

obligated you to divorce her, and if you do not we will be allowed to call you a sinner.” *Gloss: Since there is this disagreement among the Rabbis, we should be stringent and not beat him, so that we do not have a “forced get”. However, if he is married to her illegally, then everyone agrees that you can beat him. Anytime we do not beat him we also do not excommunicate him. Even so, we can declare that no Jew should do anything good for him, or to do business with him, or to perform a brit on his son, or bury him; until her divorces her. The Beit Din has complete discretion in this matter as long as they do not excommunicate him...*

מותר לקורתך עברייין. הגה: וכיון דאיכא פלוגתא דרבנותא, ראוי להחמיר שלא לכוף בשוטים, שלא יהא הגט מעושה (טור בשם הרא"ש). אבל אם יש לו אשה בעבירה, לכ"ע כופין בשוטים. וכל מקום שאין כופין בשוטים, אין מנדין אותו ג"כ (מרדכי ריש המדיר). ומכל מקום יכולין ליגזור על כל ישראל שלא לעשות לו שום טובה או לישא וליתן עמו (שערי דורא בשם ר"ת ובמהרי"ק), או למול בניו או לקברו, עד שיגרש (בנימן זאב פ"ח /רפ"ט/). ובכל חומרא שירצו ב"ד יכולין להחמיר בכהאי גוונא, ומלבד שלא ינדו אותו.

IV. Israeli Law

11) The Palestine Order in Council 10 August 1922

46. The jurisdiction of the Civil Courts shall be exercised in conformity with the Ottoman Law in force in Palestine on November 1st, 1914, and such later Ottoman Laws as have been or may be declared to be in force by Public Notice, and such Orders in Council, Ordinances and regulations as are in force in Palestine at the date of the commencement of this Order, or may hereafter be applied or enacted; and subject thereto and so far as the same shall not extend or apply, shall be exercised in conformity with the substance of the common law, and the doctrines of equity in force in England, and with the powers vested in and according to the procedure and practice observed by or before Courts of Justice and Justices of the Peace in England, according to their respective jurisdictions and authorities at that date, save in so far as the said powers, procedure and practice may have been or may hereafter be modified, amended or replaced by any other provisions. Provided always that the said common law and doctrines of equity shall be in force in Palestine so far only as the circumstances of Palestine and its inhabitants and the limits of His Majesty's jurisdiction permit and subject to such qualification as local circumstances render necessary.

12) Law And Administration Ordinance 5708-1948

11. The law which existed in Palestine on the 5th Iyar, 5708 (14th May, 1948) shall remain in force, insofar as there is nothing therein repugnant to this Ordinance or to the other laws which may be enacted by or on behalf of the Provisional Council of State, and subject to such modifications as may result from the establishment of the State and its authorities.

13) Foundations Of Law, 5740—1980

1. Where the court, faced with a legal question requiring decision, finds no answer to it in statute law or case-law or by analogy, it shall decide it in the light of the principles of freedom, justice, equity and peace of Israel's heritage .

2) (a) Article 46 of the Palestine Order in Council, 1922-1947, is hereby repealed .

(b) The provision of subsection (a) shall not derogate from the law which was accepted in Israel before the coming into force of this Law.

14) Rabbinical Jurisdiction (Marriage and Divorce) Law 1953

1. Matters of Marriage and Divorce between Jews in Israel, whether citizens or residents will be in the sole jurisdiction of the Rabbinic Courts .

2. Marriage and Divorce in Israel will be performed according to the Law of the Torah.

15) Jane Doe v. John Doe Jerusalem Family Court Case 00/3950

Summary of the case :

This concerns a motion for summary dismissal of the claim brought against the Defendants on account of injury that the Plaintiff suffered, she alleges, on account of the recalcitrance of Defendant 1 to give her a Get [a Jewish document of divorce] in accordance with the laws of Moses and Israel, even though he was required to do so in a Rabbinical Court, and on account of the assistance and encouragement of Defendant 2 (the father of Defendant 1) in support of this recalcitrance .

Justice Greenberger:

10 .In our case, I am convinced that the right of a woman to determine for herself when she wishes to sever marital ties and when she wishes to remarry, her wish "to write the story of her life as she wishes and in accordance with her choice," is a basic right that will certainly find its place by virtue of the aforesaid framework. The aspiration of a woman who wants a divorce to fashion her personal condition as a free person determining her own fate merits every defense as an inseparable part of her dignity as a person .

11 .The following are the remarks of the late Prof. A. Rosen-Zvi, which he delivered before the Committee on Constitution, Statute and Law (Protocol No. 240, 8.11.94, p. 10) in the context of a deliberation that took place in connection with the proposal of the Rabbinical Courts (Enforcement of Divorce Judgments) Law 5754-1994:

In my opinion, the basic concept of human dignity and the sanctity of the life of a human being as a free person absolutely cannot be reconciled with recalcitrance to give a Get or with Aginut [the condition of being unable to remarry because of such refusal], a priori, and does not tolerate a situation of dependency in which one party limits the other and creates impossible consequences for her. The situation of Aginut, in which the Get-recalcitrant leaves a woman, infringes her basic dignity. This is not only a Halakhic feature to which Rabbi Ovadiah Yosef gave consummate expression; there is a striking expression in the view of the MaHaRSHa at the end of Tractate Yebamot, who writes: "Where there is the creation of Aginut, there is no peace, and the entire Torah was given only in order to make peace." In other words, a situation of Aginut undoes in this respect the basic purpose for which the Torah was given. These are words expressing the universal concept of peace, freedom and human dignity .

12 .A still sharper expression of the severe infringement that occurs in the life a woman whose husband refuses to give her a Get can be found in the expression on the subject by one of the greatest decisors of the twentieth century, Rabbi Y. E. Henkin. In his book Edut le-Yisrael Rabbi Henkin says as follows:

. . .and whoever withholds a Get because he is illegally demanding payment is a thief, and worse, for he [falls into] a sub-category of shedding blood. P. 144 (quoted as well in Writings of the Gaon Rabbi Y. E. Henkin, vol. 1, p. 115b .

We are thus dealing with so severe an infringement in the eyes of Halacha that it is viewed not only as a spiritual, emotional and psychological infringement, but as the actual shedding of blood; and these words are well said .

13 .It follows that the aspirations of Israeli society for human dignity and freedom, which are embodied in the Basic Law: Human Dignity and Freedom, and in the Torah of Israel itself - the Torah that determines the fundamental values of family life not only in Jewish religion but in Israeli law, as well - require the conclusion that creation of a state of Aginut negates a woman's dignity and freedom.

14 .The infringement of the autonomy of a woman that results from her being placed by her husband in a state of Aginut is, in my opinion, compensable injury in accordance with the Tort Ordinance.