actually served in the army after he was diagnosed as suffering from severe neurosis.

B) Severe neurosis is not just ''strong worry or fear'' as you claim. According to the description in the *Encyclopaedia Britannica:* ''The neuroses include anxiety attacks, certain form of depression, hypochondriasis, hysterical reactions, obsessive-compulsive disorders, phobias, various sexual dysfunctions and some tics''.

Moreover, according to a military psychiatrist with whom we consulted, the use of the term ''severe neurosis'' in the husband's military medical file indicates a **serious** problem (even if it is not immediately discerned by a non-professional) and he says it is an illness that is likely to worsen. The fact that Levi abused Rachel already in the first year of their marriage, was unwilling to care for his sick daughter, acted wildly and violently during the divorce proceedings (for example, sending threatening letters to his wife and the *dayanim*), claimed that he had been threatened with electric shock, presented himself as a rabbi yet also frequented prostitutes – all of these unequivocally indicate the existence of a serious mental problem.

You wrote: ''The couple lived together for approximately a year and a half and Rachel did not detect any illness in her husband''. Of course, Rachel noticed her husband's problematic behavior during the time they lived together, even if she did not know that his behavior apparently stemmed from a pre-existing illness, because the information about the neurosis was withheld from her. Again, ''we are witnesses'' that Rachel would not have entered into this marriage had she known more about Levi's mental state.

3) The defects are not in the list

Indeed, Levi's defects do not appear in the list of defects specified in the *Shulhan Arukh* that make it possible to force a husband to grant his wife a *get*.* However, we have already shown (*Jewish Law Watch, The Agunah Dilemma, Case Study Number Two*, September 2000, pp. 8-15) that great halakhic authorities such as Rabbeinu Simhah of Speyer, followed by his disciple, Rabbi Yitzhak ben Moshe of Vienna, author of *Or Zarua*, the Rashba, the Tashbetz, Rabbi Eliezer Waldenberg, author of the *Tzitz Eliezer*, and others, ruled that one must include in the list of defects that are cause for compelling a husband to grant a divorce, a husband who beats, humiliates and causes distress to his wife. As the Tashbetz wrote (Part II, no. 8): ''If a man is compelled to divorce his wife because of bad breath, then shouldn't he be compelled to do so for causing her constant anguish that is worse than death!''.

Rabbi Isaac Elhanan Spector (*Responsa Ein Yitzhak*, Part I, *Even Ha'ezer*, no. 24, section 41) already ruled in the nineteenth century that if it turns out **after** the marriage that the husband already had a defect **prior** to the marriage, which would be sufficient cause to compel the husband to grant his wife a *get*, then the marriage can be considered a mistaken transaction.

Levi abused Rachel physically and psychologically while they lived together and also after they separated. It is very reasonable to assume that this behavior of Levi's resulted from the neurosis from which he suffered **before** he married Rachel. Had Rachel known that this was what lay ahead, she would have said ''I did not betroth myself with this in mind''.

* It should be pointed out that the sources quoted by Adv. Roth (*Even Ha'ezer* 39:4 and *Yerushalmi Ketubot* 7:7) are not relevant to our case at all; they deal with the defects of the *wife*, while our case deals with the defects of the *husband*.

4) Rachel did not mention the argument that it was a mistaken transaction

It is true that, formally, the wife is the one who must raise the argument of a mistaken transaction, but in our opinion, the court must make every effort to help an *agunah* be released from her chained status. Therefore, when it is impossible to obtain a *get* from the husband, the *dayanim* must ask the right questions and try and clarify with the woman whether it is possible to argue that there was a mistaken transaction, and then free her without a *get*.

V) Responding to the matter of annulling the betrothal

You write: ''The authors note that 'there is no mention in the responsa literature of the use of annulling a betrothal in order to free *agunot*' ''. First of all, you have distorted the quote. *Jewish Law Watch, The Agunah Dilemma, Case Study Number Three* states clearly on p. 20 that ''there is **little mention** in the responsa literature...''. Secondly, you accuse the authors of ''a grave mistake'', citing a list of sources which, in your opinion, prove that ''the greatest halakhic authorities in every generation'' rejected the possibility of annulling a betrothal. Finally, you write that ''in the 'dispute' between the two above-mentioned female rabbis and the greatest scholars throughout the generations, the court chose to follow the path paved and illuminated by our illustrious Sages''.

However, you did not bother to prove that such a dispute exists! The sources you cite deal with a completely different question, namely whether it is possible to purify *mamzerim* by staging the dispatching of a *get* and its cancellation not in the presence of a court, in order to annul the betrothal according to the Rashbag's position regarding Rabban Gamliel's enactment in *Mishnah Gittin*, Chapter 4. Yet these discussions are totally unrelated to our case, beyond the use of the phrase ''And the Sages can annul his betrothal''! These halakhic authorities, contrary to the impression which you gave, were unfamiliar with our case, in which there is a *get,* and according to one court the woman is divorced, and according to another court she is not divorced, and therefore they never issued a ruling on it. Furthermore, we **did cite** the concerns of the Rishonim over the use of an annulment of a betrothal (as you yourself mentioned), but in order to extricate a woman from an intolerable situation, we argued **that, in the specific circumstances of this case**, it was possible to use an annulment of a betrothal even according to those same halakhic authorities. You did not relate to this carefully-reasoned argument at all and instead used aggressive rhetoric without directly addressing the arguments raised in the above-mentioned booklet.

In conclusion, we repeat our opinion with even greater conviction:

1) There was no halakhic justification whatsoever for the rabbinic court in Jerusalem to question the actions of the rabbinic court in Argentina;
2) The rabbinic court could have freed Rachel from her chained status by canceling the betrothal on the grounds that it was a mistaken transaction;
3) The court could have annulled the betrothal.

Sincerely,
Rabbi David Golinkin
Rabbi Richard Lewis
Rabbi Diana Villa
Rabbi Monique Süsskind Goldberg