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CHAINED AGAINST HER WILL: WHAT A GET MEANS FOR WOMEN UNDER JEWISH LAW

Michelle Kariyeva*

I. INTRODUCTION

Under halachic laws, when a Jewish couple undergoes a divorce, Jewish law requires the marriage to be terminated by both civil law and religious law.1 The delivering of a divorce document, called a get under Jewish law, initiates the process.2 Essentially, without a get, the couple is not considered divorced and neither spouse may remarry until the document is signed.3 However, the consequences are far more severe and life changing for women.4 For instance, without a get, a Jewish woman cannot remarry and is viewed as an adulterer if she engages in sexual intercourse with

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* I am a Juris Doctor candidate at Touro College Jacob D. Fuchsberg Law Center and a CUNY Queens College graduate. I dedicate this Note to the memory of my late grandmother, Frida Kariyeva, whose love and support inspired me to make it this far. For all the times she picked me up when I fell down and could not get back up on my own—I know that her encouragement contributed in many ways to my academic achievement. May her soul rest peacefully. Furthermore, I would like to dedicate this Note to my professors, friends, and loved ones who helped me along the way. Your acts of kindness and support are greatly appreciated.

1 Irving Breitowitz, The Plight of the Agunah: A Study in Halacha, Contract, and the First Amendment, 51 Md. L. Rev. 312, 319 (1992) (“A civil divorce has no effect in the eyes of halacha, and any subsequent cohabitation or remarriage in the absence of a get is regarded as adulterous.”). I will discuss this in depth throughout this Note.

2 Id. Today, with all the different types of movements of Judaism present in the United States, the common groups continue to be the Orthodox, Conservative, and Reform. As it seems, those who strictly comply with halachic laws not only adhere to the get requirement but also believe that they are bound to it. Jews who categorize themselves as a part of the Reform Movement believe that halachic law only guides them and does not bind them to a get requirement. Furthermore, the Reform Movement even goes as far as extinguishing the get requirement and recognizes that a civil divorce is enough to end the union.

3 Id. (“A halachically valid marriage may be terminated in only two ways: through death of a spouse, or by the granting of a get.”).

4 See infra note 8.
other men. Furthermore, if she has children without a get from her previous husband, those children are considered mamzerim. Mamzerim are children who are born from forbidden relationships. Because of the stigma placed on children born under this status, they are not allowed to marry freely within the Jewish community. This stigma is life changing, especially for religious Jews who believe that a woman’s primary responsibility in halacha is to have a family and children. Nevertheless, many husbands who refuse to deliver a get to their wives can leave them in a “dead” marriage, which is known as the agunah problem.  

Once the husband delivers a get, the wife can accept it. If a wife does not cooperate with the husband’s demand for a get, the

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5 See Breitowitz, supra note 1, at 323-24 (citing GEORGE HOROWITZ, THE SPIRIT OF JEWISH LAW 159-60 (1973)).
6 BABYLONIAN TALMUD, Gittin 5b, http://www.come-and-hear.com/gittin/gittin_5.html (last visited Aug. 29, 2018) (“If the bearer of a Get from foreign parts gave it to the wife without declaring, ‘In my presence it was written and in my presence it was signed,’ if she marries again the second husband must put her away and a child born from the union is a mamzer.” (citation omitted)).
7 Id. The Babylonian Talmud calls it “[t]he product of an incestuous union.” Id. at n.8.
8 Breitowitz, supra note 1, at 324. The consequences of not having a get affect the children’s reputations and marital status. Breitowitz, supra note 1, at 324. Mamzerim are permitted to only marry converts to Judaism or other mamzerim. Breitowitz, supra note 1, at 324 n.48. This concept is different from having illegitimate children. Breitowitz, supra note 1, at 324. Illegitimate children, those who are born out of wedlock, do not carry this stigma. Breitowitz, supra note 1, at 324. We can see how grave the consequences are for a woman to have children with another man without obtaining a get from her previous husband.
9 Lisa Zornberg, Beyond the Constitution: Is the New York Get Legislation Good Law?, 15 Pace L. Rev. 703, 704 (1995). A woman’s primary religious responsibility in halacha is to nurture Jewish values within the domestic sphere. M. MEISELMAN, JEWISH WOMAN IN JEWISH LAW 16-18 (1978); see also Sara Esther Crispe, The Role of Women in Judaism, CHABAD.ORG, https://www.chabad.org/theJewishWoman/article_cdo/aaid/376141/jewish/The-Role-of-Women-in-Judaism.htm (last visited Sept. 14, 2018) (“For every woman, single or married, with children or without children, is able to bear fruit, is able to be an eizer kenego...[T]his is fulfilling the commandment of ‘to be fruitful and multiply’...” (citing GENESIS 1:28)). The literal translation of eizer kenego is a “helpmate to [the husband].” Id.
10 The literal translation of agunah is “chained.” Breitowitz, supra note 1, at 313 n.3. It is a term used to describe a Jewish woman who is “chained” to her marriage. Breitowitz, supra note 1, at 313 n.3. The plural form is agunot. Refusing to comply with the get process, as an act of spite or demanding certain terms before agreeing to give one, has become the modern equivalent of the biblical and historical agunah problem. I will discuss the agunah problem in greater detail later on in this Note, including the modern agunah problem—get extortion. See discussion of the modern agunah problem infra Part III.B.
11 Breitowitz, supra note 1, at 320; see also Jewish Divorce and the Civil Law, 12 DePaul L.Rev. 295, 299 (1963) (“It is the husband who gives the divorce and not the court. . . . The function of the Religious Court in Jewish Law is that of a passive participant. Its role is to attempt to dissuade the parties and counsel them against proceeding with the divorce. . . . The justification for this is that by legally severing their relation the couple is fulfilling their
implications are far less severe for the husband. That is because, a man may have sexual intercourse with other women without being branded as an adulterer, and if any children are born from a subsequent relationship, the children are not stigmatized as mamzerim. Furthermore, if the husband believes that his wife is unreasonable for not accepting the get, he can be set free from the get requirement by receiving one hundred signatures from rabbis. Jewish women cannot receive a hundred signatures from rabbis to “free” themselves from their “dead” marriages, although, now, many rabbis refuse to marry a couple unless a prenuptial agreement is signed or community pressure is applied for men to comply with the get requirements. It is unclear how many women fall under the definition of agunah today.

Many states have tried forcing husbands to issue a get based on the civil enforcement of the ketubah. Further awakened by the issue and the complexities of the agunah, New York, specifically, has enacted legislation to help. In 1986, the New York legislature enacted Section 253 of the Domestic Relations Law—removal of religious barriers—to solve the agunah problem. The statute states that a party cannot receive an annulment or divorce unless the party claims in a verified complaint that the party took all the steps necessary, to the best of his or her knowledge, to remove any barrier to the defendant’s remarriage. There was a lot of backlash when this statute was enacted because of the well-rooted constitutional right found in the First Amendment’s Establishment Clause and Free state of mind and heart and the court is merely asked to sanction this state.” (footnotes omitted).

12 See infra notes 13-15 and accompanying text.
13 Breitowitz, supra note 1, at 323-24.
14 A process known as Heter Me’ah Rabbanim (“Dispensation of 100 Rabbis”). Breitowitz, supra note 1, at 325.
15 Breitowitz, supra note 1, at 315. Many scholars have differed in opinion and have not been able to come up with a common figure. See Breitowitz, supra note 1, at 316 nn.5-6 (citing GEORGIA DULLEA, Orthodox Jewish Divorce: The Religious Dilemma, N.Y. TIMES (July 5, 1982), http://www.nytimes.com/1982/07/05/style/orthodox-jewish-divorce-the-religious-dilemma.html (estimating 150,000 agunah) and RABBI MENDEL EPSTEIN, A WOMAN’S GUIDE TO THE GET PROCESS 2 (1989) (estimating that “there are no more than 50 women who meet the basic definition of agunah”). Whatever the exact figure may be today, this is a rude awakening. The disparity between the two figures is deeply concerning. Many factors may be contributing; however, one thing remains certain: every case shows us how easily manipulated the religious process can be when faced with selfish motives.
16 See infra Part II.A.
17 See infra Part IV.
18 N.Y. DOM. REL. LAW § 253 (McKinney 1986).
19 N.Y. DOM. REL. LAW § 253 (McKinney 2018).
Exercise Clause.\textsuperscript{20} Despite the statute’s inability to be successfully challenged in civil court, it brews a lot of controversy for proponents of Jewish law because the Mishnah (\textit{Yevamot} 14:1) states that a man cannot divorce his wife under coercion;\textsuperscript{21} it must be made under his own free will.\textsuperscript{22} Therefore, the judicial involvement in such circumstances raises questions of \textit{halachic} validity, looking to the context in which the \textit{get} was ordered and subject to strict scrutiny by rabbis.\textsuperscript{23}

Some rabbis have proposed a modern solution to securing a \textit{get} through the use of prenuptial support agreements.\textsuperscript{24} Prenuptial support agreements encourage husbands to give a \textit{get}, which encourages secular law to aid \textit{agunot}. However, this proposed solution remains an issue because some people believe that premarital agreements created to encourage the husband to give his wife a \textit{get} undercut Jewish law and are coerced.\textsuperscript{25} Furthermore, Jewish law, presumably, did not foresee the coming of the modern \textit{agunot} problem in regard to \textit{get} extortion\textsuperscript{26} which arises from the unparalleled power that a husband has over his wife.\textsuperscript{27} Extortion occurs when the husband consents to give his wife a \textit{get} only if she agrees, for example, to give up her

\textsuperscript{20} See U.S. \textsc{const.} amend. I (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”).

\textsuperscript{21} The Mishnah is an edited record of the complex oral Torah laws. It was published after the destruction of the Second Temple. \textit{Yevamot} 14:1 is a rule derived from Deuteronomy 24:1. \textit{See infra} note 123 and accompanying text. It says, “A man who wishes to divorce his wife is not like a woman who seeks divorce from her husband. A woman is divorced in accordance with her will or against her will. A man cannot divorce his wife except of his own free will.” Mishnah (\textit{Yevamot} 14:1).

\textsuperscript{22} Zornberg, \textit{supra} note 9, at 709.

\textsuperscript{23} \textit{See generally} Breitbart, \textit{supra} note 1.

\textsuperscript{24} \textit{See infra} Part II.B.

\textsuperscript{25} \textit{See generally} Asher Maoz, \textit{The Impact of Jewish Law on Contemporary Legal Systems With Special Reference to Human Rights}, OLR (Nov. 2004), at 2-3, https://www.olir.it/areetematiche/73/documents/maoz_milano2003.pdf (quoting Ch. Povarsky, \textit{The Enforcement of a Jewish Marriage Contract in a Civil Court}, JEWISH L. REP. 1, 2-3 (2000) (“Jewish religion and law are a single entity. The \textit{Torah} makes no dogmatic distinction between religious teaching and legal provisions. In addition, Judaism is an ethical system, teaching a moral way of life: Jewish law is a combined system, consisting of law, religion and morality. These three elements are intertwined and interrelated, and form one system, known as \textit{Halacha}, which means a way of life.” (internal quotations omitted))).

\textsuperscript{26} \textit{See supra} note 10 and accompanying text.

\textsuperscript{27} \textit{See infra} Part III.
property rights, pay a large sum, or make concessions on child custody.  

This Note will be divided into five parts. Part II of this Note will examine the historical and biblical implications of marriage and divorce in Judaism. In this part, I will explain and analyze the case law that led to the civil enforcement of the ketubah to obtain a get and the requirements to initiate the get process. Part III will discuss the historical agunah and how the issue has changed in the modern world. Part IV will consider the issues associated with the enforcement of the ketubah and the issuance of a get under the First Amendment. I will argue that the New York Get Law is constitutional under the Establishment and Free Exercise Clauses and discuss its function. Finally, Part V will conclude and summarize my arguments. It is important to understand why such an issue exists in the first place and why it cannot be easily eradicated. Questions of halachic validity arise because the Jewish courts and American courts are different. Though a judge may issue an order compelling a husband to give his wife a get, the question of whether this is a halachically valid divorce agreement in the realm of Jewish law still remains a sticky topic. It may very well be that there is no real solution that can extinguish this problem.

II.  HISTORICAL AND BIBLICAL IMPLICATIONS OF MARRIAGE AND DIVORCE

Judaism does not forbid divorce, as it is seen within the Torah as a common occurrence. Furthermore, the Talmud explains that the “altar sheds tears” and that there is no need to continue a marriage in which one, or both, parties are miserable. Jewish marriage comprises

28 See infra Part III.
31 The literal translation of Talmud is “study.” It is comprised of the documents that comment on the Mishnah. See supra note 21. It is a central text in Judaism and discusses Jewish history, law, and customs. There are two Talmuds: the Jerusalem Talmud and the Babylonian Talmud. The Babylonian Talmud is easier to comprehend, which is important since the Talmud is difficult to understand. See Rabbi Perry Netter, Divorce is a Mitzvah: A Practical Guide to Finding Wholeness and Holiness When Your Marriage Dies 76-77 (2002) (“It is at the altar that God cries about divorce. God cries about divorce not because God is judging us as sinners, as so many people believe. God cries not because God is
two components: spiritual and practical. Judaism advances the notion that every bride and groom must spiritually reenact Adam and Eve’s physical and spiritual “one flesh” and further reminds the couple of the importance to live by the laws of “Moses and Israel.” The practicality of marriage under Jewish law is that the marriage is executed by the ketubah and can include the terms of divorce.

A. Civil Enforcement of the Ketubah to Obtain a Get

The marriage ceremony is initiated when the couple signs a document called a ketubah, which is the Jewish marriage contract. It is a document, traditionally signed by two witnesses, that is presented and belongs exclusively to the wife as her property. The purpose of the ketubah, and the reason it is the sole property of the wife, is to deter the husband from exercising the unilateral power to secure a divorce. However, the ketubah also defines the parameters of the new relationship as well as personal status of the couple.

It is possible for a wife to be successful in the civil enforcement of her ketubah. To help compel a husband to grant her a get, the interpretation of the ketubah must be made under neutral principles of contract law, rendering it not an entanglement of the courts with issues of religion.

disappointed in our failure, as so many rabbis teach. God cries because God, like, us, is in pain and cries with us.”). This note refers to the Babylonian Talmud, hereinafter TALMUD.

32 See infra notes 33-34 and accompanying text.
33 See generally Breitowitz, supra note 1.
34 Breitowitz, supra note 1, at 343.
35 See generally Breitowitz, supra note 1, at 343.
36 Breitowitz, supra note 1, at 343; see also Jodi M. Solovy, Civil Enforcement of Jewish Marriage and Divorce Constitutional Accommodation of a Religious Mandate, 45 DePaul L. Rev. 493, 495 (1996).
37 See Breitowitz, supra note 1, at 347 (noting that one of the original purposes of a ketubah was to promise to give financial security by “the creation of a lien on all real or personal property . . . to secure . . . all obligations under the ketubah”).
38 The document shows deep commitment and responsibility. See TALMUD (Megillah 29a). It provides the new married couple with a framework for mutual respect that would enable trust, openness, and love. Id. It aids in the fulfillment of a goal—the building of a Mikdash Me’at, translated to a small temple. Id. (“God will dwell in the holy places [we] create, for they are miniature temples.”).
39 See infra Part IV.
force a husband to give a *get*, normally characterized as “specific performance” actions.  

Cases such as *In re Marriage of Goldman*,  
*Avitzur v. Avitzur*, and *Minkin v. Minkin* are examples of successful civil enforcement of the *ketubah*, compelling the husband to give a *get*. In these cases, the courts were able to compel a *get* through specific performance without infringing on the husband’s constitutional rights. Specifically, these courts determined that ordering the husband to give the *get* as part of the litigants’ marital contract would not infringe on his First Amendment rights. However, many Rabbinical authorities have held that a *get* given subsequent to a civil order is coercive in nature, thus,invalidating it, which leaves the wife with no true sense of achievement.

A question that has posed a great deal of inconsistency in the New Jersey courts is whether a court can compel a husband to submit to the jurisdiction’s *beth din* to initiate the *get* proceeding without violating the Establishment Clause. In *Minkin*, the trial court ruled under the premise that giving a *get* is not a religious act, and forcing a

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40 In these types of cases, the parties have attempted to use the terms of the *ketubah*, enforcing it as a contract, to require the husband to act in accordance with the laws of “Moses and Israel,” compelling the husband to grant the *get*. This means that the litigants would attempt to have the *ketubah* specifically performed, ordering the husband to abide by its terms. As we will come to see, there are many issues with the use of the *ketubah* as a neutral contract principle, one of them being the required proof mandating the *ketubah* to give a *get*, without the courts having to settle the matter through interpretations of religious text.

42 446 N.E.2d 136 (N.Y. 1983).
43 434 A.2d 665 (N.J. Super. Ct. Ch. Div. 1981) (holding that compelling a husband to issue a *get* was a proper enforcement of the Jewish marriage contract).
44 Id.
45 Id.
46 See generally Breitowitz, *supra* note 1.
47 The translation for *beth din* is “house of judgment.” A *Beth Din* is the rabbinical court of Judaism, commonly comprised of three rabbis, that is empowered to rule on matters of Jewish law and who make sure that everything is done precisely in accordance with Jewish law, thus making the process a valid one. Breitowitz, *supra* note 1, at 326. Under Jewish law, if the husband fails to comply with the *beth din* order to give a *get*, it may issue a *seruv*—an order of contempt to a husband who refuses to comply. Breitowitz, *supra* note 1, at 326. When ordered, it is considered that the husband lifted his hand against the Torah, subjecting him to the punishment of being shunned for being non-compliant. See generally Breitowitz, *supra* note 1, at 326.
48 U.S. CONST. amend. I.
49 *Minkin*, 434 A.2d at 668.
husband to submit to the jurisdiction’s beth din would “neither advance nor inhibit religion.”

Over a decade later, after Minkin, the New Jersey trial court in Aflalo v. Aflalo held that compelling the husband to give a get would violate his right to free exercise of religion. It further stated that the Establishment Clause did not permit the court to compel the husband to submit to the beth din to initiate get proceedings. The court rationalized its decision by stating that there was no value in a get when it was ordered by a civil court because such an act went against the halachic requirement that a get must be given willingly and without restraint for the wife to truly be free.

Similarly, in Victor v. Victor, the Arizona court denied specific performance as a remedy, claiming that the ketubah contained “no specific terms describing a mutual understanding that [a] husband would secure a Jewish divorce.” Furthermore, courts in Florida, Pennsylvania, and Ohio have also refused to enforce the marital contract either because of the fear that doing so would excessively entangle the state with religious matters, violating the Establishment Clause, or because such an order would go beyond the court’s jurisdiction. In Price v. Price, the Pennsylvania court denied the wife’s request for specific performance, stating that forcing a religious divorce may not only violate the Establishment Clause but also the Free Exercise Clause.

50 Id.
52 Id.
53 Id.
54 Id. at 530. The court in Aflalo questioned why the civil court should order such relief if the beth din would not do so. Id. It further believed that if the husband could be coerced into giving a get, the beth din ought to be the one coercing. Aflalo, 685 A.2d at 530. The general fear by this court was that “[b]y coercing the husband, the civil court is, in essence, overruling or superseding any judgment which the Beth Din can or will enter, contrary to accepted First Amendment principles.” Id.
56 Id. at 902.
57 See Turner v. Turner, 192 So. 2d 787 (Fla. Dist. Ct. App. 1966) (holding that ordering the husband to cooperate with a get was unenforceable statutorily but could be enforced as a simple contract), cert. denied, 201 So. 2d 233 (Fla. 1967); Steinberg v. Steinberg, No. 44125, 1982 WL 2446 (Ohio Ct. App. 1982) (holding the compelling of a get unenforceable); Price v. Price, 16 Pa. D. & C. 299, 291 (1932) (holding that the court did not have a right to force anyone to consent to any kind of divorce, civil or religious).
58 Price, 16 Pa. D. & C. at 291. The court reasoned that “[t]he civil tribunals are . . . without authority to order one to follow the practices of his faith. This is a matter dependent entirely upon his conscience, or upon his religious belief.” Id.
Despite the few courts that have denied the enforcement of the ketubah to give a get, other jurisdictions have allowed it. When the wife in *Koeppel v. Koeppel* brought an action against her husband to compel him to grant her a get pursuant to their civil divorce, the husband moved for dismissal, arguing that compulsion would violate his First Amendment rights. The New York court was not persuaded. Rather, it stated:

Complying with his agreement would not compel the defendant to practice any religion . . . His appearance before the Rabbinate to answer questions and give evidence needed . . . is not a profession of faith. Specific performance . . . would merely require the defendant to do what he voluntarily agreed to do . . . especially if it will bring peace of mind and conscience to one whom defendant must at one time have loved.

In *Margulies v. Margulies*, another New York case, the husband openly agreed in court to give his wife a get, the stipulation being incorporated into a court order. The husband ignored the order and, as a result, was held in contempt of court twice. However, he was given the opportunity to either purge himself, subjecting him to fines and other penalties, or appear in front of the *beth din* and participate in the get proceedings. He continued to fail to comply with the court order and was sentenced to fifteen days in jail. *Margulies* is an interesting case because the court agreed with the husband’s argument that the court did not have the power to force him to comply with religious proceedings; however, the court still imposed

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59 *See supra* notes 41-50 and accompanying text.
61 *Id.* at 373.
62 *Id.*
63 *Id.* After the trial, the court held the marriage contract unenforceable and too indefinite to support a judgment for specific performance. *See also* Koeppel v. Koeppel, 161 N.Y.S.2d 694 (App. Div. 1957) (stating that the language of the agreement obligated the husband to give his wife a get only if it were necessary).
65 *Id.* at 484.
66 *Id.*
67 *Id.*
68 *Id.* The Appellate Division reversed the order of the fifteen days in jail, but it imposed the fines instead. *Margulies*, 344 N.Y.S.2d at 484.
the fines. The importance of this case reflects the court’s ability to be open to the enforceability of the ketubah, despite the court’s lack of authority and desire to do so. The court did this by imposing less severe penalties on the husband (i.e., using the court’s authority to bypass the issue involving the ketubah).

In some instances where there was no express agreement regarding a get, few courts have allowed an inference of an express agreement to give or receive a get. The courts’ rationale behind the inference was that the parties performed their marriage through religious tradition and in “accordance with the laws of Moses and Israel,” or through the execution of the ketubah. A case from Canada, Morris v. Morris, was the first case seeking an order from a court to compel a get from a reluctant husband on the grounds that the ketubah served as a “civilly enforceable contract to grant a get upon civil dissolution and entered an order of specific performance.” The question presented to the court was whether a woman was able to compel her husband to grant a religious divorce through the civil court in situations where the husband refused to give a get, thus prohibiting remarriage. The court answered in the affirmative, holding that the ketubah was an enforceable contract that allowed for specific performance. Despite its uphill and inconsistent battle, the ketubah has been used to uphold a get and has been accepted by many courts.

In a New Jersey case, Burns v. Burns, the wife was granted a civil divorce judgment but sought an order that would compel her ex-husband to issue a get. The court, which had relied on Minkin, held that whenever there was a case of civil dissolution, the ketubah would

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69 Id.
70 See generally Breitowitz, supra note 1.
71 Margulies, 344 N.Y.S.2d at 484. Although the court did not uphold the enforcement of the ketubah to give a get, it upheld the fines based on procedural grounds, thus imposing a less severe penalty for the husband’s non-compliance. Id.
72 Breitowitz, supra note 1, at 343.
73 Breitowitz, supra note 1, at 343.
74 Breitowitz, supra note 1, at 343 (citing 36 D.L.R.3d 447, rev’d, 42 D.L.R.3d 550 (1973)).
75 Breitowitz, supra note 1, at 343.
76 Breitowitz, supra note 1, at 343.
77 Breitowitz, supra note 1, at 344. The decision was later reversed by the Manitoba Court of Appeals, and the wife did not seek further review. Breitowitz, supra note 1, at 344.
78 See supra notes 41-50 and accompanying text.
80 Id.
81 Minkin, 434 A.2d at 668.
impose an obligation to dissolve the marriage.\textsuperscript{82} Thus, the court compelled the parties to “submit [to] the jurisdiction of the Jewish ecclesiastical court, the ‘Bet[h] Din,’ and initiate the procedure to secure a ‘get’ [was] within the equity powers of [that] court.”\textsuperscript{83} In denying the husband’s free exercise claim, the court, in dicta, held that a “true religious belief is not compromised as the amount of money offered or demanded is increased.”\textsuperscript{84} The court further noted that “[t]his so-called ‘offer’ is akin to extortion.”\textsuperscript{85} Although the court did not explicitly direct an order to the husband to initiate the get, it did order him to submit to the rabbinical court and initiate the procedure based on an inference of an express agreement.\textsuperscript{86}

\textbf{B. Securing a Get Through Prenuptial Support Agreements}

Prenuptial support agreements have been another indirect mechanism in helping secure a get.\textsuperscript{87} Even though the ketubah generally spells out the promises a husband makes toward his wife, Jewish law mandates that a husband be obligated to support his wife

\begin{itemize}
\item[(1)] a declaration that he has betrothed his wife in accordance with the laws of Moses and Israel;
\item[(2)] a promise that he will honor, support, and work for his spouse in accordance with the custom of Jewish husbands;
\item[(3)] an obligation to provide food, clothing, and intimacy in accordance “with universal custom”;
\item[(4)] an agreement to pay an alimony lump sum of 200 silver zuz in the event of divorce or death;
\item[(5)] an agreement to pay a stipulated monetary value for property that the wife brings into the marriage;
\item[(6)] a promise to pay an additional alimony sum in excess of the statutory minimum; and
\item[(7)] the creation of a lien on all real or personal property, whether presently owned or after-acquired, to secure payment of all obligations under the ketubah.
\end{itemize}

\textit{See} Breitowitz, \textit{supra} note 1, at 347 (footnotes omitted).

\begin{itemize}
\item \textsuperscript{82} Burns, 538 A.2d at 438.
\item \textsuperscript{83} Id. at 441 (citation omitted).
\item \textsuperscript{84} Id. at 440. By examining the testimony offered, the court reasoned that the husband’s refusal to give a get was based not on his religious beliefs but rather on monetary gain. \textit{Id}.
\item \textsuperscript{85} Id. (citation omitted).
\item \textsuperscript{86} Burns, 538 A.2d at 438.
\item \textsuperscript{87} See Breitowitz, \textit{supra} note 1, at 347.
\end{itemize}
both physically and financially. In Israel, rabbinical courts have the authority to rule on matters regarding marital support because they have broad authority over such issues. These courts create pressure on a reluctant husband to execute a get. Forcing high money judgments puts pressure on the husband; however, because the only way to stop the support obligation would be through dissolving the marriage, high money judgments act as a major factor in deterring a husband from denying his wife a get.

In prenuptial agreements, the couple agrees to “submit to the jurisdiction of a rabbinical court in the event of marital dissolution, and to abide by contractual provisions that either encourage or require the delivery or acceptance of a get.”

The prenuptial agreement has numerous advantages: it works preemptively rather than after the problem has already arisen; it can be uniformly implemented on a national level; and finally, while prenuptial agreements are designed to be legally enforceable, many rabbis hail the fact that they encourage spouses to resolve their problems in rabbinical, not secular, courts.

Thus, in an attempt to incentivize husbands to give their wives a get, some rabbis have drafted prenuptial agreements. Specifically, the Rabbinical Council of America (hereinafter “RCA”) endorsed the prenuptial agreement drafted by Rabbi Mordechai Willig, which makes it an obligation for a husband to make fixed payments to his wife beginning from separation and ending once he grants her the get.

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88 SHULCHAN ARUKH, Even HaEzer 70:1. The Shulchan Aruch is known as the code of Jewish law and is consulted by many Jewish communities. Once a marriage is dissolved through divorce, Jewish law does not recognize any obligations for support, other than the one-time payment of 200 zuz.


90 Id. at 22.
91 Id.
92 Zornberg, supra note 9, at 768.
93 Zornberg, supra note 9, at 768.
94 See infra note 95 and accompanying text.
95 A Powerful Advance to Prevent Using Jewish Law to Cause Human Suffering, RABBINICAL COUNCIL AM. (Sept. 22, 2016), http://www.rabbis.org/news/article.cfm?id=105862. Here, the RCA issued a statement naming Rabbi Willig’s halachic prenuptial agreement as an “effective way to prevent get-abuse.” Id.
Prenuptial agreements create no *halachic* concerns. Because the husband refuses to grant the *get*, thereby keeping the couple religiously married, he subjects himself to the Jewish law that a husband must support his wife for as long as they are married. Rabbi Kenneth Brander stated, “All we’re doing is actualizing in very definitive terms what his responsibilities are as he is not willing to change that [marital] status quo and give the *get.*”

Though prenuptial agreements have many advantages, they might have some disadvantages. Like any law passed, it is only as effective as the officials making the effort to enforce it. Here, although the prenuptial agreement is not one mandated by Jewish law, the solution to the *agunah* problem (i.e., using a prenuptial agreement as a vehicle to receive a *get*) can only truly be effective if the community rabbis agree to use them. Today, some rabbis agree to perform the marriage ceremony on the condition that a prenuptial agreement between the couple is executed. However, most rabbis disagree with the notion of a prenuptial agreement altogether, fearing that executing one would lead to marital conflicts revolving around trust.

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96 Id.
97 Id.
98 Zornberg, supra note 9, at 769 (quoting Telephone Interview with Kenneth Brander, Orthodox Rabbi, Chair, RCA Committee on prenuptial agreements (Feb. 16, 1994)).
99 Ben Sales, *Orthodox Rabbis’ Group Mandates Prenup To Prevent ‘Chained’ Wives, JEWISH TELEGRAPHIC AGENCY* (Sept. 23, 2016, 5:48 PM), https://www.jta.org/2016/09/23/news-opinion/united-states/orthodox-rabbis-group-mandates-prenup-to-prevent-chained-wives. Disadvantages arise because, as mentioned, there are rabbis that oppose the notion of a *halachic* prenuptial and actively discourage them from getting one. See id. Those rabbis who are not opposed to the prenuptials, like Rabbi Mark Dratch, believe that it would be difficult to enforce such a resolution because rabbis who are pro-prenuptial are not present to execute every wedding. See id.
100 Id. (explaining that some rabbis “either don’t require the prenup or actively discourage couples they are marrying from signing one.”).
101 Id. (“The Rabbinical Council of America will mandate its member rabbis to require couples to sign a prenuptial agreement ensuring that husbands will not withhold a ‘get,’ or Jewish writ of divorce, from their wives.”).
102 Sales, supra note 99 (“Among some 200 mostly American Orthodox rabbis surveyed earlier [in the year 2016] by the Jewish Orthodox Feminist Association, approximately 75 percent already require couples to sign the prenup before getting married.”).
103 See Zornberg, supra note 9, at 768. Some rabbis believe that the fear of prenuptial agreements leading to dissolution of marriage is something that can be overcome if more rabbis explained to marrying couples that the point of the prenuptial agreement was evidence of love and responsibility toward the other in the event that a change in the relationship would occur. See Zornberg, supra note 9, at 768 (“If prenuptial agreements would be signed routinely at every wedding, we could wipe out this problem entirely.” (citation omitted)).
As discussed, the prenuptial agreement was created in the effort to discourage a husband from turning his wife into an agunah.\textsuperscript{104} Furthermore, it was also created with the goal to stop the wife from becoming a victim of get extortion.\textsuperscript{105} It protects the wife from a husband who abuses Jewish law as a mechanism of extorting money, property, and custody through the wife during the divorce proceedings.\textsuperscript{106} It is important to conceptualize that a prenuptial agreement does not expressly grant a get at a time of dissolution, as that would compromise the husband’s free will.\textsuperscript{107} A prenuptial agreement simply enforces the husband’s obligation to support his wife, something expressly provided for in the ketubah.\textsuperscript{108} Today, many women’s rights activists and some rabbis are pushing for more halachic solutions.\textsuperscript{109} Though a prenuptial agreement may have some drawbacks and is not ideal for some, it is a step toward a solution to help free the agunot.\textsuperscript{110}

Making a get invalid relies upon the finding that it was executed under any form of duress or compulsion.\textsuperscript{111} An issue that arises once a get has been deemed executed under duress or compulsion is whether the penalty was contractually assumed.\textsuperscript{112} Jewish law has recognized many situations where a husband could divorce his wife through compulsion.\textsuperscript{113} Though the idea of a

\textsuperscript{104} See discussion of this concept infra Part III.
\textsuperscript{105} See infra Part III.
\textsuperscript{106} See infra Part III.
\textsuperscript{107} A get must be given under the husband’s free will in order to constitute a valid divorce under Jewish law. See supra note 22 and accompanying text.
\textsuperscript{108} See infra note 113 and accompanying text.
\textsuperscript{109} See infra note 186 and accompanying text.
\textsuperscript{110} See supra notes 99-103 and accompanying text.
\textsuperscript{111} The invalidity of a get is called a get meusah. This is a big obstacle for any woman seeking a religious divorce, since a get must be given with the husband’s consent and under his free will. As discussed in the previous paragraphs, what plays a major role in whether this obstacle can be overcome is based on civil enforcement and prenuptial agreements. However, issues still arise. Generally, civil courts have no say past the civil divorce proceeding. A civil court may have the authority to compel a reluctant husband to grant his wife a get, but the husband may still go before the Jewish court and say that the only reason he is there is because of compulsion of that civil court, making the religious divorce proceeding technically invalid. See generally TALMUD, Gittin 88b.
\textsuperscript{112} See Breitowitz, supra note 1, at 331 n.73. The idea that transactions entered under duress are voidable is similar to American law. See Breitowitz, supra note 1, at 331 n.73 (“The fact that duress is recognized as a basis for the invalidation of a get—such a get is void, not merely voidable—underscores the crucial importance of consent and the problematic nature of judicial coercion.”).
\textsuperscript{113} Breitowitz, supra note 1, at 333 n.80.
compelled *get* goes against the rule that a *get* must be granted without duress or compulsion, the Talmud briefly states that if the husband is forced until he states, “I am willing,”\(^{114}\) then it is to be considered a valid divorce decree. Although the consent must be formally expressed, it can be encouraged through applying any type of psychological, financial, or physical pressure.\(^ {115}\) Another situation where compelling a *get* would remain valid is when the event did not arise from the purpose of influencing a *get*.\(^ {116}\) A contemporary example would be a “separation agreement where one spouse agrees to forego property or custody rights in exchange for a *get*.\(^ {117}\) However, it seems that under these circumstances, by granting the *get* and holding it valid, the husband confers a benefit simply because he would be escaping financial burdens that would have been his responsibility had the *get* not been executed.\(^ {118}\) Financial burdening

The Talmud enumerates a number of specified grounds that enable a woman to petition for divorce, and later authorities have supplemented the list:

1. If her husband becomes afflicted with certain loathsome diseases after marriage or even if the disease predated the marriage but, as of the date of the marriage, its existence was unknown to her.
2. Impotence or sterility.
3. Failure to provide material support.
4. Refusal to cohabitate.
5. Physical or verbal abuse.
6. Husband forces wife to violate religious law.
7. Husband is engaged in certain occupations that are physically repulsive—dung gathering, tanning hides.
8. Husband becomes an apostate.
9. Habitual infidelity.

Breitowitz, *supra* note 1, at 333 n.80.


\(^{115}\) *Id.* “He is subjected to pressure until he says, ‘I am willing.’ And so you find in the case of letters of divorce for women: The man is subjected to pressure until he says, ‘I am willing.’” *Id.* (footnotes omitted).

\(^{116}\) Breitowitz, *supra* note 1, at 335. The category arose under the Spanish authority, *Rivash*. This case was about a person who was imprisoned for not paying a debt, an event completely unrelated to the *get*. His wife’s relatives had offered to help with the debt, thus releasing him from prison, conditioned upon him giving his wife a *get*. Here, there was no objection to the *get*, “for he was not seized in order to [compel] him to divorce [his wife] but on account of his debt; the *get* is not coerced but [the product] of free will.” Breitowitz, *supra* note 1, at 335.

\(^{117}\) *Id.*

\(^{118}\) See RESTATEMENT (SECOND) OF CONTRACTS §§ 174-76 (2018). As an example, imagine someone threatening to drown another person unless he or she agrees to the contract versus offering to save an already drowning person if he or she agrees to the contract. In the former, any contract created under such coercive circumstances would be *void* by means of duress. In
undoubtedly is a factor in what gave rise to the modern agunah problem—get extortion.\textsuperscript{119}

III. \textbf{THE AGUNAH PROBLEM}

A Jewish woman who seeks a divorce from her husband must often times pay for her freedom to encourage her husband to give her a get and exercise his free will when doing so.\textsuperscript{120} She may ultimately give up her rights to child support, marital property, or burden herself financially to rid herself from the bonds of a failed marriage.\textsuperscript{121} In a worst-case scenario, the wife may still unsuccessfully persuade her recalcitrant husband and remain handicapped by halacha, turning her into a lifelong agunah.\textsuperscript{122}

A. \textbf{Religious Implications of the Agunah Problem}

The requirement that a husband grant his wife a get comes from Deuteronomy, stating:

When a man taketh a wife, and marrieth her, then it cometh to pass, if she find no favour in his eyes, because he hath found some unseemly thing in her, that he writeth her a bill of divorcement, and giveth it in her hand, and sendeth her out of his house.\textsuperscript{123}

This verse gives a man the authority to divorce his wife at his own discretion and, in time, many Jewish scholars have sought to protect women in these types of divorce proceedings by providing takkanot.\textsuperscript{124} Today, this means that a husband must voluntarily execute the get, and the wife must voluntarily accept it.\textsuperscript{125} Takkanot would further allow either spouse to initiate the proceedings for divorce by summoning an

\begin{thebibliography}{9}

\item See infra Part III.B.
\item See generally Breitowitz, supra note 1.
\item Breitowitz, supra note 1.
\item See infra Part III.B.
\item Deuteronomy 24:1; see also Zornberg, supra note 9, at 708.
\item Takkanot is “a legislative enactment by competent rabbinical authority to ameliorate the effects of an unduly harsh Biblical or Talmudic law or to enhance the social welfare.” See Breitowitz, supra note 1, at 317 n.13.
\item Zornberg, supra note 9, at 708.
\end{thebibliography}
appearance before the *beth din*. Lastly, where the rabbinic authorities decide that a religious divorce is necessary, the *beth din* can compel the husband to give it.

There are restrictions placed on rabbinical courts by Jewish law. First, the husband retains the power to give a *get*, and, absent his consent, a rabbinical court cannot simply declare her divorced. Second, a *get* must be given under the husband’s own free will for it to be deemed valid under *halachic* laws. However, the issue is not one of compulsion, but rather the issue is whether rabbinical courts can enforce such an order given its limitations.

An *agunah* is a woman that is “chained” to what essentially is a dead marriage. Although she may have the desire to end her marriage and move on with her life, she is unable to do so because she has not been released under religious law. According to Jewish law, a woman cannot remarry unless there is clear evidence that her husband died or gave her a *get*. In the past, most women fell victim to disappearing husbands. Husbands who were businessmen and travelled a lot were killed and their bodies were disposed of. Husbands who were soldiers were sent off to war with the possibility to never return. This led to the rise of the main categories of *agunah* today. A wife becomes an *agunah* when:

1. A man divorces his wife in the civil courts and possibly even remarryes, but refuses to give his wife a *get*, either because of malice or greed. All too

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126 Zornberg, *supra* note 9, at 708.
127 Zornberg, *supra* note 9, at 709.
128 *See infra* notes 129-130 and accompanying text.
129 However, there are some rabbis, such as Rabbi Moshe Antelman, who believe a *beth din* may give a *get* under its own discretion in certain scenarios. Zornberg, *supra* note 9, at 772.
130 *See supra* note 123 and accompanying text.
131 *See infra* note 141.
132 *See infra* note 138 and accompanying text.
133 *See supra* note 123 and accompanying text.
134 TALMUD, Gittin 3a. The deliverance of a *get* has a witness requirement. *Id.*
136 *See id.*
137 *See id.*
138 *See id.*
often the husband tries to extort money from this wife in exchange for the *get*.

2. A man disappears without leaving a trace, so that he is not available to issue the divorce . . .

3. The man is lost in military action or dies in a mass explosion. . .

The *agunah* problem has always been a big challenge for Jewish authorities. Scholars of the Talmud have recognized the devastating outcome for a woman with the status of *agunah* and have created various *halachic* “leniencies” in an attempt to lessen the problem. However, as one may come to find out, the *agunah* problem is nothing new. The problem arises given the contractual nature of Jewish marriage and divorce. Interestingly, although the Talmud discusses the issues involving husbands who disappear and various “leniencies,” the Talmud does not offer annulment as a solution for spousal abandonment.

Because the Jewish perception of the contractual nature of marriage and divorce, the issue involving spousal abandonment and the refusal of a husband to participate under his own free will causes

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139 MICHAEL J. BROYDE, MARRIAGE, DIVORCE, AND THE ABANDONED WIFE IN JEWISH LAW: A CONCEPTUAL UNDERSTANDING OF THE AGUNAH PROBLEMS IN AMERICA 6 (2001) (“With the movement of large segments of the Jewish community from Eastern Europe to America, a new form of agunah problem arose. A husband would emigrate to America, promising to send for his wife when he accumulated enough money to support her, and would then disappear. . . . As a general proposition. . . . [a solution] declaring the husband to be dead were few and far between.”). Under these circumstances, the rabbinical authorities started to prompt men who traveled to either write out a *get* before leaving or give authority to the *beth din* to do so.

140 Gordin, supra note 137 (“During the Russo-Japanese war or 1905, some great Russian rabbis visited the troops before they left for the front and persuaded the Jewish soldiers to issue . . . a conditional divorce so as to free their wives from the status of agunah should the men fail to return.” (internal quotations omitted)).

141 This is an issue that many Jewish authorities grapple with because, as *halacha* mandates, giving a *get* is a direct right given to men. See generally KENNETH SEEKIN, JEWISH MESSIANIC THOUGHTS IN AN AGE OF DESPAIR (2012). Furthermore, the law cannot be rewritten or removed because of the codification of the thirteen core principles of Jewish belief by scholar and philosopher, Maimonides. See generally id. One of the codified principles is that the Torah is timeless and unchanging. See generally id.

142 See TALMUD, Gittin 3a. Generally, two witnesses are required when verifying marital status. See id. With this law of “leniency” in place, the rabbis hold that one witness’s testimony is enough with regard to the *get*. See id.

143 See infra Part III.B.

144 Compare it to transactions that involve other contractual obligations—issues that arise would implicate parties’ rights if one party wished to withdraw from the contract.

145 See generally TALMUD, Gittin 3a.
there to be no a solution to this problem. While it seems that the solutions offered are the best that the rabbinic authorities can do to reach just results, the rise of the modern agunah problem shows that these solutions are not as just and successful as one may have hoped them to be.

B. The Modern Agunah Problem and its Developments

Rabbinic authorities have been conscious of the unjust results that may arise during religious divorce proceedings, as today the get has been used as a major vehicle for extortion. Because it is uncommon for people to disappear out of thin air, the agunah problem arises through the abuse of the get process.

In prior centuries, when Jews lived in very closely-knit, interdependent communities, extortion or refusal of the Get was almost unheard of, because the price the man would pay as an outcast in his community simply prevented such action.

With the rise of mobility and modern technology, which makes communication easier, it is less challenging to find people who have disappeared and verify other important information. However, it can be argued that the modern agunah problem bloomed out of the rise in mobility, and perhaps the loosening of community ties in the modern world. Today, husbands refuse to grant their wives a divorce, even

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146 See supra note 113. The ketubah signed by the couple on their wedding day consists of promises that are made to the wife by the husband. These promises are contractual.

147 The fact that agunah women are still prevalent in the modern world and there are husbands that still refuse to issue a get is evident enough that the proposed solutions, such as the prenuptial agreements, are not as successful in their entirety. See supra notes 99-103 and accompanying text. This is especially important because there are rabbis who refuse to acknowledge the prenuptial as a halachically valid solution. See supra notes 99-103 and accompanying text.


149 See generally BROYDE, supra note 139.

150 Leichter, supra note 148.

151 BROYDE, supra note 139, at 7-8 (“Modern technology has made it easy to communicate. People who wish to be found are found. Death is much more easily verifiable, and facts are generally clearer.”).

152 See generally BROYDE, supra note 139, at 7-8.
if it clashes with a rabbinical order to do so.\textsuperscript{153} Ultimately, they are motivated by sheer spite, unhappiness with divorce settlements, or custody agreements.\textsuperscript{154} This leads the recalcitrant husband who uses the get as a bargaining chip or leverage against his wife.\textsuperscript{155}

In more recent years, rabbinical courts have not accounted for the vast significance of interference when they see husbands purposefully hold their wives hostage to a marriage by refusing her the get.\textsuperscript{156} On a comparative level, the Israeli system combines secular law and religious law.\textsuperscript{157} This permits the rabbinic courts to “order imprisonment, [revoke] driver’s and professional license, and [impose] other penalties . . . on a ‘recalcitrant’ husband, who refuse[s] to give his wife a Get.”\textsuperscript{158} Any rabbinical court, with the exception of the rabbinical courts in the State of Israel, functions similarly to arbitration courts in the United States.\textsuperscript{159}

Rabbinical courts in the United States possess the authority to compel a husband in giving his wife a get.\textsuperscript{160} However, the enforcement issues still persist.\textsuperscript{161} Unlike the courts in the State of Israel, rabbinical courts in the United States cannot use coercive methods at their disposal to force a recalcitrant husband to comply, nor can a court in the United States enforce coercive judgments set forth by the rabbinical courts.\textsuperscript{162} Thus, because Israel’s rabbinical court

\textsuperscript{153} BROYDE, supra note 139, at 7-8.
\textsuperscript{154} BROYDE, supra note 139, at 73.
\textsuperscript{155} See generally BROYDE, supra note 139, at 73.
\textsuperscript{156} As mentioned before, Rabbis have proposed solutions, i.e., prenuptial support agreements. Despite the interference, not all solutions have been accepted and many Rabbis still refuse to interfere with the husband’s discretion in granting a get. See supra note 103 and accompanying text.
\textsuperscript{157} Leichter, supra note 148, at 10.
\textsuperscript{158} Leichter, supra note 148, at 10; see also Yair Ettinger, Israel’s High Court Invokes Medieval Punishment for Husbands Who Refuse Jewish Ritual Divorce, HAARETZ (Mar. 01, 2017, 4:23 PM), https://www.haaretz.com/israel-news/.premium-1.774684. Israel’s rabbinical court, in a 5-2 vote, held that aside from pursuing punitive charges, it can shun the husband and subject him to ostracizing by the community if he denies his wife a divorce. \textit{Id.} The court held that its authority was not exceeded when it publicly shamed those husbands and urged the community to stay away from “get refusers.” \textit{Id.} It further publicly announced to not trade or pray with those who refused to give a get “until they set their wives free.” \textit{Id.}
\textsuperscript{159} Leichter, supra note 148, at 10.
\textsuperscript{160} Although the authority really depends on morals and applying community pressure, rabbinical courts in the United States do not have actual authority like Israeli courts do.
\textsuperscript{161} See infra note 162 and accompanying text.
\textsuperscript{162} BROYDE, supra 139, at 9 (“The single most significant reason is that Jewish law has been emasculated since the emancipation. Jewish law courts have been deprived of juridical authority and are powerless to impose obligations on individuals. They have only moral and
prefers to order payments for the wife’s support as a way to push the husband toward giving her a get, it rarely uses coercive force against a noncomplying husband.\textsuperscript{163}

In its most recent case, the Rabbinical Court of Jerusalem attempted a settlement between the estranged couple, even though the case was active in America’s civil court.\textsuperscript{164} The couple lived in New York and filed for divorce in the Beth Din of America.\textsuperscript{165} However, the husband refused to appear before the rabbinical court.\textsuperscript{166} The court issued a seruv against him and banned members of the synagogue from getting involved in any type of economic or social transaction with him.\textsuperscript{167} Despite the sanctions, he still refused to give her a get; the wife then contacted organizations in Israel for assistance.\textsuperscript{168} The court held that jurisdiction over the religious divorce proceedings was proper because the husband was a citizen and resident; therefore, the court issued a ban because he was a flight risk and could have potentially fled the country leaving the wife “chained” in a marriage against her will.\textsuperscript{169}

In another recent Israeli case, the rabbinical court sentenced a man to five years in prison because he refused to give his wife a get.\textsuperscript{170} The Israeli rabbis have implemented a “policy of stringent ethical authority. This situation makes the emasculated Jewish law courts impotent, and vastly exacerbates the modern agunah problem in America.”).\textsuperscript{163}

BROYDE, supra 139, at 10 (“They are inclined to require counseling, therapy, mediation, and other techniques of reconciliation as alternatives to divorce, particularly when there are children in the marriage.”).

\textsuperscript{164} Jeremy Sharon, Rabbinical Court Infringes on U.S. Civil Jurisdiction in 8-Year Agunah Case, JERUSALEM POST (July 14, 2017, 2:50 PM), http://www.jpost.com/Diaspora/Rabbinical-court-infringes-on-US-civil-jurisdiction-in-8-year-agunah-case-499686 (“Lawyers for the aguna[h] say that the case is a classic example of the problematic phenomenon of rabbinical courts trying the right of a woman to get divorced to her acceptance of a financial settlement, essentially acquiescing to an even abetting the extortion of women.”)

\textsuperscript{165} Id.

\textsuperscript{166} Id.

\textsuperscript{167} Id.

\textsuperscript{168} Id. Her husband was a citizen and resident of Israel; thus, contacting these organizations made them aware of her uphill battle with her husband regarding their religious divorce and would allow the rabbinical courts to get involved. See Sharon, supra note 164. Consequently, leading up to the rabbinical court banning the husband from leaving Israel. See Sharon, supra note 164.

\textsuperscript{169} Sharon, supra note 164. The court further stated that it lacked jurisdiction over matters regarding child support and division of assets because these issues were pending before the civil courts in the United States. See Sharon, supra note 164.

punishments against husbands. “171 This policy included publishing the husbands’ names, where they worked, and other details that would identify them.172 The objective behind these actions is to publicly humiliate the husbands into freeing their wives.173 Consequently, the husband still refused to comply with the court’s orders to give his wife a get, which led the court to its decision—issue an injunction that placed a travel ban, order him to surrender his passport, and freeze all of his bank accounts.174 The judges responded with the following statement:

Imprisoning a person is not easy and is in fact an extraordinary and harsh measure. But the husband leaves the court no other alternative as outweighing the pain that the sentence involves in the Halacha [Jewish law] given to the sages of Israel, which requires the court to do everything within its power to redeem a woman from her chains.175

Taking away a noncomplying husband’s liberty may be a harsh punishment, but perhaps by placing him in physical chains, it will help him understand the consequences of his actions and how detrimental his actions can be when he chooses to keep his wife religiously chained.176 The importance of this Israeli decision lies in the rabbinical courts’ acknowledgment that religious chains placed on an agunah can be equally limiting as placing a person in physical chains.177

In one of most extreme cases known, a seventy-year-old Brooklyn rabbi, Mendel Epstein, was convicted for ten years for initiating and leading a violent coalition of Jewish men who would use coercive and violent means to force husbands into giving their wives a get.178 Although the laws in the United States prohibit kidnapping,
torture, and assault, some rabbis further believe that the actions of Epstein and his “gang” should be heavily sanctioned for they were inhumane.\(^{179}\) Although these acts were inhumane and illegal, the arrests brought “national attention [to] the anguished situation . . . and perhaps will help put legal pressure on husbands who have separated from their wives but refuse to allow them to re-marry.”\(^{180}\) Though Epstein is no martyr, his drastic actions further exposed the great need for some sort of systematic solution that is deeply rooted in halachic laws.\(^{181}\)

In more recent years, the agunah problem has made its way up to the surface.\(^{182}\) The inevitable question frequently pondered, that does not necessarily have a definitive answer, is whether there is a possible solution.\(^{183}\) Unfortunately, secular law cannot do much for women in these situations.\(^{184}\) The granting of a get is completely a religious matter; thus, secular courts can only go as far as making a judgment that it cannot necessarily and specifically enforce.\(^{185}\) Many active organizations advocate for the rights of agunot by taking action such as public shaming.\(^{186}\)

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\(^{180}\) Id.

\(^{181}\) See generally id.

\(^{182}\) With the help of Jewish rabbis, like Epstein, who have acknowledged the problem and organizations that have and continue to take a proactive stance on this issue. See infra note 188 and accompanying text.

\(^{183}\) See infra Part IV. Indubitably, there is a clash between civil law and halachic law. Ultimately, the clash stems from the need to protect First Amendment rights while offering help to agunot under civil law can and the need to preserve the text of the Torah by religious adherents.

\(^{184}\) See infra Part IV.

\(^{185}\) See infra Part IV.

\(^{186}\) A prominent New York-based nonprofit organization called, Organization for the Resolution of Agunot (ORA), advocates for the rights of the agunot and supports a universal adoption of the Jewish prenuptial agreement. Mark Oppenheimer, Religious Divorce Dispute Leads to Secular Protest, N.Y. TIMES (Jan. 3, 2011), http://www.nytimes.com/2011/01/04/us/04divorce.html. This organization stages protests in front of a noncomplying husband’s (sometimes a noncomplying wife who refuses to accept the get) home or place of work and actively raises awareness by forcing financial and legal pressures onto him (or her). See generally id.; see also Doree Lewak, An Orthodox Woman’s 3-Year Divorce Fight, N.Y. POST
Abolishing the _get_ requirement as a whole is not a solution for the Orthodox community. 187 It may be that, perhaps, the only plausible solution would be a communal agreement to reinterpret the _halachic_ laws of divorce in situations where the wife may successfully exit her marriage in accordance with _halacha_. 188 However, as of now, _agunot_ can continue to fight against _get_ refusal and remain hopeful for an improved, _halachically_-accepted development. 189

IV. **The American Judicial System as a Remedy**

The New York _Get_ Law, amended into the Domestic Relations Law Section 253, 190 is an example of secular law coming to the aid of the _agunah_ problem. 191 This very controversial legislation was enacted with the goal of “ensur[ing] that persons who do not give or receive [a _get_] will be unable to receive the benefits of a civil divorce.” 192 The statute states that a party cannot receive an annulment or divorce unless the party claims in a verified complaint that the party took all the steps necessary, to the best of his or her knowledge, to remove any barrier to the defendant’s remarriage. 193 Furthermore, the court must “defer entering final judgment until the plaintiff files with the court and serves on the other party a sworn statement of actual compliance.” 194 Even though the court does not have the authority over inquiring into the factual basis of a sworn statement, knowingly submitting a false statement may lead to a criminal proceeding for perjury. 195 Included in the “barriers to remarriage” would be “religious

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187 See generally KENNETH SEESKIN, MAIMONIDES ON THE ORIGIN OF THE WORLD (2005). One of the core principles of Jewish law is that the Torah is timeless and unchanging.

188 As the rabbis once reinterpreted a woman’s grounds for divorce. See BROYDE, supra 139, at 19 (“Soon after the close of the Talmudic period, the rabbis of that time (called _geonim_ changed or _reinterpreted_ the substantive understanding of Jewish law to vastly increase the right of a woman to sue for divorce.”).

189 See generally Oppenheimer, supra note 186.

190 N.Y. DOM. REL. LAW § 253 (McKinney 1986).

191 See Masri v. Masri, 50 N.Y.S.3d 801 (Sup. Ct. 2017) (“It is clear from the legislative history that it was precisely this purported unfairness of a Jewish husband’s refusal to provide a _Get_ that drove the enactment of the [DRL § 253]. . .” (internal quotations omitted)).

192 Breitowitz, supra note 1, at 375.

193 § 253. With its adoption, questions of whether its enactment violated the First Amendment arose.

194 Breitowitz, supra note 1, at 376; see also § 253(3)(i).

195 § 253(8); see also N.Y. PENAL LAW § 210.40 (McKinney 1986) (making a knowingly false statement is a Class E felony that is punishable by at least four years in prison).
or conscientious restraints or inhibitions.” Therefore, not executing a get would constitute a barrier and would limit the husband’s ability to truthfully file an affidavit for a civil divorce.

The get law was challenged, although unsuccessfully, under the First Amendment. The First Amendment states that “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.” Inevitably, the get law creates a conflict between the Establishment Clause and the Free Exercise Clause. Challengers of the get law arguably believe that judicial intervention would violate a person’s constitutional right to free exercise, which provides that religion must be kept as a private matter; otherwise, it would constitute an impermissible establishment of religion. Furthermore, there is a lot of halachic criticism of the get law because it “improperly diminishes the capacity of the husband and wife to offer and receive a get with free will, a requirement of Jewish law.”

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196 § 253(6).
197 See supra notes 193-94 and accompanying text. As mentioned, the court does not necessarily have the authority to inquire whether the affidavit is truthful or not. However, if the husband would want to take that risk, he would be subjecting himself to a criminal action of perjury. This legislation was created with the intent to help wives obtain a get. Consequently, Governor Cuomo stated, “If there was such a precedent, I would defer to it . . . [b]ut [g]iven the clarity of the need, the efficiency of this statutory solution and the uncertainty of the constitutional objection, I approve this measure.” Breitowitz, supra note 1, at 375.
198 See Chambers v. Chambers, 471 N.Y.S.2d 958, 960 (Sup. Ct. 1983). Chambers is the only case that actually addresses the statute’s constitutionality though in dicta. Id. The court noted

It might very well be argued that the aspect of the get statute herein under scrutiny constitutes a denial of due process in that it requires a plaintiff to seek an undesired item of relief in order to obtain a desired item. It might further be argued, at least for the reason that there is no way to extract a removal of barriers statement from a defendant, that the requirement is as much a denial of due process as would be a law preventing the entry of a judgment . . .

All of the foregoing is unnecessary to the determination at bar.

199 U.S. CONST. amend. 1.
200 See infra note 204 and accompanying text.
201 See generally BROYDE, supra note 139, at 141.
202 BROYDE, supra note 139, at 103. Broye continues by saying

the threat of economic penalty undermines the free will needed by Jewish law, and a get given without free will can be void according to Jewish law. This criticism stands in contrast to the approval given to the earlier Get Law, which merely withheld a civil divorce in certain circumstances until a religious divorce was granted.

BROYDE, supra note 139, at 103.
In *Lemon v. Kurtzman*, the Supreme Court created a test that would indicate whether a state statute impermissibly established a religion. The *Lemon* test yields three prongs: first, the statute must have a legitimate state interest; second, the statute’s primary effect must neither advance nor inhibit religion; finally, the statute cannot promote excessive entanglement between the government and religion. The test would hold a law that accommodates a certain religious practice valid if it satisfies the three prongs. Furthermore, when a statute is challenged under the Free Exercise clause, often the challenger concedes that the failure to apply the provision in a way that would exempt certain religious practices infringes on religious liberty. The test employed when individuals challenge the Free Exercise clause is one of “general applicability.”

The state has a legitimate state interest by addressing the free exercise of a secular state interest. Here, the purpose is not only to

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203 403 U.S. 602 (1971). This test is still applied today, although it is unclear whether these prongs function as elements or factors to be considered. Case law subsequent to *Lemon* would indicate that regardless whether the prongs are elements or factors, excessive entanglement between the government and religion is important when analyzing the constitutionality of a statute under the Establishment Clause. See generally *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1 (1947); see also *Bd. of Ed. of Cent. Sch. Dist. No. 1 v. Allen*, 392 U.S. 236 (1968). Notably, before *Lemon*, the Court upheld state statutes that allowed for parents of students enrolled in private and public schools to be reimbursed of transportation costs and provided textbooks to parochial schools for secular purposes, arguing that the money provided to the schools were not related to religious purposes. See generally *id.* In *Lemon*, however, the Court held a state program, which provided parochial school teachers with salary supplements, invalid. *Lemon*, 403 U.S. at 602. The majority opinion noted the distinction between textbooks and salary supplements, reasoning that the parochial school teachers would be able to advance religious texts even when teaching secular subjects and taken in tandem, the state would be excessively entangling itself with religious purposes by providing salary supplements. *Id.* at 612.

204 *Id.* at 612.

205 *Id.*

206 *Id.*

207 See, e.g., *Emp’t Div., Dep’t of Human Res. v. Smith*, 494 U.S. 872, 919 (1990). The majority opinion held that the First Amendment’s protection of the free exercise of religion does not allow a person to use a religious motivation as a reason not to follow a generally applicable law. *Id.* (quoting *Reynolds v. United States*, 98 U.S. 145, 166-67 (1890) (“To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself.”)).

208 *Lemon*, 403 U.S. at 612. The majority concluded that generally applicable laws that impose a burden on religion are not subject to the compelling interest test. *Id.* Under that standard, nondiscriminatory (general) laws should be analyzed under a rational basis test, which shows more deference to legislation than the compelling interest test would. *Id.* A rational basis test would hold a law constitutional so long as there is a rational or legitimate purpose behind it. *Id.*

facilitate a right to privacy, as established through case law, but to facilitate a recognized fundamental right to marriage, and arguably the right to a divorce falls under its penumbra. As a general argument, the state has a legitimate interest in promoting the opportunity of its citizens to exercise and enjoy the constitutional rights afforded to them. Although the issue arises from a private actor rather than a public actor, states should have the power, especially in similar situations, to protect its citizens from infringement created by private actors.

When a husband withholds a get out of sheer spite or attempts to use the get as a scheme to gain a financial advantage over his wife, the state has a legitimate interest in protecting its citizens from coercion. Furthermore, many states have accepted intentional infliction of emotional distress as a tort and states should be able to use the prevention of human suffering as a legitimate state interest.

In short, the justifications for the New York law appear to be secular in purpose: the furtherance of the state’s divorce policy, the validation of the integrity of the judicial system, the facilitation of religious liberty, the encouraging of remarriage and a more stable family life, the protection of fundamental rights of privacy, and the curbing of victimization and extortion all appear to fall within the traditional ambit of general legislative competence. The “secular purpose” prong of Lemon can be easily satisfied.

210 See, e.g., Roe v. Wade, 410 U.S. 113 (1973) (recognizing the fundamental right to privacy); see also Loving v. Virginia, 388 U.S. 1 (1967) (recognizing that the fundamental right to marry, established before the right to privacy, is protected by the Due Process Clause).

211 See generally supra note 203. Courts apply the rational basis test when considering constitutional questions. It determines whether a law is rationally related to a legitimate government interest. Generally, states have an inherent police power to promote the general welfare of its citizens, where one may argue that general welfare includes a citizen’s right to exercise and enjoy his or her constitutional rights.

212 See generally The Civil Rights Cases, 109 U.S. 3 (1883), which coined a limitation known as the “state action” doctrine, indicating that constitutional rights may be argued against the government or its agents.

213 See Breitowitz, supra note 1, at 386; see also, Daniel J. Givelbar, The Right to Minimum Social Decency and the Limits of Even-handedness: Intentional Infliction of Emotional Distress by Outrageous Conduct, 82 COLUM. L. REV. 42, 43 (1982) (listing jurisdictions that recognize intentional infliction of emotional distress as a tort).

215 Breitowitz, supra note 1, at 386.
The second prong may be somewhat problematic, because it requires that the statute’s primary effect neither advances nor inhibits religion. 216 A statute that “indirectly compels an unwilling party to perform a religious act, even if there are legitimate secular purposes . . . seems to have the ‘effect’ of advancing religious observance.” 217 However, just because the statute may have some effect, it does not necessarily make the statute invalid because the prong requires a “primary” effect. 218 Nevertheless, it can be argued that the statute facilitates religion in certain respects. 219 For instance, it could create a lesser hurdle on observers of Orthodox Judaism by helping adherents remove barriers they would have not been able to cross otherwise. 220 Furthermore, though indirectly, it can force people into complying with religious practices that would not have been complied with but for the statute. 221

Excessive entanglement, the third prong of the test, would occur if the statute required continuous monitoring over the religious practice or institution. 222 Once the court receives the affidavit, the court must enter the judgment and need not inquire about the truthfulness of it. 223

Issues concerning the technical validity of the get, the qualifications of the executing Rabbis, and whether the principles of the officiating clergyman have or have not been met and what those principles are—questions that could indeed entangle the court in complex doctrinal matters—pose matters that the court simply does not and may not address. 224

216 Lemon, 403 U.S. at 612.
217 Breitowitz, supra note 1, at 387.
218 Breitowitz, supra note 1, at 387.
219 See infra notes 220-21 and accompanying text.
220 Breitowitz, supra note 1, at 386.
221 Breitowitz, supra note 1, at 386. A noncomplying husband may be encouraged to give his wife a get if he is seeking a civil divorce. Breitowitz, supra note 1, at 386. Breitowitz notes that “the ‘effect’ of making the practice of Judaism less burdensome on its willing practitioners is probably nothing more than a permissible accommodation of free exercise and does not offend Lemon’s ‘primary effect’ criterion.” Breitowitz, supra note 1, at 386 (citation omitted).
222 Lemon, 403 U.S. at 612.
223 N.Y. DOM. REL. LAW § 253(9) (McKinney 1986) (The truth of any statement submitted pursuant to this section shall not be the subject of any judicial inquiry. . . .”). Thus, the affidavit is conclusive. § 253(2)-(4).
224 Breitowitz, supra note 1, at 389.
As the statute indicates, the only way to contest the submitted affidavit would be if the clergyman filed an affidavit and testified in a way that went contrary to the other one.225

The Get Law has not been successfully challenged thus far under the Establishment Clause.226 Although critics of the law have attempted to argue for its unconstitutionality, the law has remained, and, one hopes, will continue to remain, valid because it does not raise threatening problems under the Free Exercise Clause as well.227 “A careful examination of the get law, however, demonstrates that the unwilling spouse’s free exercise rights are not truly impaired.”228

When using this statute, the court cannot directly compel a plaintiff to comply because the terms of the statute merely places a condition to remove barriers before being granted a civil divorce.229 Though promoting a wife’s right to free exercise would probably not be a state interest sufficient enough to stand on its own, there are many other important state interests that would need protection.230 Consequently, the enactment of the Get Law decreased the amount of agunot in New York, despite the legal and religious challenges made against it.231

V. CONCLUSION

In writing this Note, I have attempted to recognize the various civil remedies available for Jewish women who are unable to receive

The purpose of the law is to advance purely secular interests, including the facilitation of free exercise by those who otherwise would be burdened because of their religious beliefs. The primary effect of the law is not the “endorsement” . . . of religion[,] . . . [it] simply equalizes the rights of women holding certain beliefs with those of women who do not. Nor does the law invite excessive entanglement into religious affairs because the court is prohibited from inquiring into the truth of any matters alleged in the affidavit.

Breitowitz, supra note 1, at 392.

225 § 253(7).
226 See generally Breitowitz, supra note 1.
227 Breitowitz, supra note 1.
228 Breitowitz, supra note 1, at 394.
229 Breitowitz, supra note 1, at 394.
230 Enhancing the wife’s right to free exercise while infringing on the husband’s would seem counterintuitive. However, the state has other interests that it would want to protect. As mentioned before, “the furtherance of the state’s divorce policy, the validation of the integrity of the judicial system, the facilitation of religious liberty, the encouraging of remarriage and a more stable family life, the protection of fundamental rights of privacy, and the curbing of victimization and extortion. . . .” Breitowitz, supra note 1, at 386.
231 See generally Breitowitz, supra note 1.
a get because of recalcitrant husbands who use their religious power to extort their wives.\textsuperscript{232} Whether motivated by sheer spite, financial pursuits, or custody grounds, being denied a get is a heavy burden placed on adherents of halachic law.\textsuperscript{233} When a Jewish couple signs a ketubah, they implicitly agree to act in accordance with the laws of “Moses and Israel” and the state in which they marry.\textsuperscript{234} For such individuals, halachic laws serve as their guiding principles throughout the couple’s lives (i.e., during marriage or divorce).\textsuperscript{235} A couple can only hope for a “clean” divorce, one in which it would not resort to a brutal battle amongst former spouses, and in similar situations, a battle with an inherent loser.\textsuperscript{236}

Furthermore, I have fervently contended that civil enforcement of the get process is valid, though many scholars and critics of civil involvement in religious proceedings have argued adversely.\textsuperscript{237} Although the get requirement is found in the Torah, a text that cannot be changed, religious leaders and civil courts have implemented prenuptial support agreements and have used the ketubah as an implied promise to secure a get.\textsuperscript{238} I presented a legal argument that the New York Get Law, codified in the Domestic Relations Law § 253, does not violate the First Amendment.\textsuperscript{239} Consequently, the Get Law is not deemed unconstitutional under the Establishment Clause or the Free Exercise Clause because there are many state interests that require protection under such circumstances.\textsuperscript{240} The number of agunot in New York has decreased because of the enactment of the Get Law and organizations that assist with this issue.\textsuperscript{241}

Challenges to the New York Get Law may very well continue to be unsuccessful.\textsuperscript{242} However, whether the judgment remains halachically valid, is a question that will remain open for presumably a long time because of all the differing opinions concerning the

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\textsuperscript{232} See supra Part III.  \\
\textsuperscript{233} See supra Part III.  \\
\textsuperscript{234} See supra Part III.  \\
\textsuperscript{235} See supra Part III.  \\
\textsuperscript{236} See supra Part III.A (explaining why the wife is the inherent loser in divorce proceedings when the husband refuses to give her a get, making her into an agunah).  \\
\textsuperscript{237} See supra Part II.  \\
\textsuperscript{238} See supra Part II.  \\
\textsuperscript{239} See supra Part IV.  \\
\textsuperscript{240} See supra Part IV.  \\
\textsuperscript{241} See supra Part III.  \\
\textsuperscript{242} See supra Part IV.
\end{flushright}
question.\textsuperscript{243} The fact that such questions are still contemplated emphasizes the dilemmas that encompass agunot during Jewish divorce proceedings.\textsuperscript{244} Since the get right lies in the hands of the husband alone, as mandated by Jewish law, certain rabbis delay their involvement because of the fear and inability to undermine the important halachic doctrines.\textsuperscript{245} A determinative factor of the get lies with the free will of the husband rather than equity for the agunah, which leaves such women with virtually no real solution.\textsuperscript{246} Though individuals affected by this situation remain hopeful for a more halachically accepted solution, I have shown the legislative and judicial desire, and ability, to generate various solutions in an attempt to remove the chains and free agunot from their dead marriages.\textsuperscript{247}

\textsuperscript{243} See supra Part IV.
\textsuperscript{244} See supra Part III.
\textsuperscript{245} See supra Part III.
\textsuperscript{246} See supra Part III.
\textsuperscript{247} See supra Part IV.