

THE CENTER FOR WOMEN IN JEWISH LAW

JEWISH LAW WATCH

THE AGUNAH DILEMMA

CASE STUDY NUMBER ONE

THE SCHECHTER INSTITUTE OF JEWISH STUDIES

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THE CENTER FOR WOMEN IN JEWISH LAW

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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 School of 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 backgrounds, 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 80 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 in order to study the status of women in the synagogue and 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 rabbinical courts without resolution. In most instances, the rabbinical courts have not written or published their decisions on cases brought before them. The decision we have presented here is not a halakhic decision in the formal sense, as the Center's staff did not sit as a rabbinical court and the parties did not appear before them for examination of their testimony or other evidence. We present, rather, "halakhic directions" which the rabbinical courts should have examined in order to free "Sarah", a modern-day *agunah*.

The goal of the *Jewish Law Watch* is to pressure the rabbinical courts to publish their decisions in a timely and orderly fashion, much as civil court decisions are published, and to encourage rabbinical 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*.” Rabbeinu 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.

THE METHOD

Sharon Shenhav, the attorney who represented “Sarah” at some of the hearings in the Israeli rabbinical courts, supplied the staff with biographical data about the parties; affidavits and other testimony of Sarah and her mother which were presented to the Jerusalem Rabbinical Court and the Rabbinical Court of Appeals; court records and decisions of the rabbinical courts who heard the case; and the decision of the late Professor Ze’ev Falk who convened a special Bet Din in Jerusalem in 1993 to deal with this case.

Rabbi Monique Süsskind Goldberg and Diana Villa researched the case in depth under the guidance of Rabbi Richard Lewis and with the aid of bibliography which I supplied. Rabbi Süsskind Goldberg then wrote the case study in Hebrew and it was translated into English by Sharon Shenhav and myself. I then edited both versions, after which Sharon Shenhav saw the newsletter through the press.

It is our hope that this first *Jewish Law Watch* will make public the anguish of modern-day *agunot* like Sarah and will spur rabbinical courts to free these women from their chains. We welcome the responses of rabbis, religious court judges (*dayanim*), judges, lawyers, scholars and the public at large to this case study.

Rabbi David Golinkin
Schechter Institute of Jewish Studies
Jerusalem
January, 2000

CASE STUDY NUMBER ONE

by

Rabbi Monique Süsskind Goldberg

Summary of the Case

(The names of the parties have been changed to protect their privacy.)

- Sixteen year old Sarah is forced to marry Reuven in Israel in 1970.
- Reuven takes Sarah to Iran under false pretenses in 1970.
- In Iran, Reuven physically assaults Sarah and abuses her emotionally.
- After the Islamic Revolution in Iran, the family returns to Israel in 1979.
- One month after their arrival in Israel, Reuven abandons Sarah and their two young children and returns to Iran.
- Despite her constant requests for a *get*, Reuven is recalcitrant, telling Sarah that he will never agree to release her.
- In 1986, Reuven returns to Israel, appears in rabbinical court and demands \$80,000 for his consent to the *get*. Sarah is unable to make the payment.
- Despite scores of hearings in the rabbinical courts and decade-long efforts to convince Reuven to give Sarah a *get*, Reuven refuses.
- In 1995, Sarah pays Reuven the sum of \$16,000 and receives a *get*.

Summary of Our Proposals

We believe that the rabbinical courts should have examined the following approaches in order to free Sarah from Reuven:

1. Sarah agreed to marry under duress. Such a marriage is not valid (*Kiddushin* 2b and *Bava Batra* 48b) and she may remarry without a *get*.
2. The betrothal was “a mistaken transaction” (*Bava Kamma* 110b) and Sarah is therefore free to remarry without a *get*.

THE CASE

In the summer of 1969, Sarah, aged 15, moved from Iran to Israel with her family.

Reuven, a 23 year old Iranian, came to Israel for the Pesach holiday in the spring of 1970. He contacted Sarah's parents and informed them that he wanted to marry her. Reuven had admired Sarah since she was 13 years old as he had lived in the same Iranian city as Sarah's family and would follow her to school so that he could observe her. Sarah was not interested in marrying Reuven since she wanted to complete high school and was not ready to marry. Sarah's parents rejected Reuven's offer of marriage. In order to convince them to change their mind, Reuven threatened to tell everyone in the community that he and Sarah had been intimate. The Iranian community in Israel at that time was very conservative as to the virginity of brides, and it was clear that if Reuven followed through with his threat, Sarah would not be able to find a husband within that community. Therefore, as a result of Reuven's threat and without discussing the truth of his claim with Sarah, her parents forced her to marry Reuven. Sarah testified that she had no choice but to agree to the marriage; she made the condition that the couple make their home in Israel and that she continue her studies. Reuven promised to abide by her conditions and the couple were married in June, 1970 in Jerusalem, despite the fact that Sarah was only 16 years old and forbidden to marry under Israeli law. (The Marriage Age Law, 1950 provides that the minimum age of marriage for girls is 17.)

After the wedding, Reuven took Sarah to Iran "for a month" in order to pack his belongings and bring them to Israel. Once in Iran, he informed Sarah that he had no intention of returning to Israel. Two children were born to Reuven and Sarah in Iran, a son in 1971 and a daughter in 1975. Sarah testified that during the period the couple lived in Iran, from 1970 to 1979, she suffered from ongoing physical and verbal abuse from Reuven. Sarah described how Reuven would hit her, swear at her and threaten to kill her. During her first pregnancy, Reuven locked Sarah in the house without food. When Sarah finally filed a complaint with the local police in 1974, they brought Reuven in for questioning and decided that it was Sarah who was "crazy".

On September 4, 1979, Reuven brought the family back to Israel after the Islamic revolution in Iran. However, a month later Reuven abandoned his wife and children, returning to Iran. Sarah and the children were left without housing, savings or financial support. In fact, Reuven wrote letters from Iran stating that he had no intention of returning to his family and to Israel. When Sarah wrote again and again to Reuven, asking him for a divorce, he replied that he would never give her a *get* (religious divorce). In several letters, Reuven even

claimed that he had converted to Islam and married a Muslim woman in an Islamic ceremony.

In 1984, Sarah turned to the Jerusalem Rabbinical Court and filed for divorce. Since there were no diplomatic relations between Israel and Iran at that time, the *dayanim* (religious court judges) wrote to the Chief Rabbi of France and requested his help in obtaining a *get* for Sarah from Reuven. Nothing came of these efforts. For the next ten years, Sarah's case was passed from one rabbinical court to another without a solution that would free her from her non-existent marriage to Reuven. A detailed description of the case follows.

On November 25, 1985, the Jerusalem Rabbinical Court decided to send the file to the Chief Rabbi of France with a request to "help this woman whose husband is in Iran, and to try to find a suitable way to obtain the husband's agreement and signature in order to permit the divorce to be arranged in the Rabbinical Court here". Nothing was done.

On March 4, 1986, Reuven arrived in Israel with a forged Iranian passport and a new identity. On that same day, as a result of Sarah's testimony regarding Reuven's violent attacks on her in the past, the Jerusalem Rabbinical Court decided to issue an order forbidding Reuven to enter Sarah's apartment or place of work.

On March 23, 1986, the Jerusalem Rabbinical Court ordered Reuven to pay Sarah child support in the amount of 450 NIS a month.

On March 27, 1986, Reuven signed a statement before the rabbinical court judges appointing an agent to give Sarah a *get* on his behalf. However, after reconsidering, he canceled the appointment of the agent and refused to give his wife a *get* unless she paid him \$80,000. The rabbinical court did not use its authority to compel Reuven to give Sarah a *get*, despite the fact that Reuven had "under punishment of excommunication sworn not to cancel the *get* or the appointment of the agent".

After several years of court hearings, during which Sarah lived apart from her husband and raised their children by herself, the rabbinical courts had still not found a way to free Sarah from the non-existent marriage. On June 1, 1989, upon Sarah's request, the court asked to transfer the case to a special bench dealing with *agunot*, since the case had been languishing without progress for over five years. However, on July 7, 1989, the President of the Rabbinical Court of Appeals rejected the request on the grounds that "during the last few months there has been some movement and the case should continue to be heard before the same bench". Thus the case returned to the Jerusalem Rabbinical Court.

On October 26, 1989, the rabbinical court attempted to arrive at a divorce settlement by deciding that:

The parties must divorce under one of the following conditions:

- a. Either the wife will give the husband the sum of \$5000 and waive the rights of the minor daughter to receive child support in payment of the husband's financial claims.
- b. Or the two parties will sign an arbitration agreement to deal with the husband's financial claims for payment of \$10,000 and child support payments for the daughter will remain unchanged.
- c. If the parties do not accept either of the above conditions, the rabbinical court will hear arguments for an Obligatory Divorce and a Compulsory Divorce.

Sarah immediately agreed to paragraph "b" which required the husband to continue to pay child support for the daughter while an arbitrator would decide on the validity of the husband's claim to a payment of \$10,000. Reuven refused to accept either of the conditions and now claimed that he wanted a reconciliation (*shlom bayit*) instead of a divorce. But he also announced to the court that he would be willing to forgo his request for reconciliation if Sarah paid him \$50,000!

On October 29, 1989, the rabbinical court added to its earlier decision the following:

Even if it is determined that there was a basis for the husband's claim for reconciliation, the wife will be obligated to pay the husband \$10,000 according to the arbitration which will take place.

Reuven still refused to accept either of the conditions of the divorce settlement proposed by the rabbis.

On March 2, 1990, after two days of hearings on Sarah's request for a divorce, the rabbinical court decided to make a further suggestion for settlement: "The wife will waive her rights to payment of the amount written in her *Ketubah*". The court gave the husband fifteen days to agree; he did not.

On July 1, 1990, the court decided: "The parties should divorce immediately. The matter of division of property will be decided after the giving of the *get*". The date for the giving of the *get* was set for August 9, 1990. On that date, the husband announced that he refused to accept the court's decision. On August 23, 1990, Sarah filed an appeal and requested that the rabbinical court issue an order compelling Reuven to give her a *get*.

On October 14, 1990, the court issued an order "obligating Reuven to give Sarah a *get*" and one of the *dayanim* stated that Reuven should be obligated to give the *get* "immediately". After six months, when it was clear that Reuven remained recalcitrant and that the court would do nothing to influence him to

give her a *get*, Sarah filed a claim for maintenance for herself on the basis that she could not remarry due to Reuven's recalcitrance. The court rejected Sarah's request since she was gainfully employed. Sarah appealed their decision to the Rabbinical Court of Appeals, but in November, 1992 the appellate court rejected her appeal.

A year later, in November 1993, Sarah filed a claim against Reuven for reimbursement of child related expenditures and requested that his property be attached for non-payment. She received a court order enabling her to enforce the judgment. Reuven continued to demand the sum of \$50,000 as his price for agreement to give Sarah a *get*.

In 1995, with her children now grown, Sarah took out a loan, paid her husband \$16,000 and received a *get*.

In summary, Sarah and Reuven lived apart beginning in 1979 when Reuven abandoned her and their children. Sarah tried to free herself from the marriage by requesting a *get* in the many letters she wrote to Reuven and then filing for divorce in the rabbinical courts in 1984. Despite hundreds of hours in the rabbinical courts, Sarah was unable to obtain her freedom from a non-existent marriage. The rabbinical court did not write a halakhic decision in this case and failed to explain its position in the many documents that we have received. Therefore, we do not know the basis for their decisions or the reasons why the court was unable to reach a solution in this painful case.

OUR PROPOSALS

We believe that the rabbinical courts should have examined the following approaches in order to free Sarah from being chained to a non-existent marriage and to enable her to build a new life and a new family.

1. BETROTHAL (*Kiddushin*) UNDER DURESS

Even if Sarah did not receive a *get* from Reuven, the rabbinical court could have annulled the marriage. Sarah claimed that she agreed to marry Reuven only because she was in fear of Reuven's threats to her and her parents that he would damage her reputation if she did not marry him. If Sarah's agreement to the marriage was obtained under duress, it is clear that the marriage is not valid and she may remarry without a *get*.¹

1 This paragraph is based on Rabbi David Golinkin's responsum in *Responsa of the Va'ad Halakhah*, Vol. 6 (5755-5758), pp. 303-309 and on the sources in *Otzar Haposkim to Even Ha'ezer*, Vol. 14, par. 42:1, pp. 1-3.

According to the Talmud (Kiddushin 2b), a woman may be betrothed only with her consent and not under duress.

In Bava Batra 48b, there is an amoraic dispute regarding betrothal under duress:

Amemar said: if they threatened her [with physical violence] and he betrothed her, the betrothal is valid. (Mar Bar) Rav Ashi² said: the betrothal is certainly not valid. He acted in an unfair fashion, therefore [the Sages] acted in an unfair fashion towards him and have annulled his betrothal.

Amemar wanted to compare betrothal under duress to a sale under duress. In his opinion, the betrothal transaction is comparable to any other transaction which, even if done under duress, is still valid and when the money is received the transaction is completed. But (Mar Bar) Rav Ashi maintained that the betrothal is not valid since the woman was under duress, and the receipt of the money is not proof that she agreed to the betrothal. The Rashbam (ad. loc.) explains that even though the betrothal was valid according to biblical law, we have already learned elsewhere (Gittin 33a) that whoever betrothes does so according to the wishes of the Sages, and if they so decide, they can invalidate the betrothal and convert the betrothal money into a gift. In this case, the Sages do not want such a betrothal under duress and therefore the betrothal does not take effect.

Most halakhic authorities, both early and late, ruled according to (Mar Bar) Rav Ashi. As Maimonides stated (Laws of Matrimony 4:1) "A man who betrothes a woman against her will – she is not betrothed". So ruled Sefardic Sages such as R. Isaac Alfasi (to Bava Batra, ed. Vilna 26b) and R. Solomon Ben Adret (Novellae to Kiddushin 2b s.v. תנן). R. Joseph ibn Haviva (*Nimukei Yosef* to the Rif to Bava Batra 48b) emphasizes:

Betrothal of a woman is not like purchasing land ... and this is the halakhah, that in cases of a sale it is a sale, but in the cases of betrothal, it is not a betrothal.

The Tur and Rabbi Joseph Karo also ruled like Maimonides (*Even Ha'ezer* 42) as did Rabbenu Asher before them (Bava Batra, Chapter 3, par. 51).

And so ruled the Sages of Provence such as the *Ittur* (Part I, letter פ, 77d) and the Meiri (*Bet Habehira* to Kiddushin 2b s.v. harbeh), who added an important point:

2 See R. Golinkin, op. cit., note 3, for a discussion regarding the correct reading of his name.

Even if she said 'I want [to be betrothed]', if it turns out that they forced her to say 'I want', she is not betrothed since she only said 'I want' under duress'.

According to this opinion, in our case, even if Sarah did not explicitly object at the time of the wedding, since she was under duress, her betrothal did not take effect, and she is single.

Rabbi Samuel de Medina wrote in one of his responsa regarding a betrothal which was clearly made under duress:

All of the prophets [i.e. Sages] agreed unanimously that as long as the betrothal was under duress, one should not be concerned [about its validity] (*Even Ha'ezer*, no. 101).

The *Semag* (Positive Commandments, no. 48, 125a) ruled like (Mar Bar) Rav Ashi in Bava Batra, but, in his opinion, the betrothal does not take effect even biblically:

A woman is not betrothed except of her own volition, as it is written 'she leaves... and becomes' (Deut. 24:2) - the verse means that she is betrothed of her own will.

In other words, the *Semag* deduces from a biblical verse that a woman becomes betrothed only of her own volition. In our day, Rabbi Ovadiah Yosef concurred with this (*Yabia Omer*, Pt. 3, no. 20). From all of these sources, it is clear that the halakhic authorities agree that betrothal under duress is not valid.³

True, in our case, there are no witnesses that Sarah was under duress at the wedding and she apparently did not say "I do not wish to marry Reuven", but her mother testified that Reuven threatened them and, as a result, they forced Sarah to marry him. And if one were to argue that duress by people other than the husband is not duress, we would reply that Rabbi Kuk already ruled in another case (*Responsa Ezrat Cohen*, Laws of Betrothal, no. 41, pp. 156-157):

It makes no difference who applied duress; even if others did so... it was not proper to force a woman to be betrothed and therefore the Sages annulled the betrothal.⁴

Furthermore, the printed editions of Bava Batra, the Rashbam and some of the manuscripts have the reading "תלייה" which means "they forced her", in the plural.⁵ Therefore, in this case too, one should rule that Sarah was forced to marry Reuven and therefore the betrothal did not take effect.

3 For additional sources, see *Otzar Haposkim* loc. cit.

4 Cf. R. Golinkin, op. cit., p. 307.

5 For variant readings, see the sources quoted *ibid.*, p. 309, n. 3.

The possibility of annulling Sarah's marriage on account of duress was not raised in any of the discussions in the rabbinical courts that dealt with this case over the course of ten years.

2. THE BETROTHAL WAS "A MISTAKEN TRANSACTION"

In a case where a husband has a hidden defect which was not revealed before the marriage, the wife can claim "I did not betroth myself with this in mind" (Bava Kamma 110b). The betrothal was, therefore, a mistaken betrothal and there is no need for a *get*.

Sarah's betrothal can be defined as "a mistaken transaction" for two reasons:

- A. At the time of the wedding, Sarah was under the legal age for marriage (17), as defined in the Marriage Age Law 5710 - 1950. The law states: "A person who (a) married a girl; (b) performed a wedding... of a girl; (c) married off a girl who was his daughter or was under his guardianship - is punishable by two years imprisonment or a fine...". One can assume that Reuven was aware of the fact that he was breaking the law; therefore he was a criminal. Since Sarah was a minor, she was not presumed to know the law, but had she known, she certainly would not have wanted to marry a criminal and to be partner to a criminal activity.
- B. Reuven was probably a violent person before the marriage. Recent research shows that men who express verbal and physical violence against their wives have a tendency to violence which already developed during their adolescence.⁶ Therefore, from this point of view, the betrothal can also be defined as "a mistaken transaction"; the violence in this case can be defined as a defect which was revealed to Sarah only after the marriage.

In a similar case, Rabbi Moshe Feinstein already ruled (*Igrot Moshe, Even Ha'ezer*, Pt. I, no. 79:1):

... immediately after the wedding it became apparent that he was impotent and could not consummate the marriage... we should rule this as a case of "a mistaken transaction" and annul the betrothal.

6 See American Psychiatric Association: *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Washington, D.C. 1994, pp. 609-612. See also The Beijing Platform for Action, paragraphs 112-130, United Nations Fourth World Conference on Women, Beijing, 1995; Rabbi Abraham J. Twersky, M.D., *The Shame Borne in Silence: Spouse Abuse in the Jewish Community*, Pittsburgh, Pa., 1996.

In other words, if a woman discovers after her marriage that her husband has a pre-existing defect, she can claim that it was “a mistaken transaction” and the betrothal is null and void.

In another responsum (ibid., no. 80) Rabbi Moshe Feinstein came to a similar conclusion regarding a husband who suffered from mental illness. Since the wife did not know about his condition before the marriage, “it should be judged as a case of ‘a mistaken transaction’ and we annul the betrothal”.⁷

The halakhic authorities who oppose annulling the marriage due to “a mistaken betrothal” do so on the basis of Resh Lakish’s principle: “It is better for two to live together than to live alone”. According to this presumption, women are so afraid of being alone, they even prefer to marry a man with a defect; the main thing is not to remain alone.⁸ Therefore, there would be no justification for annulling this betrothal.

But the validity of Resh Lakish’s principle in our day is a matter of dispute. Rabbi Feinstein wrote regarding this issue (*Igrot Moshe, Even Ha’ezer*, Pt. I, no. 79:2):

... there are many women who would not agree to marry a man who has even a small defect, and if he has a large defect, most women would not agree, because Resh Lakish’s principle applies only in cases where a woman would agree [to marry such a man].

In other words, in cases of a grave defect, one cannot say “it is better for two...”, because this is simply not so. Women can say “I will not betroth myself in such a case”. Especially in our time, when many women are far more independent socially and financially, it is possible to say that a woman prefers to remain alone rather than suffer a miserable marriage. A similar approach to Rabbi Feinstein’s is found in a responsum of R. Isaac Elhanan Spector in the nineteenth century.⁹

In our case, there are grounds for defining the betrothal as “a mistaken betrothal”. Sarah did not become betrothed in order to live with a criminal or to be partner to a criminal act; how much the more so did she not marry in order to suffer at the hands of a violent or absent husband.

To our knowledge, this solution to free Sarah from her “anchored state” was not discussed at any of the Rabbinical Court sessions. This, once again, bears out our claim that the rabbinical courts are not properly availing themselves of the halakhic solutions which exist in order to solve the problems of modern-day agunot.

7 Also see *Or Zarua*, par. 761.

8 See Rabbi J. David Bleich, *Tradition* 33/1 (Fall 1998), pp. 90-128.

9 *Responsa Ein Yitzhak*, Pt. I, *Even Ha’ezer*, no. 24, subpar. 41.