

## THE AGUNAH CRISIS: THE HALAKHIC PRENUP AND ORA

### 1. *Pitchei Teshuva, E.H. 154:4 (Quoting Beit Meir)*

Therefore it is better, in my opinion, to not force the husband to give the *get* but rather to demand support payment or the return of the dowry and the payment of the *ketubah* until, from this, he will unwillingly choose to give the *get* as a small compromise and this presents no concern.

### 2. *Shulchan Arukh, E.H. 70:12*

A woman who leaves her husband's home and lives in another home, if she came because of a bad rumor about her in her neighborhood or a similar reason, he must support her if she claims support. But if she doesn't claim support, she relinquishes her former rights to support.

Rama: This is also the law if she had a fight with her husband and she no longer lives with him because of his preventing her from doing so, and she borrowed support, he has to pay it back; but if she is preventing herself from doing so, he doesn't have to pay it back since a husband is only obligated to pay support for his wife when she is living with him.

### 1. פתחי תשובה אבן העזר סימן קנד ס' ד

לכן המוטב לענ"ד שלא לכפותו על הגט כי אם על החיוב מזונות ופרנסה או לתשלומין הנדוניא והכתובה עד שמכח זה בע"כ ירצה עצמו לגט ע"י פשרה קצת ובזה אין שום חשש.

### 2. שו"ע אה"ע סימן ע"ס ק"ב

האשה שיצאה מבית בעלה והלכה לבית אחר – אם באה מחמת טענה שהיא בשכונה שיוציאו עליה שם רע וכיוצא בזה, חייב לזונה שם אם תבעה מזונות. אבל אם לא תבעה – מחלה על מזונות דלשעבר:

הגה: וה"ה אם היתה לה קטטה עם בעלה ולא מתדר לה עמו והמניעה ממנו ולותה למזונות – צריך לשלם. אבל אם המניעה ממנה – א"צ לשלם: דאין האיש חייב במזונות אשתו אלא כשהיא עמו.



# BETH DIN OF AMERICA BINDING AGREEMENT

STANDARD  
VERSION

This agreement consists of two pages and a notarization page. Instructions for filling out this document may be found on page 4. It is important that the instructions be carefully read and followed in completing the form.

THIS AGREEMENT made on the \_\_\_\_\_ day of the month of \_\_\_\_\_ in the year 20 \_\_\_\_\_ ,  
between Husband-to-Be: \_\_\_\_\_  
residing at: \_\_\_\_\_  
and Wife-to-Be: \_\_\_\_\_  
residing at: \_\_\_\_\_

The parties, who intend to be married in the near future, hereby agree as follows:

- I. **Arbitration.** Should a dispute arise between the parties, so that they do not live together as husband and wife, they agree to submit to binding arbitration before the Beth Din of America (currently located at 305 Seventh Avenue, Suite 1201, New York, New York 10001; www.bethdin.org), which shall have exclusive jurisdiction to decide all issues relating to a *get* (Jewish divorce), the *ketubah* and *tena'im* (Jewish premarital agreements) entered into by the Husband-to-Be and the Wife-to-Be, any issues and obligations arising from or in connection with this Agreement (including under paragraphs II, III and VI hereof) and any disputes relating to the enforceability, formation, conscionability, and validity of this Agreement (including any claims that all or any part of this Agreement is void or voidable) and the arbitrability of any disputes arising hereunder.

## SECTION II: Financial and Custody Issues. Paragraphs II:A and II:B, regarding additional financial issues and child custody issues, are optional.

II:A. The parties agree that the Beth Din of America is authorized to decide all monetary disputes (including division of property and maintenance) that may arise between them, and to utilize principles of equitable distribution in accordance with customary practice, as the Beth Din deems appropriate according to principles of Jewish law, equity and local custom. We choose to have paragraph II:A apply to our arbitration agreement.

Signature of  
Husband-to-Be

Signature of  
Wife-to-Be

II:B. The parties agree that the Beth Din of America is authorized to decide all disputes, including child custody, child support, and visitation matters, as well as any other disputes that may arise between them. We choose to have Section II:B apply to our arbitration agreement.

Signature of  
Husband-to-Be

Signature of  
Wife-to-Be

II:C. The Beth Din of America may consider the respective responsibilities of either or both of the parties for the end of the marriage, as an additional, but not exclusive, factor in determining the distribution of marital property and maintenance, should such a determination be authorized by paragraph II:A or paragraph II:B.

- III. **Support Obligation.** Husband-to-Be acknowledges that he recites and accepts the following:

*I obligate myself to support my Wife-to-Be according to the requirements of Jewish law governing Jewish husbands. Furthermore, I hereby now (me'achshav) obligate myself, in a manner that I cannot exempt myself with any claim of asmachta (unenforceable conditional obligation) or any other claim, to support my Wife-to-Be from the date that our domestic residence together shall cease for whatever reasons at the rate of \$150 per day (calculated as of the date of our marriage, adjusted annually by the Consumer Price Index-All Urban Consumers, as published by the US Department of Labor, Bureau of Labor Statistics) in lieu of my Jewish law obligation of support, as hereinabove cited and circumscribed, so long as the two of us remain married according to Jewish law, even if she has another source of income or earnings. Furthermore, I waive my halakhic rights to my wife's earnings for the period that she is entitled to the above-stipulated sum, and I recite that I shall be deemed to have repeated this waiver at the time of our wedding. I acknowledge that I have now (me'achshav) effected the above obligation by means of a kinyan (formal Jewish transaction) in an esteemed (chashuv) Beth Din as prescribed by Jewish law.*



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However, this support obligation shall terminate if, despite Husband-to-Be's compliance with the terms of this agreement and the decision or recommendation of the Beth Din of America, Wife-to-Be refuses to appear upon due notice before the Beth Din of America or in the event that Wife-to-Be fails to abide by the decision or recommendation of the Beth Din of America. Furthermore, Wife-to-Be waives her right to collect any portion of this support obligation attributable to the period preceding the date of her reasonable attempt to provide written notification to Husband-to-Be that she intends to collect the above sum. Said written notification must include Wife-to-Be's notarized signature. This support obligation under Jewish law is independent of any civil or state law obligation for spousal support, or any civil or state law imposed order for spousal support, and shall be determined only by the Beth Din of America.

- IV. Opportunity for Consultation. Each of the parties acknowledges that he or she has been given the opportunity prior to signing this Agreement to consult with his or her own rabbinic advisor and legal advisor. Each of the parties further acknowledges that he or she has been fully informed of the terms and basic effect of this Agreement as well as the rights and obligations he or she may be giving up by signing this Agreement. Each of the parties expressly waives, in connection with this Agreement, (i) any right to consult with his or her legal counsel to the extent they have not done so and (ii) any right to disclosure of the property or financial obligations of the other party beyond any disclosures that have been provided. The obligations and conditions contained herein are executed according to all legal and halakhic requirements.
- V. Governing Law. The decision of the Beth Din of America shall be made in accordance with Jewish law (*halakha*) or Beth Din ordered settlement in which the relative equities of the parties' claims are considered in accordance with principles of Jewish law (*peshara krova la-din*), except as specifically provided otherwise in this Agreement.
- VI. Rules, Default Judgment and Costs. The parties agree to appear in person before the Beth Din of America, at a location mutually convenient to the arbitrators and the parties, at the demand of the other party, to cooperate with the adjudication of the Beth Din of America in every way and manner, and to abide by the published Rules and Procedures of the Beth Din of America (available at [www.bethdin.org](http://www.bethdin.org)), which are in effect at the time of the arbitration. If either party fails to appear before the Beth Din of America upon reasonable notice, the Beth Din of America may issue its decision despite the defaulting party's failure to appear, and may impose costs and other penalties as legally permitted. Both parties obligate themselves to pay for the services of the Beth Din of America. Failure of either party to perform his or her obligations under this Agreement shall make that party liable for all costs, including reasonable attorney's fees, incurred by one side in order to obtain the other party's performance of the terms of this Agreement.
- VII. Jurisdiction; Enforceability. By execution and delivery of this Agreement, each party consents, for itself and in respect of its property, to the exclusive jurisdiction of the Beth Din of America with respect to the issues set forth in paragraph I. Each of the parties agrees that he or she will not commence any action or proceeding relating to such issues in any court, rabbinical court or arbitration forum other than the Beth Din of America. This Agreement constitutes a fully enforceable arbitration agreement, and any decision issued pursuant to this Agreement shall be fully enforceable in secular court. Should any provision of this Agreement be deemed unenforceable, all other provisions shall continue to be enforceable to the maximum extent permitted by applicable law. As a matter of Jewish law, the parties agree that to effectuate this Agreement they accept now (through the Jewish law mechanism of *kim li*) whatever minority views determined by the Beth Din of America are needed to effectuate the obligations, procedures and jurisdictional mandates contained in this Agreement.
- VIII. Counterparts. This Agreement may be signed in one or more duplicates, each one of which shall be considered an original.

In witness of all the above, the Husband-to-Be and Wife-to-Be have entered into this Agreement.

Signature of  
Husband-to-Be

Signature of  
Wife-to-Be

Signature of  
Witness

Signature of  
Witness

Signature of  
Witness

Signature of  
Witness

**Special notes for parties notarizing the agreement online:**

**(i) If you do not have witnesses available, the agreement is binding even if signed without witnesses.**

**(ii) The agreement may be signed separately by Husband-to-Be and Wife-to-Be. Simply sign on separate counterpart documents and then attach the separate signature and notary pages together.**