

THE NEW YORK GET LAWS

1. New York Domestic Relations Law §253(2): Removal of Barriers to Remarriage (Or, the 1983 NY Get Law)

Any party to a marriage defined in subdivision one of this section who commences a proceeding to annul the marriage or for a divorce must allege, in his or her verified complaint: (i) that, to the best of his or her knowledge, that he or she has taken or that he or she will take, prior to the entry of final judgment, all steps solely within his or her power to remove any barrier to the defendant's remarriage following the annulment or divorce; or (ii) that the defendant has waived in writing the requirements of this subdivision.

2. New York Domestic Relations Law §236(5) & §253(6) (Or, the 1992 NY Get Law)

[§236(5)] In any decision made pursuant to this subdivision the court shall, where appropriate, consider the effect of a barrier to remarriage, as defined in subdivision six of section two hundred fifty-three of this article, on the factors enumerated in paragraph (d) of this subdivision.

[§253(6)] As used in the sworn statements prescribed by this section "barrier to remarriage" includes, without limitation, any religious or conscientious restraint or inhibition, of which the party required to make the verified statement is aware, that is imposed on a party to a marriage, under the principles held by the clergyman or minister who has solemnized the marriage, by reason of the other party's commission or withholding of any voluntary act.

3. Mishnah, Yevamot 14:1

A man who divorces is not similar to a woman who is divorced, for the woman goes out with her consent or without her consent, but a man can only remove [his wife] with his consent.

4. Shulchan Arukh, Even Ha-Ezer 154:1

These are the [reasons] we force him to divorce her and to give her the ketubah: One who develops bad breath of the mouth or nose, or goes back to become a collector of dog feces, or a tanner, or to a scraper of copper from its source [i.e. a miner]. If she wants, she can stay with her husband.

Rema: And if she knew [about this problem] before she was married, we do not force him to divorce her, for she understood and accepted it (*Tur* in the name of the Ramah).

5. Arukh Ha-Shulchan, E.H. 134:4

What do we do when the law requires the man to divorce but it is not in our power to compel him? We compel him using the power of non-Jewish courts.

3. משנה יבמות פרק יד משנה א

אינו דומה האיש המגרש לאשה מתגרשת, שהאשה יוצאה לרצונה ושללא לרצונה, והאיש אינו מוציא אלא לרצונו:

4. שו"ע אה"ע סומן קנר סי' א

אלו שכופין או להוציא וליתן כתובה: מי שנולד לו ריח הפה או ריח החוטם, או שחזר להיות מקבץ צואת כלבים או בורסקי או להיות מחתך נחושת מעיקרו. ואם רצתה תשב עם בעלה.

(הגה: ואם ידעה בהן קודם שנשאת אין כופין להוציא דסברה לקבלה) (טור בשם הרמ"ה)

5. ערוך השולחן אבן העזר סימן קלד סעיף ד

וכיצד עושין כשהדין נותן שמחוייב לגרש ואין ידינו תקיפה לכופו וצריכים לכופו ע"י ערכאות.

6. Responsa Avnei Nezer E.H. 167

It appears to me that even the Ritva and Rivash are referring to a case where the husband wishes to live with this woman and represent her as his wife. In such a case halakhah never says because of the coercion and the money he divorced her. Certainly, even if one gave a man all the money in the world, he would not divorce his wife [with whom he is living]. But a man such as this who betrayed his wife and abandoned her for many years, we certainly do say the coercion and the money persuaded him to sell the divorce. For this man desires his wife not at all, and only desires leverage over her so that she cannot marry another without his permission, and he can get money from her for this. Certainly in such a case we say because of the money he divorced her. This is very logical.

7. Rama, E.H. 17:15

In any situation in which there is a disagreement concerning these laws we are stringent.

8. Taz, E.H. 17, 15

When there is a dispute amongst Sages regarding the laws of [classic] *agunah* we are lenient.

9. Rabbi Joseph B. Soloveitchik, Remarks Delivered at RCA Convention

I also was told that it was recommended that the method of annulment be reintroduced. If this recommendation is accepted, and I hope it will not be accepted, but if it is accepted, then there will be no need for a *get*. . . . We will be able to cross out this *mishnah*, that halakhah; every rabbi will suspend Jewish marriages. Why should there be this halakhah if such a privilege exists? Why should this privilege be monopolized by the Israeli Chief Rabbinate in Israel? Why couldn't the Rabbinical Council do it just as well?

6. שו"ת אבני נזר חלק אבן העזר סימן קסז

ונראה לי דאף לריטב"א וריב"ש דס"ל ... היינו בשהוא רוצה לדור עמה ומחזיקה לאשתו. דבזה ודאי לא נאמר אגב אונסא וזווי, דודאי אף אם יתנו לאדם כל הון לא יגרש אשתו, אבל איש זה שבגד באשתו ועזבה מכמה שנים, ודאי סברא הוא אגב אונסא וזווי ... שאינו רוצה בה כלל רק שהי' לו שיעבוד עלי' שלא תוכל להנשא לאחר בלא רשותו ויוכל להוציא ממנה ממון ע"י זה ובודאי נאמר שעבור זווי גירשה, וזה מסתבר מאד

7. רמ"א אה"ע סימן יז סי' טו

בכל מקום דאיכא פלוגתא בדינין אלו אזלינן לחומרא.

8. ט"ז אה"ע סימן יז ס"ק טו

דיש פלוגתא בין רבוותא בדיני עגונה אזלינן לקולא