

Agunah Awareness Shabbat

This Shabbat is an international Agunah Awareness Shabbat, promoted by ORA, the Organization for Resolution of Agunot. I support ORA and I definitely support agunot. But I must admit that I find speaking about divorce in a derashah challenging. All aspects of divorce are very sensitive – for the couple, for their parents, for their children, for their friends. That's why I sent out the warning email I did on Friday, in advance of this derashah. I want to take the next ten minutes to talk about how we can help divorcing couples avoid deteriorating into agunah situations, with the aid of an insight into Megillat Esther.¹

First and Last

My first involvement with an agunah situation was in 2002, with a husband who didn't want to issue a get. He was Israeli, and he was holding out for money. I called his 80 year old mother in Israel to tell her what was going on - at 2 AM her time. Just minutes later he called me to say he would give the get.

Not all of my involvements have been so successful. Over my last 18 months in Toronto I spent innumerable hours trying to arrange a particular get. Ontario actually has a strong get law, but this guy is willing to go to jail rather than cooperate. His wife is still an agunah today.

In between those two cases I dealt with a few husbands who threatened to withhold a get unless they received favorable divorce terms; a wife who refused to receive a get just because her husband wanted to give one; and a man who refused to cooperate with chalitzah because he wanted money. What can we do, as a community, to prevent things like this?

Halachic Prenuptial Agreements

There are many steps we can and must take, both to prevent agunah situations and to deal with them after they arise. Those are fodder for many more derashot. But our best tool for prevention is the Halachic Prenuptial Agreement, which can also be signed by couples who are already married; I know Eitz Chayim hosted an event with postnuptial agreements in 2016. These agreements work – the prenup promoted by the Rabbinical Council of America is reported to have a 100% Success Rate.

The RCA's agreement has just two parts. I expect to give a shiur on the halachic background after minchah this evening, but in a nutshell:

- Part One is a Binding Arbitration Agreement, a contract stating that if, Gd forbid, the marriage breaks down and they stop living together, they will resort to a specific Beit Din, named in the document.
- Part Two is a Support Obligation, a contract stating that if, Gd forbid, the marriage breaks down and they stop living together, and the wife is willing to appear in the beit din but the husband is not, then the husband will pay a set sum per day as his support obligation for his wife.

¹ Historically, until the 19th century, there wasn't much outright get refusal, because a beit din could rule that a get was required, and seize assets or authorize physical punishment in order to achieve "cooperation". In the immortal words of a Mishnah (Arachin 5:6, 21a), adopted by the Rambam (Mishneh Torah, Hilchot Geirushin 2:20) and applied in the Shulchan Aruch (Even Ha'Ezer 154), "כופין אותו עד שיאמר רוצה אני", we compel him until he says he is willing."

But when European governments emancipated Jewish communities in the 19th century, they also pulled the plug on the Beit Din's powers of compulsion. (See Rabbi Michael Broyde, *Marriage, Divorce and the Abandoned Wife in Jewish Law*, Chapter Four) By the second half of the 19th century there were advertisements in Eastern European newspapers looking for absconding husbands. (See Haim Sperber, *Agunot, 1851-1914: An Introduction* <https://www.cairn.info/revue-Annales-de-demographie-historique-2018-2-page-107.htm>) The problem materialized in the US in the beginning of the 20th century, and it remains a crisis today. This is less of an issue in Israel, which has fewer agunot per capita in Israel than elsewhere. Numbers vary depending on who is recognized as an agunah, but it's clearly less – because the State of Israel empowers the Beit Din to imprison a spouse who refuses to cooperate in the get process. For more on the statistics in Israel, and the challenges as well, see Rabbi Michael Broyde, Chapter Four footnote 10, and Dr. Rachel Levmore at <https://www.jpost.com/opinion/op-ed-contributors/the-aguna-a-statistic-or-a-real-problem> and <https://www.jewishideas.org/article/ethics-agunah-problem>, as well as articles at <https://www.israelnationalnews.com/news/324085> and <https://www.brandeis.edu/hirjw/blog/2020/0107-part1.html> So what can we do to prevent these situations?

The Importance of Defusing Competition

People often assume that the reason these agreements work is Part Two, the support payment. But experienced dayanim say that the real driving force of the prenup is the Arbitration Agreement, because it eliminates the impetus and opportunity for each spouse to fight for an advantage.

The vast majority of human beings who get married expect and desire to remain peacefully married. If things break down, the dynamic certainly changes – but most spouses don't normally leap to actively harm the other. In fact, a popular figure in the secular literature² says that in North America, only 20% of divorces are classified as “high-conflict”. That's not great, but it means that 80% are not high-conflict.

But the Halachic world is worse. In a 2017 article,³ Dr. Yitzchak Schechter, a clinical psychologist, reported study results contending that 57% of Orthodox Jewish divorcees describe their divorce as “acrimonious” or “highly contentious”.⁴ Why are we so much worse than our neighbors?⁵ The first factor Dr. Schechter named was the get process itself. Not the beit din part of it – more than 50% said that their beit din process was either “positive” or “very positive”. It seems to be the process of selecting a beit din, with each side pushing for a venue they believe will favor them. That doesn't exist in general society, but it does in our world, and it makes divorce competitive, for very high stakes.

High stakes competition promotes deception and manipulation; we feel compelled to pursue what's best for us. That's a quick route to join the 57% who experience an acrimonious or highly contentious divorce.

Keshet Starr, the head of ORA, said as much in a 2022 article:⁶ “Engaging in “acts of war”... tends to start a cycle of animosity, each partner doubling down to protect themselves and ‘upping the ante’ in the conflict.”

That's why the Arbitration Agreement is effective; it extinguishes a potential flashpoint. And it points to something we as a community can do, namely, avoid unintentionally encouraging a fight.

Megillat Esther and The Role of the Community in Avoiding Competition

Consider the heroes and villains of Megillat Esther. Who are the villains? Haman and Achashverosh. Midrashim add Vashti, and Memuchan. But a closer read of the story reveals two more sets of villains:

- In the third perek, Mordechai refuses to bow to Haman, but Haman doesn't notice. Haman only finds out when the royal servants at the gate see what Mordechai is doing daily and ויגידו להמן, they decide to tell Haman. The royal servants are the third man in, villains for sparking a fight that doesn't involve them.
- In the fifth perek, Haman is angry that Mordechai still won't bow, and he summons his wife Zeresh and his close friends. Their reaction is not just sympathy; they give him an idea: Make a giant gallows, and hang Mordechai! Zeresh and Haman's friends are the third man in, villains for sparking a fight that doesn't involve them.⁷

When we give advice to people who are involved in a divorce, we run the risk of emulating the mistakes of the royal servants, Zeresh, and Haman's friends. Dr. Schechter makes this point, blaming: “the very close-knit family systems in the Orthodox world; and the ‘too-many-cooks-in-the-kitchen’ phenomenon—the fact is there are often many players and authorities (community rabbis, mentors, family members, et cetera) giving advice and directing the divorcing couple.”

Keshet Starr makes this point, too, saying: “Too often, a former husband and wife are encouraged by their friends and family to engage in acts of war, to protect themselves and ‘fight for what's yours!’... In times like this, we need a village to offer support—not an army to go to battle.”

² See, for example, <https://www.divorcenet.com/resources/6-strategies-for-surviving-a-high-conflict-divorce.html>

³ <https://jewishaction.com/family/marriage/data-divorce-q-dr-yitzchak-schechter/>

⁴ Even if all 57% include reporting by both members of the couple, that means we are at 28.5%, while the rest of society is at 20%.

⁵ I wonder – he claims that the divorce rate in the Orthodox Jewish world is about 10%, much lower than in general society. Maybe that means that the people who actually go to divorce are the most acrimonious situations?

⁶ <https://18forty.org/articles/a-letter-to-those-going-through-divorce-and-everyone-else/>

⁷ This reminds me of a comment by Rabbi Mordechai Miller, of the Gateshead Yeshiva (*Sabbath Shiurim*, Korach), who noted that Datan and Aviram were swallowed up along with Korach. Why were Datan and Aviram involved in that fight at all – they weren't Leviyim, they didn't stand to gain anything! And that's why they deserve such a terrible punishment. For more see my Korach 5769 derashah.

We must offer support, validating the pain of our friends, listening empathetically, letting them know we are in pain over their suffering, but we need to be careful not to inspire aggression, not to point out more reasons for umbrage, not to be the match that lights the fire and makes our friends angrier. Their lawyers can suggest a course of action, while we provide the support they deserve.

Mishlei⁸ criticizes someone like Zeresh, who catalyzes fights. We need to make sure that our support is positive and productive.

The Ketubah

The Rambam wrote that the Torah transformed marriage. Prior to Sinai, conjugal relations were generally lawless and ritual-less. Halachah imposed changes that formalized the relationship and created legal protections for women. There is a transaction with witnesses, and a presumption of permanence. A man accepts responsibility for his wife's well-being, especially on the financial level.⁹

Rabbi Michael Rosensweig¹⁰ adds that the institution of a ketubah – a payment guaranteed to a woman upon the dissolution of the marriage – harnesses a financial obligation to sanctify the marriage, guaranteeing the wife security and dignity.

These values – permanence, security, dignity, sanctity – are at risk when couples divorce. A prenuptial agreement can reduce the risk, with its Support Obligation, and primarily with its Binding Arbitration Agreement. It works well. And the rest of us, the friends and family, can do our part to be not the inciting army, but the supportive village.

⁸ Mishlei 26:17

⁹ Mishneh Torah, Hilchot Ishut 1

¹⁰ See my shiur at <https://www.yutorah.org/lectures/1042949/>