THE CENTER FOR WOMEN IN JEWISH LAW

JEWISH LAW WATCH

THE AGUNAH DILEMMA

CASE STUDY NUMBER SIX

THE SCHECHTER INSTITUTE OF JEWISH STUDIES
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THE SCHECHTER INSTITUTE OF JEWISH STUDIES

The Schechter Institute of Jewish Studies is one of the leading academic institutions of Jewish studies in the State of Israel. The unique approach of Schechter combines traditional and modern methods of study. Historical and textual discussions of Jewish sources are accompanied by cultural and topical discussions, which grapple with the ethical and social dilemmas of Israeli society today. The Schechter Institute offers an interdisciplinary M.A. degree in Jewish studies in classic fields such as Bible, Jewish Thought and Jewish History alongside innovative fields of study, which examine Gender, Education, the Community and Art from a Jewish perspective.

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In the fields of applied research, the Schechter Institute runs the Institute of Applied Halakhah, the Center for Judaism and the Arts and the Center for Women in Jewish Law.

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 *agunah* 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

In this issue of *Jewish Law Watch* we have not come to suggest solutions in order to free an *agunah*, but rather to protest the attempt by a Regional Rabbinic Court to turn a woman who had already received a *get* according to Jewish law into an *agunah* fifteen months after the *get* was given. Indeed, the Supreme Rabbinic Court in Jerusalem annulled that unfortunate ruling, but the very fact that a Regional Rabbinic Court issued such a ruling shows how far the Rabbinic Court system needs to go until it is truly attentive to the "cry of the wretched".

We thank Adv. Sharon Shenhav for finding the case and Rabbi Monique Susskind Goldberg for writing the case study in consultation with the staff of the Center. The case study was translated into English by Dahlia Friedman and myself, and Prof. Alice Shalvi corrected the English style. I then edited both versions and saw the case study through the press.

It is our hope that the *Jewish Law Watch* will make public the anguish of modern-day *agunot* and will spur Rabbinic 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.

Prof. David Golinkin
Schechter Institute of Jewish Studies
Jerusalem
January, 2003

CASE STUDY NUMBER SIX

by

Rabbi Monique Susskind Goldberg

THE FACTS

''Leah'' and ''Yehudah''[1] were married in Israel on May 28, 1981 and their children were born in 1985 and 1990.

Until 1993, the couple lived a totally secular life. That same year, Yehudah started to become observant and severe tension surfaced between the couple because Leah did not agree to follow in his footsteps. Yehudah began to absent himself frequently from their home.

As a result, on February 17, 1994, Leah filed suit in the District Court seeking alimony, child support, custody of the children and the right to determine how they would be educated. It should be noted that in the letter of response submitted by Yehudah in his defense, he accepted that his children would receive a secular education and these are his words: ''I would like the children to study in a religious school. Today, I am willing to accept the fact that they are studying in the educational institutions where they are'' (from the District Court ruling, 5.2.95, p. 30).

On April 28, 1994, as a result of the above-mentioned suit filed by Leah, Yehudah filed for divorce and division of joint property with the Regional Rabbinic Court in Ashdod. In this suit, the husband asked the court to obligate the wife to accept a divorce and ''to rule on the division of joint property''. The nineteen paragraphs of the suit made no mention of the custody of the children and their education.

On February 8, 1995, the Regional Rabbinic Court in Ashdod decided that

1) The parties would divorce each other with their consent;
2) The representatives of the parties would attempt to work out an agreement on the matter of property, as this is a bone of contention and at this point is hindering a divorce;

1 The names have been changed to protect the identity of those involved.

3) The parties are aware that there is a need for a divorce, that they are living apart, and that due consideration should be given to the matter of a consensus regarding the children's education.

The District Court's ruling of May 2, 1995, stated that the husband must pay child support; that the children ''will be in the mother's custody''; that the children ''are entitled to continue maintaining the secular lifestyle which they had been living until then''; and that the father ''shall refrain from making any change in the children's lifestyle... as well as refrain from transferring them out of the secular public schools they are attending into religious educational institutions'' (pp. 32-34).

The reason for the latter decision is the ''children's welfare,'' and as the court ruling stated (p. 32):

> A change in the current educational framework of the children, as well as their way of life at home and in social frameworks outside the home, would harm the children's welfare and may cause them social and emotional conflicts... It is not possible that the children should live in the custody of their mother, who leads a secular lifestyle, and nevertheless receive a religious education, in accordance with the lifestyle of their father, who does not live with them.

On October 18, 1995, the wife filed a request with the Regional Rabbinic Court in Ashdod asking for a separation order, due to physical violence which the husband had directed against her.

On October 22, 1995, the Rabbinic Court held a hearing regarding her request. At that hearing, a divorce agreement was drawn up between the parties which stated that questions of alimony and custody of the children and division of property would be discussed in the Rabbinic Court after the divorce had been issued. According to this agreement, the court ruled that ''a *get* (divorce) must be arranged immediately''. It was also decided that the court would contact the welfare services in the community where the couple lived in order to ''request a report regarding the custody of the children''. On that same occasion, the court deemed it appropriate to arrange a divorce as soon as possible (according to the wife's representative, due to the husband's extremely violent actions against the wife).[2] A *sofer stam* (religious scribe) was summoned to the court and the couple divorced.

2 In the February 11, 1997 appeal to the Supreme Rabbinic Court. This document will be referred to hereafter as "the appeal".

On March 26, 1996, the welfare services department in the couple's community presented its opinion to the Rabbinic Court. After talking with the parents and the children, the following conclusions were reached:

> The children's parents are in a difficult relationship that has been going on for some time. The conflict centers on division of property and custody of the children. The conflict is taking place against a backdrop of the great differences in the parents' religious outlook and values. The children are caught in the middle and are involved in the conflict. They know and hear that both parents want custody and are very much afraid of the possibility that they will be transferred to the father's custody. According to the 1994 Tel Aviv District Court ruling, the mother has custody of the children and their education is to be determined accordingly. Indeed, the children are in the mother's custody. We recommend that the mother continue to be the custodian of the children. She is a loving and responsible mother, who tries to be attentive, and provides for their physical and emotional needs.

On March 28, 1996, the Ashdod Regional Rabbinic Court issued a ruling stating: ''Custody of the parties' children will go to the mother for the next three years'' and ''the manner of the children's education should be a compromise – **they should be registered in a religious public school''.**

On September 26, 1996, the wife appealed to the Supreme Court (sitting as the High Court of Justice) against the above ruling, and on December 5, 1996, the Supreme Court ruled that the Rabbinic Court issued the ruling without authority to do so, because the question of the children's education was first posed to the District Court before the divorce suit; because the divorce suit did not include the issue of the children's education; and because the wife did not consent to give the Rabbinic Court the authority to discuss the education of the children. The ruling further stated that the fact that the parties agreed that the Rabbinic Court would discuss the issue of child custody did not give it authority to determine their education. Therefore, the High Court of Justice ruled:

> A decisive order must be issued indicating that the Rabbinic Court acted without authority in dealing with the children's education; the Rabbinic Court's decision with regard to the children's education according to its ruling on March 28, 1996 is nullified; and the authority to discuss the matter of the children's education is given to the District Court.

On January 2, 1997, in direct response to the Supreme Court ruling, without anyone approaching them, the Regional Rabbinic Court in Ashdod ruled that ''a doubt has arisen as to the validity of the *get* due to concern that the husband granted it in the belief that the education of the children, which in his eyes was a condition for his consenting to give his wife a *get*, would be under the jurisdiction of the Rabbinic Court''. The decision of the Rabbinic Court was ''to postpone the validity of the *get*'' – which, as mentioned, had been issued a year and a quarter earlier, on October 22, 1995! ''The wife is prohibited from marrying another man until another ruling is issued in her case'' (see Appendix A).

The Rabbinic Court instructed the Ministry of Interior's population registry not to register any changes in the wife's personal status on the basis of the Certificate of Divorce issued at the time of the divorce. On March 19, 1997, the office of the population registry replied ''that on the basis of the Certificate of Divorce presented by the wife, her personal status was changed to 'divorced' back on November 5, 1995'' (see Appendix B). In the meantime, the husband had married another woman and, by issuing this ruling, the Rabbinic Court transformed the husband into a bigamist and into a violator of Rabbeinu Gershom's ban against bigamy!

On February 11, 1997, Leah appealed to the Supreme Rabbinic Court in Jerusalem against the Rabbinic Court ruling postponing the validity of the *get*.

On May 28, 1997, the Supreme Rabbinic Court in Jerusalem issued a majority ruling whereby ''The [above] ruling is null and void... the case of these parties will from this point on be transferred for discussion to the Regional Rabbinic Court in Rehovot'' (see Appendix C).

In the ruling, Rabbi Shlomo Dichovsky wrote: **''I must say that we were surprised and astonished by the above ruling. How can the validity of a *get* be questioned a year and a quarter after it was issued?''**

OUR POSITION

In this issue of *Jewish Law Watch*, we do not aim to present proposals and solutions in order to free an *agunah* (anchored woman), **but to describe an attempt by a Regional Rabbinic Court to transform a woman who had already been divorced and obtained a *get* (bill of divorce) as required by *halakhah* (Jewish religious law) into an *agunah* by questioning the validity of the *get* arranged a year and a quarter earlier by that same Rabbinic Court!** That court ruled as follows: ''The court hereby decides to postpone the validity of the *get*

according to which the parties divorced in our court on 28 Tishrei 5756 (22.10.95) and consequently, the wife may not marry another man until another ruling is issued in her case'' (see Appendix A). The above court also instructed the Ministry of Interior not to change the wife's recorded personal status until after clarification of the matter.

We also wish to express our esteem for and full agreement with the majority opinion of the Supreme Rabbinic Court in Jerusalem after the wife appealed against the Regional Rabbinic Court's decision concerning the validity of the *get*. Below are several key points that were highlighted in the appeal and in the Supreme Rabbinic Court's decision.

1. HOW CAN THE VALIDITY OF A GET BE QUESTIONED A YEAR AND A QUARTER AFTER IT WAS ISSUED?

Rabbi Shlomo Dichovsky writes about this question in the Supreme Rabbinic Court's ruling:

> In all Rabbinic Courts – in the Land of Israel and all over the world – there is an established method for nullifying declarations and breaking oaths and vows in order to prevent any shadow of a doubt regarding a *get*. Upon completing the arrangement of a *get*, it is announced that there is a ban on speaking unfavorably of the *get*, so how can the Rabbinic Court itself speak unfavorably of the *get* which was given [in that same court]?

Indeed, according to *halakhah*, writing and issuing a *get* must be done before a Rabbinic Court using a prescribed format in order to eliminate the possibility of questioning the validity of the *get* in any way. We read the following in *Shulhan Arukh Even Ha'ezer* 134:3:

> Prior to writing the *get*, [the husband] must void all declarations he made and say the following: I hereby void all declarations I made regarding this *get*. And I also void anything that may, when it comes to pass, lead to the nullification of this *get*. And I hereby testify about myself that I have said nothing regarding this *get* that would nullify it and I hereby disqualify any witness or witnesses who testify that I said or related anything that would nullify this *get* or detract from the force of this *get* due to that declaration or remark.

Moreover, Rabbeinu Tam relates: ''And I further ruled in the gathering in the market of Troyes with a very strict oath and decree that no Jew may question any *get* after it has been given, even immediately afterwards''.[3] This decree of

3 *Sefer Hayashar Le'Rabbeinu Tam*, *Helek Hahidushim*, Jerusalem, 5719, end of section 140, p. 105.

Rabbeinu Tam is also cited in the *Mordechai* on *Gittin*, end of *Hilkhot Haget* (Vilna edition, folio 9a),[4] and every Rabbinic Court usually recites the ban aloud immediately after arranging a *get* (*Shulhan Arukh Even Ha'ezer* 154:22):

> A ban must be imposed on all those present at the issuing of a *get*, that they not speak unfavorably of the *get* [Rema:'' (and they mention that Rabbeinu Tam decreed in a gathering with his students against anyone who speaks unfavorably of a *get* that was given).

If so, how could the Regional Rabbinic Court question a *get* which it itself had arranged? How strange!

2. THE VALIDITY OF A GET CANNOT BE QUESTIONED BECAUSE OF VIOLATIONS OF THE DIVORCE AGREEMENT

As the wife's representative wrote in her appeal:

> It is well-known that every divorce agreement has conditions or various agreements relating to the children, alimony and sometimes even to property. It is inconceivable that it would be possible to annul a *get* when a given party does not uphold some condition or agreement. There is no precedent, to the best of my knowledge, of a Rabbinic Court nullifying a *get*... due to the fact that the father did not pay his obligatory child support payments, something which happens frequently.

And so writes Rabbi Dichovsky in the ruling of the Supreme Rabbinic Court:

> In every *get* arrangement, there is a divorce agreement or court ruling formalizing the related issues. In no small number of divorce cases, there are violations by one party or another of the various sections of the divorce agreement, including essential sections – is it conceivable to question the validity of the *get* because of these violations, which may also occur years after the *get* was issued?
>
> Rabbinic Courts have always distinguished between a *get*, which is a *sefer kritut*, a final and absolute bill of divorcement, and all the related issues. When there is a violation of the divorce agreement – even a basic violation – there is a remedy for it in legal proceedings, **but it is not possible – not**

4 For a discussion and other versions of this decree, see Israel Schepansky, *Hatakanot B'Yisrael*, vol. I, Jerusalem, 5753, pp. 160-162; and *Mordechai* on *Gittin*, Mayer Rabinowitz edition, *Studies and Sources* (ed. H.Z. Dimitrovsky), book 2, vol. II, Jerusalem 5750, pp. 870-872.

even for the Rabbinic Court – to hold the *get* as ''a hostage'' and question its validity (see Appendix C).

3. THE HUSBAND DID NOT SPECIFICALLY MAKE ISSUING THE *GET* CONTINGENT ON A DISCUSSION OF THE CHILDREN'S EDUCATION

As mentioned above, the Regional Rabbinic Court cast doubt on the validity of the *get* lest the husband gave it ''on condition''. However, a conditional *get* must be prepared in a precise manner in accordance with the laws of conditions and in conditional language based on the rules cited in *Shulhan Arukh Even Ha'ezer* 38:2-3:

> Every condition must contain four things and they are: it should be doubled, the positive aspect should precede the negative aspect, the condition should be stated prior to the action, and the condition should be something that can be upheld. And if any one of these four conditions is absent, then the condition is void as if no condition existed at all...

The protocol of the Regional Rabbinic Court proceedings on October 22, 1995, indicate that there was no conditional wording in the husband's consenting to give his wife a divorce. As stated in the appeal: ''At the time he granted the *get*, the husband did not mention any condition whatsoever, nor the question of the children's education. Therefore the *get* was issued properly, with no conditions attached''.

In addition, it should be noted that the ceremony of granting the *get* includes an explicit declaration by the husband, who declares that the *get* is being granted unconditionally and the *Shulhan Arukh* writes in the *Seder Haget* (parag. 14): ''The Rabbi shall ask the husband who is divorcing: Are you giving this *get* of your own accord and without any duress?... and the husband who is divorcing answers... I am granting this *get* wholeheartedly under no duress **and with no conditions''.**

4. FROM A LEGAL PERSPECTIVE, WAS THE REGIONAL RABBINIC COURT'S DECISION REGARDING THE CHILDREN'S EDUCATION, ISSUED AFTER THE CIVIL RULING, PERMISSIBLE?

As mentioned, already on February 17, 1994, Leah appealed to the District Court about the children's education. The court ruled on May 2, 1995, that the father ''shall refrain from making any change in the children's lifestyle... as well as refrain from transferring them out of the secular public schools they are attending into religious educational institutions''.

Therefore, when the Regional Rabbinic Court ruled two years later that ''they should be enrolled in a religious public school'', Leah appealed to the High Court of Justice, arguing that that ruling was issued without the authority to do so, based on the principle of ''the jurisdiction race''. If the wife had first appealed to the District Court regarding the children's education, discussion of this matter must continue in that court. And that is indeed how the High Court of Justice ruled in the above ruling and in the words of Justice Eliezer Goldberg:

> A decisive order must be issued, indicating that the Rabbinic Court acted without authority in dealing with the children's education; the Rabbinic Court's decision with regard to the children's education... is nullified; and the authority to discuss the matter of the children's education is entrusted to the District Court.

5. WAS THE VALIDITY OF THE *GET* REALLY IN DOUBT?

Because the husband had married another woman several months after giving the *get*, Leah's counsel justly writes in her appeal: ''If the Rabbinic Court truly had doubts about the *get*, it should have immediately summoned the husband and required him to give the *get* again and obligated him to pay punitive support payments until the *get* was given again''.

Indeed, in the decision of the Supreme Rabbinic Court, Rabbi Dichovsky writes: ''If the Rabbinic Court had seriously intended to question the *get*, then the husband would be charged with bigamy, because he has two wives and he would have to divorce one of them, unconditionally and immediately''.

It seems to us that a respectable court such as the Regional Rabbinic Court would not make such a gross error. Therefore it appears that the Regional Rabbinic Court was not really concerned with the validity of the *get;* rather the postponement of the *get* was tendentious: to pressure the wife into sending the children to a religious school. The Supreme Rabbinic Court seems to be implying as much when it writes that ''the Rabbinic Court should not hold the *get* as a 'hostage' ''.

Likewise, we are inclined to agree with the wife's counsel when she writes: ''It seems that the Rabbinic Court's ruling... was intended to punish the wife for daring to appeal to the High Court of Justice''.

6. THE REGIONAL RABBINIC COURT WAS BIASED IN FAVOR OF THE HUSBAND AND HOSTILE TO THE WIFE

The wife's counsel further wrote in her appeal: ''The Rabbinic Court was biased in favor of the husband and issued rulings in his favor without even being

requested''. Furthermore, after the ruling that questioned the validity of the *get*, the Regional Rabbinic Court, on its own initiative, sent a letter to the husband asking whether he was currently interested in custody of the children, and this despite the report from the welfare services which specifically states that the children must remain with their mother.

All the facts indicate that the wife's counsel was apparently correct when she wrote that ''the court demonstrated particular hostility toward the wife''. It is possible that the Supreme Rabbinic Court felt the same way, as we read in the majority opinion: ''The parties' matters will be transferred from this point on for discussion in the Rehovot Regional Rabbinic Court''. One of the *dayanim* (Rabbinic Court judges) did not agree with this point and wrote: ''Is a court that erred in its conclusion on a given matter already disqualified from continuing to discuss this case?'' However, the Supreme Rabbinic Court ruled according to the majority and decided to move continuation of the discussions on dividing the couple's property to another Regional Rabbinic Court, apparently because they too sensed the first Regional Rabbinic Court's hostility toward the wife.

IN CONCLUSION

In the case reviewed above, the Regional Rabbinic Court attempted to question the validity of a *get* that had been issued fifteen months earlier. It is hard to believe that a respectable court would make such a gross error as to think that the husband had issued the *get* conditionally. After all, the judges were present when the *get* was given and knew that there was no conditional language used when the husband wrote and gave the *get* and that while he was writing the *get* he also voided all previous declarations relating to it. Therefore, it can be assumed that the above Regional Rabbinic Court was not acting innocently when it did what it did. Rather it had other motives for nullifying the *get,* to wit:

1. In the first place, the judges thought that by placing doubt on the *get*, they could force the wife to give the children a religious education, which was more to the court's own liking. There is a conflict here between a religious husband and a secular wife and the court supported the religious spouse. Otherwise, how can one understand why, on their own initiative, the *dayanim* sent a letter to the father asking if he was interested in obtaining custody of the children, when the court itself, in the wake of the social welfare services' recommendation, decided that the children must remain with their mother?
2. There was also a clash between authorities here, between the Regional Rabbinic Court and the civil courts. The former court consciously issued a ruling on a matter that was no longer in its jurisdiction – the children's

education – because the wife had first appealed to the civil court. Apparently, the Regional Rabbinic Court judges were angry that the wife had appealed to the High Court of Justice in order to obtain what she wanted. It is possible that questioning the validity of the *get* and making the woman an *agunah* were a way for the court to punish her and demonstrate their power.

3. Moreover, we are again witness to the fact that, in many cases, the *dayanim* are incapable of taking into account the wife's side. In a conflict between a couple, the courts tend to be more understanding of the husband's side.

Nevertheless, there is some consolation in the fact that there are *dayanim* like Rabbi Dichovsky and Rabbi Eliyahu Bakshi Doron who offer hope that it is possible to change the way things are, and that the Rabbinic Courts are capable of pursuing justice in matters of marriage and divorce.

Appendix A

Ashdod Regional Rabbinic Court

Ruling

The parties appeared at length before the court and the court made a great effort to help them work out a divorce agreement. During these efforts, it was important to the husband to see to the religious education of his children, who were in the wife's custody, and to that end he insisted that the divorce agreement would include a specific section noting that the Rabbinic Court would have the authority to discuss the children's custody after the divorce, even though this matter had already been discussed previously in the District Court. Indeed, in the divorce agreement, a clause was included whereby the parties agreed that the issue of the custody of the children would be in the Rabbinic Court's jurisdiction after the divorce.

The husband honestly believed that in so doing he was guaranteeing that even the matter of the children's education would be discussed by the Rabbinic Court as part of the custody of the children.

And indeed, on March 28, 1996, we ruled on the matter of the children's education, but the wife submitted a petition to the High Court of Justice and on 24 Kislev 5757 (5.12.96) a ruling was issued stating that we are not authorized to rule on the matter of the children's education, as distinct from the custody issue.

That being the case, there arose a doubt regarding the validity of the *get,* due to concern that the husband issued it in the belief that the children's education, which was in his opinion a condition for his consenting to give his wife a *get*, would be within the court's jurisdiction.

The court maintains that there is a need for an in-depth clarification of the question of the validity of the *get* in these circumstances and therefore the court has decided:

1. To postpone the validity of the get according to which the couple divorced in our court on 28 Tishrei 5756 (22.10.95) and, consequently, the wife may not marry anyone else until another ruling is issued in her case.
2. The Rabbinic Court also instructs the Ministry of Interior's population registry not to record any changes in the wife's personal status on the basis of Certificate of Divorce no. _____ , issued to the wife on 20.10.95 and the parties should be summoned.

Issued on 23 Tevet 5757 (2.1.97)

[Names of the *dayanim* and of the chief secretary]

Appendix B

The State of Israel
Ministry of Interior
Population Registry — 10 Adar II 5757
Passports and Registry Department — March 19, 1997

To: Mr. _____
Chief Secretary
Rabbinic Court
Ashdod

Dear Sir,

Re: Leah, identity no. _____
Yehudah, identity no. _____

References: Ruling issued in case no. _____ on 2.1.97

In the ruling presented, the Rabbinic Court instructed that no changes should be made in the personal status of the wife on the basis of Certificate of Divorce no. _____ issued to the wife on 20.10.95 and the parties should be summoned.

We wish to bring to your attention that on the basis of the Certificate of Divorce presented by the wife, her personal status was already changed to ''divorcée'' on November 5, 1995.

For your information.

Sincerely,

_____

The passports and population registry department

Appendix C

Supreme Rabbinic Court Jerusalem

Date of issue: 21 Iyar 5757/28.5.97

Panel of Dayanim

Rabbi Eliyahu Bakshi Doron, The Rishon L'tziyon, President

Rabbi Shlomo Dichovsky – Dayan

Rabbi Shlomo Ben Shimon – Dayan

Re: Divorce

Decision

The Regional Rabbinic Court in Ashdod (ruling of 23 Tevet 5757) questioned the validity of a *get* and instructed the appellant not to marry another man pending an in-depth review of this matter. Likewise, the Court instructed the Ministry of Interior not to change the appellant's personal status to divorcée until after completion of the review.

The parties divorced on 28 Tishrei 5756 – approximately a year and three months earlier – and the divorce agreement approved by the Rabbinic Court stated that ''the matter of child custody and support would be discussed by the Rabbinic Court after the *get* is issued and the parties authorize the court to discuss this matter under its exclusive jurisdiction''.

On 8 Nisan 5756, the Rabbinic Court ruled on the matter of the children's education and determined that they would go to a religious public school (a compromise between the appellant's wish to enroll them in a secular public school and the respondent's wish to enroll them in an ultra-Orthodox school).

In an appeal to the High Court of Justice, the appellant argued that the education of the children is not part of the custody arrangement and the jurisdiction lies with the District Court that handled it in the past. Her appeal was accepted on 24 Kislev 5757.

As a result of the High Court of Justice's ruling, the Rabbinic Court ruled that ''there arose a doubt regarding the validity of the *get*, due to concern that it was issued by the husband in the belief that the children's education, which was in his opinion a condition for his consenting to give his wife a *get*, would be within the court's jurisdiction''.

The petition before us is appealing this ruling.

I must say that we were surprised and astonished by the above ruling. How can the validity of a *get* be questioned a year and a quarter after it was issued?

In all Rabbinic Courts – in the Land of Israel and all over the world – there is an established method for nullifying declarations and breaking oaths and vows in order to prevent any shadow of a doubt regarding a *get*. Upon completing the arrangement of a *get*, it is announced that there is a ban on speaking unfavorably of the *get*, so how can the Rabbinic Court itself speak unfavorably of the *get* which was given [in that same court]?

And if the appellant were married – the respondent is married – and had children, then the Rabbinic Court would be questioning the status of the children – and that is inconceivable.

In every *get* arrangement, there is a divorce agreement or court ruling formalizing the related issues. In no small number of divorce cases, there are violations by one party or another of the various sections of the divorce agreement, including essential sections – is it conceivable to question the validity of the *get* because of these violations, which may also occur years after the *get* was given?

Rabbinic Courts have always distinguished between a *get*, which is a *sefer kritut*, a final and absolute bill of divorcement, and all the related issues. When there is a violation of the divorce agreement – even a basic violation – there is a remedy for it in legal proceedings, but it is not possible – not even for the Rabbinic Court – to hold the *get* as ''a hostage'' and question its validity.

Had the court seriously intended to question the *get*, then the husband would be charged with bigamy, because he has two wives, and he would have to divorce one of them unconditionally and immediately.

In conclusion, the ruling is null and void and the Rabbinic Court would do well to nullify it on its own. The parties' case will from this point on be transferred to the Regional Rabbinic Court in Rehovot.

(–)

Shlomo Dichovsky

I agree with the above

(–)

Eliyahu Bakshi Doron – President

I agree that the ruling in question is null and void, but I do not agree with the end of the ruling deciding to move further discussion of the case to the Rabbinic Court in Rehovot.

Is a court that erred in its conclusion on a given matter already disqualified from continuing to discuss this case? That would establish a precedent for disqualifying a Rabbinic Court from ruling on any case in which the Supreme Rabbinic Court voided a ruling of the lower court.

This seems inappropriate and in my opinion the Regional Rabbinic Court in Ashdod can continue to hear the case and, of course, any decisions by it regarding property can be appealed in the usual manner.

(–)

Shlomo Ben Shimon

It was decided according to the ruling of Rabbi Bakshi Doron and Rabbi Dichovsky.

Issued on 21 Iyar 5757

(28.5.97)

[Names of the *dayanim* and of the chief secretary]

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