

## HALAKHIC SOLUTIONS OF THE RECENT PAST

### 1. *m. Yevamot* 1:4

Even though these [one school] prohibit and these [the other school] permit, these disqualify and these allow, Beit Shammai did not refrain from marrying women from Beit Hillel, nor did Beit Hillel [refrain from marrying women] from Beit Shammai. [With regard to] purity and impurity where these ruled [a matter] pure and these ruled [it] impure, they did not refrain from using [utensils] the other deemed pure.

### 1. משנה יבמות פרק א משנה ד

אף על פי שאלו אוסרין ואלו מתירין, אלו פוסלין ואלו מכשירין, לא נמנעו בית שמאי מלשא נשים מבית הלל, ולא בית הלל מבית שמאי. כל הטהרות והטמאות שהיו אלו מטהרין ואלו מטמאין, לא נמנעו עושין טהרות אלו על גבי אלו:

## I. TA'UT

### 2. Halachic Principles and Procedures For Freeing Agunot, *Jewish Week*, 1997

One category of *kiddushei ta'ut* is the voiding of the marriage because a salient defect was not disclosed to one party. ... When the salient defect reveals itself, the wife has the right to declare to a *beit din* "Had I known of this defect, I would never have married him." The groom's failure to disclose does not have to be with fraudulent intent on his part. It may be that he himself was not aware of this problem. ... Of course, in the case of willful concealment, *a fortiori*, the marriage is voidable. Building on this concept of *kiddushei ta'ut*, a *beit din* may recognize other intolerable defects in the husband as grounds for a declaration of *kiddushei ta'ut*. These defects – which are in total discord with any reasonable concept of marriage – include: physical and psychological abuse, adultery (which more than ever endangers the life of the spouse), sexual molestation, abandonment, criminal activity, substance abuse, and sadism (the withholding of a Get may be viewed as indicating a sadistic nature). A *beit din*, applying a psychologist's or psychoanalytic concept of human nature, may hold that the seeds of such deviant behavior are present in the groom at the inception of the marriage though they may not yet have expressed themselves in overt behavior. These personality defects are so categorically unacceptable in marriage that the wife may testify, "Had I known that he had these personality defects, I never would have married him."

### 3. *Iggerot Moshe, E.H. IV*, 113

But if she lives with him (sexually) even after it is known, it is difficult to rule the marriage void.

### 3. אגרות משה אה"ע חלק ד סימן קיג

אבל אם שהתה אצלו אף אחר שנודעת אז קשה לבטל הקידושין.

### 4. *m. Kiddushin* 1:1

A woman is acquired [in marriage] via three methods, and acquires herself via two methods. She is acquired through money, through a contract, or through sexual intercourse.

### 4. משנה קידושין פרק א משנה א

האשה נקנית בשלש דרכים, וקונה את עצמה בשתי דרכים. נקנית בכסף, בשטר, ובביאה.

## II. HAFKA'AT KIDDUSHIN

### 5. *m. Gittin* 4:2

At first, a man would set up a religious court in a different place [from where the wife lived] and cancel [the bill of divorce]. Rabban Gamliel the Elder enacted that they not be able to do this, due to [the need for] *Tikkun Ha-Olam*.

### 5. משנה גיטין פרק ד משנה ב

בראשונה היה עושה בית דין במקום אחר ומבטלו. התקין רבן גמליאל הזקן שלא יהו עושין כן, מפני תקון העולם.

## 6. *Gittin* 33a

Why is *Tikkun Ha-Olam* invoked? R. Yochanan says: to prevent *mamzerim*. Reish Lakish says: to prevent *agunot*.

The Sages taught: [even after R. Gamliel's edict] if he renders it void, it is rendered void – such is the view of Rebbi.

Rabban Shimon ben Gamliel says: he is unable to render it void, nor add on more conditions. For, if so [i.e., if he could render it void], where lies the power of the court [i.e., R. Gamliel's edict]?

[The Gemara asks] is it possible that a *get* can be void according to Torah law but we nonetheless permit a married woman to marry anyone to protect the power of the court?

Indeed. For anyone who is married does so contingent upon the will of the Sages, and they can thus annul such a marriage.

Said Ravina to R. Ashi: this makes sense when the marriage was validated through money. But, when it was validated through intercourse – what is there to say? The Sages can declare the intercourse to have been mere licentiousness.

## 7. Rabbi Jeremy Wieder, “*Hafka’at Kiddushin: Rejoinder*” *Tradition* 37:1 (2003), 62

In a situation where a marriage, for all public appearances, seemed to function normally for some period of time (*Ketubot* 2b–3a, *Gittin* 33a, 73a), *Hazal* were unwilling to risk the appearance of *eshet ish yotse’a be-lo get* (a married woman remarrying without a divorce while her husband was still alive), hence they did not allow for a *hafka’at kiddushin* in such a situation without some kind of *get*.

There are cases in the Talmud (*Yevamot* 110a, *Bava Batra* 48b), *Rishonim*, and *Aharonim* which involve at least the possibility of *hafka’at kiddushin* without a *get*, but only when: a) the *kiddushin* was conducted in an inappropriate (though legally binding) fashion from the start, in which case there was never a time in which the marriage appeared to be legitimate; or b) the husband is in all likelihood dead, but the exceedingly high threshold of proof required to permit an *eshet ish* to remarry has not been crossed; or c) the purpose of the annulment is not to permit a woman who would otherwise still be married to another man, but rather to let her return to her husband.

### III. ZEKHIYYAH

## 8. *Kiddushin* 42a

One can act in a person's interest in his absence.

## 9. *Yevamot* 118b

Concerning one who sends his wife a *get* following strife, what's the status of the *get*? Do we say that, given the strife, it is advantageous for her to be divorced? Or, perhaps, remaining married is more preferable? Come here the view of Reish Lakish: it is better to dwell as two than to dwell as a widow.

## 6. תלמוד בבלי מסכת גיטין דף לג עמוד א

מאי "מפני תיקון העולם"? ר' יוחנן אמר: מפני תקנת ממזרים. ריש לקיש אמר: מפני תקנת עגונות.

ת"ר: בטלו – מבוטל, דברי רבי.

רשב"ג אומר: אינו יכול לא לבטלו ולא להוסיף על תנאו. שא"כ, מה כח ב"ד יפה?

ומי איכא מידי דמדאורייתא בטל גיטא ומשום "מה כח ב"ד יפה" שרינן אשת איש לעלמא?

אין. כל דמקדש אדעתא דרבנן מקדש, ואפקעינהו רבנן לקידושין מיניה.

אמר ליה רבינא לרב אשי: תינח דקדיש בכספא. קדיש בביאה – מאי איכא למימר? שויה רבנן לבעילתו בעילת זנות:

## 8. תלמוד בבלי מסכת קידושין דף מב עמוד א

שזכין לאדם שלא בפניו.

## 9. תלמוד בבלי מסכת יבמות דף קיח עמוד ב

אמר ליה רבינא לרבא: המזכה גט לאשתו במקום קטטה, מהו? כיון דאית לה קטטה בהדיה – זכות הוא לה. או דלמא, ניחא דגופא עדיף לה? תא שמע דאמר ריש לקיש: טב למיתב טן דו מלמיתב ארמלו.