INTERNATIONAL BEIT DIN
בית דין בינלאומי לעיניני אישות

18 Av 5775

August 3, 2015

Case 2015/124

Plaintiff

vs.

Defendant

Judgment

Facts of the Case:

On May 29, 2006, Plaintiff, who at the time was approximately 50 years old, married Defendant. The couple separated on March 31, 2013. It is our understanding that Defendant initiated the dissolution of the marriage. In July 2014, Plaintiff filed for a civil divorce. Over a year ago, Defendant allegedly told Plaintiff that she would only receive a *get*, a Jewish writ of divorce, upon the final resolution of a financial settlement which, upon mutual agreement, was to be handled by their respective legal counsel and, if need be, would be resolved by civil law. This was evidenced by Section 17 of their executed cohabitation agreement of May 2006 and Defendant's attorney's correspondence dated March 17, 2014.

As of the date of this decision, Defendant has refused to receive a *get* from Plaintiff. Plaintiff has told us that he would like to remarry and have children and has requested the International Beit Din (hereafter: the IBD) to address the matter of the *get*. We have summoned Defendant three times to appear at a hearing. However, on December 21, 2014, she communicated to us that upon the finalization of the settlement she would be prepared to receive a *get*. Given her unwillingness to appear at the *beit din* hearing, on January 19, 2015 we convened a hearing and heard Plaintiff's claim regarding the *get*. Among Plaintiff's statements at the hearing was that it would take anywhere between one to two years to finalize the monetary settlement and he was not prepared to wait such an extended period of time to execute a *get*. It was already almost two years since their separation and he argued it was time to be divorced in accordance to Orthodox Jewish law. In reply to our question of how he could corroborate his

desire to have children, he submitted an invoice attesting to the fact that some of Defendant's eggs were frozen for reproductive purposes. Upon further inquiry, Plaintiff admitted that his sperm were not frozen.

On February 18, 2015, we handed down a decision that Plaintiff is obligated to give a *get* and Defendant is obligated to receive a *get*. In our telephone conversation on March 10, 2015, Defendant suggested that she was willing to receive a *get* contingent upon the fact that Plaintiff would appear at a May 11, 2015 trial conference hearing and that he personally would commit into writing that he will continue to participate in the civil process which will culminate either in a divorce settlement agreement or a civil court judgment regarding all outstanding end-of-marriage matters. We requested that Defendant forward to us a letter indicating her intent to receive a *get* which was contingent upon compliance with the above mentioned conditions. Though we have received a letter from Plaintiff stating that he would be at the May hearing (and he did appear according to his representation) and would facilitate the finalization of their outstanding divorce matters, to date Defendant has not provided the letter that we requested of her.

Discussion:

1. **The Authority of the Local Beit Din and Refusal to Appear in the International Beit Din and Comply with IBD Decision**

The threshold question is whether the IBD has jurisdiction to address this case which deals with the matter of Defendant receiving her *get* from Plaintiff. Generally speaking, if two people who are engaged in litigation reside in two different places, then the halakha is "*ha-tovea* (plaintiff) follows the *nitva* (defendant)".[1] As noted by Rashba, Gaon of Vilna and others, this halakha applies to litigating claims of a *monetary* nature.[2] Clearly, in our case the above rule is inapplicable. Firstly, prior to her marriage, Defendant lived in Canada. Upon her marriage, she closed her Canadian dental practice and moved to Nebraska. Defendant and Plaintiff lived together for five years in Omaha, Nebraska (including living together in NY from June 2006 through August 2008) and upon separation Defendant was living in Omaha, Nebraska. The fact that upon marital separation, she returned to Toronto, Canada does not serve as grounds to invoke the rule of "*ha-tovea* (plaintiff) follows the *nitva* (defendant)". Moreover, *after* the issuance of our *psak din*, Defendant invoked the above rule. Clearly, given that the IBD has retained jurisdiction of this matter, convened a hearing and issued a ruling, a defendant cannot suddenly invoke the above rule. But even if Defendant had requested during the *hazmana*, summons process that

[1] Rema, Shulhan Aruch (hereafter: SA) Hoshen Mishpat (HM) 14:1
[2] Teshuvot ha-Rashba 2:344;Bi'ur ha-Gra, SA HM 14:18; Teshuvot Divrei Malkiel 3:167

the matter be resolved in Toronto, Canada there were no halakhic grounds to support such a position. Given that they resided in Nebraska during their marriage, their marital residence, namely Omaha, Nebraska was their "*makom*" (their place in terms of identifying the halakhic forum for resolving differences) rather than Toronto, Canada.

Secondly, even if Defendant lived in Toronto, Canada during their marriage, as Rabbi Dr. Eliav Shochetman of Jerusalem, Israel notes in his *madrich* (handbook) dealing with the *seder ha-din* (the civil procedure) of a *beit din*, a panel of *dayanim* is authorized to deal with matters of divorce and marriage including "*a heter ni'ssuin*" even in the absence of the presence of the wife and in these circumstances even during the summons process a defendant cannot invoke the rule of "*ha-tovea* (plaintiff) follows the *nitva* (defendant)".[3] As noted by Rashba, Gaon of Vilna and others, this halakha applies to litigating claims of a *monetary* nature.[4] Such authorization is contingent upon the fact that the *beit din* had summoned the defendant at least three times to appear at the hearing. In our case, Defendant was summoned three times to appear at the IBD and in our summons we informed her that if she has any questions regarding the *beit din* process, she should contact us. At no point during the *hazmana* process did she contact us inquiring regarding the process except to notify us in writing that she would only accept the *get* upon the finalization of a monetary claim. Consequently, for both reasons the IBD has jurisdiction to resolve this case.

Regretfully, given that Defendant failed to agree to appear at our *beit din*, we declare that she is "*mesarevet ledin*", unwilling to appear in *beit din*. Due to the fact she failed to communicate her readiness to receive a *get* as requested in our February decision issued by our *beit din*, we declare that she refuses to abide by a *beit din* decision and is recalcitrant regarding receiving a *get*. Given that she has chosen to refrain from accepting a *get*, we must address whether there are grounds for Plaintiff to remarry ("a *heter nissuin*") by depositing a *get* in a *beit din*?

2. Conditions for Issuing Permission to Remarry

Among the differences in halakhah between a man and a woman with respect to divorce is whereas a woman is proscribed from marrying more than one man at a time, the Torah permits a man to be married to more than one woman. Second, whereas a man must consent to divorce his wife, the woman's consent is not required for her husband to divorce, and if she is given a *get* against her will, she is halakhically divorced.

[3] Eliav Shochetman, Seder ha-Din (Civil Procedure in Rabbinical Courts) pages 521-522. Additionally, given that she left him, the place of adjudication is where the husband decides. See Yabia Omeir, vol. 2, HM 4(5); vol. 7 HM 4.
[4] Teshuvot ha-Rashba 2:344;Bi'ur ha-Gra, SA HM 14:18; Teshuvot Divrei Malkiel 3:167

Over the course of time and for varying reasons, during the eleventh century there emerged rabbinic legislation known as *takanot* (rabbinic regulation) of Rabbeinu Gershom. Among the pieces of legislation attributed to Rabbeinu Gershom, there was a prohibition upon a man to marry more than one woman and that upon divorce the wife must consent to the divorce.[5] The latter prohibition guaranteed that a husband could not marry a second wife without dissolving his first marriage

This double prohibition of outlawing bigamy and coercing a *get* may result in a husband being unjustifiably fettered in a situation where he would otherwise not be required by halakha to maintain his marital ties and yet may not divorce her against her will. For example, in our scenario, given the duration of time since the separation and the desire of the husband to remarry there are grounds to obligate a *get*, yet in accordance with *takanot* of Rabbeinu Gershom he is unable to divorce her against her will.

Being aware of this conundrum, there are grounds for "*a heter*" (a release) from this prohibition against bigamy which is granted by a *heter mea'h rabbanim*, permission given by 100 rabbis from three different countries.

That being said, that does not mean that the first wife is divorced but that the husband is granted permission to contract an additional marriage. Should such a *heter* be given based upon an exhaustive examination of the facts, the husband is obligated to deposit a *get* (*hashlashat ha-get*) and the value of the *ketubah* (assuming the wife is entitled to receive it)[6] or providing security for *ketubah* payment[7] in a recognized *beit din* where his first wife may pick up the *get* at anytime.[8]

In light of the circumstances of our case, can a husband receive a *heter* from the prohibition of bigamy and thus receive permission to remarry? Can a *beit din* release him from this prohibition even without a *heter me'ah rabbanim*?

One of the grounds for the inapplicability of the prohibition against polygamy is when we are dealing with an *igun* situation. As we mentioned in our first *psak din* in a situation where there exists no prospects for marital reconciliation and a couple have been separated for at least a year[9] and some

[5] Teshuvot Maharam of Rothenberg, Prague edition, 4: 153, 1022; Kol Bo 116; Teshuvot ha-Rosh 42:1; Teshuvot ha-Maharik, Shoresh 101 in the name of Rashba.
[6] Bah, Tur Even ha-Ezer (hereafter: EH) 119; Helkat Mehokeik EH 119:12; Beit Shmuel ad. locum. 23. For the rationale that the husband is obligated to pay the value of the *ketubah*, see Teshuvot ha-Rashba 1254; Teshuvot Tiferet Tzvi 46.
[7] File no. 586335/2, Haifa Regional Beit Din, January 4, 2011
[8] Bah, Tur EH 119; Beit Shmuel, EH 1:23; 119:8; Helkat Mehokeik EH 119:12.
[9] Sefer Meisharim Netiv 23, Helek 8

argue eighteen months,[10] a *get* should be given by the husband and received by the wife. Our conclusion is based upon a ruling emerging from a fourteenth century Sephardic case. A wife was a *moredet* (refusal to engage in conjugal relations with her husband) for an extended period of time and a *beit din* attempted to broker *shalom bayit*. However, their efforts to promote domestic tranquility were unsuccessful and therefore the panel mandated that a *get* be given. Though the husband was ready and willing to give a *get* to his wife, his spouse was unwilling to receive the *get*. Relying upon the well-known position of Ravan concerning a rebellious wife,[11] Rabbis Hayyim ben Yona, Yisrael ben Yoel Zuslin, and Eliezer ben Yitzhak ruled that in a situation of *igun* the prohibition against bigamy is inapplicable.[12] During the same century, the teacher of Rabbi Hayyim ben Yona issued a *psak* with the approval of the Torah scholars of Prague that a husband could divorce his wife against her will when she was *me'again* him.[13] Though in the fifteenth century Maharil rejected their position,[14] relying upon the earlier rulings of Ravan and others, Rabbi Yisrael Kutna ruled that in a case of *igun* a husband can divorce her against her will and there is no requirement of receiving a *heter me'ah rabbanim*.[15] In our case, since the couple has been separated for over two years and Defendant is refusing to accept a *get* at this time, we are dealing with an *igun* situation. In light of the above rulings, when dealing with *igun*, the *herem* is inapplicable.

3. Delaying the Giving of the *Get* Until the Resolution of the Monetary Matters

Given that there is an outstanding financial matter between the couple, the question is whether a wife is entitled to withhold a *get* until the issue is resolved? To state it differently, even if the wife is *me'again* her husband, can this situation continue until all financial matters have been resolved between the couple? In accordance with at least three Israeli rabbinical court decisions, the question is which party is responsible for the divorce. If the dissolution of the marriage is due to the fact that the husband acted improperly and bolted from the marriage, then the wife may refuse to receive the *get* prior to resolving her financial claim(s). On the other hand, should the wife be liable for the marital breakdown, then she is obligated to receive the *get* unconditionally and the pending financial issue(s) ought to be resolved after the *get* has been executed.[16]

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[10] Teshuvot Hayyim ve-Shalom 2:112; Iggerot Moshe YD 4:15(2)
[11] Sefer Ravan, folio 261c
[12] Teshuvot Maharam of Rothenberg, Prague ed. 1021; Teshuvot Maharam 104
[13] See Maharam, supra n. 12.
[14] Teshuvot Maharil ha-Hadashot 201
[15] Teshuvot Yeshuot Malko EH 7.
[16] PDR 13:264, 274; File no. 7787/57, Supreme Rabbinical Court, December 26,1999; File no. 289160/5, Netanya Regional Beit Din, September 19, 2012.

However, implicitly following Pithei Teshuva's view and foreshadowing two Israeli *piskei din*,[17] Rabbi Moshe Feinstein rules,[18]

In the matter of a husband and wife who have for many years have not experienced marital tranquility, and already one and half years they are residing in separate homes...and we have a signed *beit din* statement that marital reconciliation is impossible, therefore according to halakha they are obligated to divorce. And neither party has permission to *me'again* (chain his partner), neither the husband of the wife nor the wife of the husband, by delaying (the *get*) due to a monetary claim.

In other words, in pursuance to Rabbi Feinstein's position neither party can be *me'again* his/her spouse regardless of who is responsible for the marital dissolution due to an outstanding monetary matter which requires resolution.

Since the couple has been separated for over two years and the resolution of the outstanding claim may still take at least one more year to arrive at a settlement or a civil judgment and we are concerned about Plaintiff's moral fabric (see infra text accompanying note 24) following in the footsteps of Rabbi Feinstein, a *get* ought to be received by Defendant now.

As such, in our case where a wife is *me'again* her husband; as earlier mentioned, there are grounds for a husband to remarry without requiring a *heter me'ah rabbanim*.[19]

4. Refusal to Appear in Beit Din and Recalcitrance to Accept a *Get*

Furthermore, despite the fact that we sent out three *hazmanot*, summons to appear in *beit din*, she refused to appear. Failure to appear in a *beit din* labels her as a "*mesarevet ledin*", refusal to appear in *beit din*.[20] Consequently, according to certain *poskim* (authorities) despite the wife's protestations, a *get* may be deposited in a *beit din* and a husband is free to remarry without the need to receive a *heter me'ah rabbanim*.[21] Implicit in this position is that when a wife refuses to appear in *beit din,* one may divorce her against her will and the *herem* is inapplicable.[22]

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[17] Pithei Teshuva EH 1:17 in the name of Minhat Ani; File no. 73266/15, Yerushalayim Regional Beit Din, March 17, 2013; Regional Beit Din of Tzfat, 21 Heshvan 5773.
[18] Iggerot Moshe YD 4:15(2).
[19] See supra text accompanying notes 10, 11, 12 and 14.
[20] SA HM 11:1; Netivot ha-Mishpat HM, op.cit, Hiddushin 9.
[21] Teshuvot Avnei Tzedek 40;Teshuvat R. Akiva Eiger, Mahadurah Tanina 82; Teshuvot Nahalat Ya'akov 2:5;Teshuvot Shev Ya'akov 2:42; Teshuvot Maharshag 3:79; Teshuvot Minhat Yehiel 3:84; Teshuvot Teshurat Shai, Mahadura Kama 209; File no. 18110/1, Tel Aviv Regional Beit Din, July 5, 2011.
[22] Teshuvot Maharik Shoresh 101; Teshuvot Maharil ha-Hadashot 201; Teshuvot Maharam me-Padua 13; Teshuvot Mabit 3:126; Rema EH 115:4.

Moreover, based upon the foregoing position that a wife who refuses to resolve a matter in *beit din* may serve as a reason for allowing a husband to remarry without his wife receiving the *get,* it is not unsurprising to find *poskim* who have expanded a husband's release from the prohibition of bigamy to the situation of a wife who refuses to accept the judgment of a *beit din*.[23] In our first *psak din*, we obligated Defendant to receive the *get* but she has chosen to refrain from complying with our judgment.

5. Additional Grounds to Authorize Permission to Remarry

a. Thoughts of Sin

Furthermore, though there are authorities who argue that a husband may be released from the *herem* when he is young and therefore may be subject to thoughts of sin which may lead to engaging in illicit affairs,[24] in our scenario where we are dealing with an older man who by his own admission is not Orthodox and has been separated from his wife for over two years and may continue to be separated for another year or two until the outstanding financial matter is resolved, those authorities may concur that he should be equally released from the *herem*. In fact, Rabbi Shmuel Engel argues that a wife who withholds a *get* indirectly causes her husband to engage in "*hirhurei averah*", i.e. thoughts of sin and therefore we may release him from the prohibition of polygamy.[25]

b. The husband's desire to bring children into the world

Finally, Plaintiff, who is presently 56 years old, wants to remarry. Allegedly, he wants to have a child and does not want to wait any longer and therefore requests relief from our *beit din*. Given the fact that Plaintiff admitted to us that his sperm was never frozen and we have not heard from Defendant regarding his desire to have a child, we refrain from passing judgment whether in fact he wants to remarry in order to sire a child.

6. A double doubt

To buttress our ruling, there are *poskim* who clearly will mandate that a *heter me'ah rabbanim* is either required prior to allowing a husband to remarry when his wife refuses to appear in *beit din* [26] or when

[23] Terumat ha-Deshen 242; Divrei Hayyim EH 51; Teshuvot Sefer Yehoshua Even Haezer 98 (end); File no. 056015019-12-1, Yerushalayim Regional Beit Din, May 10, 2010 culled from ha-Din ve-ha-Dayan 26:10

[24] Even though Rabbi Yehezkel Landau raises a doubt that this reason would be grounds for releasing the husband from the *herem* (see Teshuvot Noda be-Yehuda Mahadurah Tanina EH 6), numerous *poskim* contend that this reason serves as a valid ground for a release from the *herem*. See Teshuvot Maharam Alshakar 95; Teshuvot Shearit Yosef EH 2; Teshuvot Emek ha-Teshuva 2:96 in the name of Torat Hessed and Maharsham; 3:90; Sdei Hemmed, Ishut 2:1;Mishpetei Uziel 2:7.

[25] Teshuvot Maharash EH 4:56

[26] Teshuvot Hatam Sofer 2:167; Teshuvot Maharsham 5:48, 7:193

dealing with an *igun* situation.[27] Consequently, given that there is a debate whether a *heter* is required in these two situations, there emerges a *sefek safeka*, a double doubt. Firstly, since we are dealing according to most authorities with rabbinic legislation we invoke the rule *kol sefeka de'rabbanan le'kula*,[28] a matter of doubt which relates to a rabbinic issue such as *herem* of Rabbeinu Gershom is resolved according to the lenient opinion.[29] And even if you argue that the stringent opinion is to be determinative due to the fact that some contend that a violation of this *herem* is akin to transgressing a *d'oraita*, a biblical matter,[30] there remains the *safek* that this *herem* was only in force until *sof elef hahamishi*, the year 1240.[31] Given the *safek sefeka*,[32] we rely on the lenient opinions *ab inito* which would release a husband from the prohibition of bigamy.

7. Depositing the Value of the *Ketubah*

As we mentioned earlier,[33] accompanying the deposit of the *get* is a deposit of the value of the *ketubah*. The question is whether Defendant is entitled to the value of her *ketubah*? Based upon the submitted presentation, Plaintiff contends that his wife filed for marital dissolution. Assuming his representation is correct, the question is what were the circumstances surrounding Defendant's decision to bolt the marriage. If the marriage was dissolved because of the husband's conduct then he remains obligated to pay the value of the *ketubah*. On the other hand, if the wife is responsible for dissolving it, then the husband isn't required to pay it.[34] Depending on her reply and supporting evidence, we would have been able to ascertain whether there is a basis to award her the value of her *ketubah*. Since she chose to refrain from appearing at the hearing, we are unable to determine the answer to our question. Given that the value of the *ketubah* is a *hov*, an obligation devolving upon the husband to be paid at the time of the divorce,[35] halakhah dictates "*ha-mozi mi-havero alav ha-re'ayah",* lit. the individual who extracts the money is duty bound to provide proof. In our case, concerning the matter of the *ketubah*, Defendant is the plaintiff and therefore has the burden of proving her claim. In light of her absence from the hearing, Defendant was unable to address the matter and therefore we were precluded from dealing

[27] Maharil ha-Hadashot, supra n. 14.
[28] Beitzah 3b
[29] Darkhei Moshe EH 1:10; Teshuvot Haham Tzvi 117; Teshuvot Divrei Hayyim 2, EH 14,44; Teshuvot Maharam Schick, EH 4; Teshuvot Maharsham 1:21
[30] Teshuvot Maharik, shoresh 184;Teshuvot ha-Mabit 2:16
[31] Beit Yosef EH 1; Darkei Moshe EH 1:10; SA EH 1:10.
[32] Rema EH 118:6; Beit Shmuel EH 1:21; Teshuvot Ein Yitzhak EH 4:3; Teshuvot Yabia Omer 7:2 (7).
[33] See supra text accompanying notes 6-7.
[34] File no. 937185/1, Haifa Regional Beit Din, January 22, 2015.
[35] SA EH 55:6

with this issue. Alternatively, given that she refuses to receive her *get*, she isn't entitled to the value of her *ketubah*.[36] Therefore, Plaintiff is not obligated to pay the value of the *ketubah*.

Conclusion:

In short, there are four grounds for releasing Plaintiff from the *herem* (excommunication) of Rabbeinu Gershom: Defendant's recalcitrance in appearing for a hearing, her failure to comply with our *beit din* decision to receive a *get*, the fact that she is *me'again* him and our concern for Plaintiff's halakhic moral conduct.

Addressing the scenario of an Ashkenazic husband whose wife refused to receive a *get*, who was recalcitrant concerning appearing in a *beit din* and did not have a child, the late Israeli Sephardic Chief Rabbi, Rabbi O. Yosef, relying upon numerous Ashkenazic decisors, ruled that he directed the husband to deposit a *get* in a *beit din* and was free to marry without receiving a *get* from her.[37] More recently, Rabbis Avraham Sheinfeld, Eliyahu Abergel and Mordekhai Toledano of the Jerusalem Regional Beit Din opinioned that a husband would receive a *heter nissuin* (without the need to execute a *heter me'ah rabbanim*) where the wife refuses to receive a *get* and is *me'again* her husband awaiting the resolution of whether she is entitled to a *ketubah*.[38] Based upon these two contemporary rulings, the support of numerous *aharonim* (later halakhic authorities) and the additional ground that Defendant refused to comply with our *psak din*, we rule that Plaintiff may remarry without a *heter me'ah rabbanim* by executing a *hashlashat ha-get*, i.e. depositing of a *get* in a *beit din*.

DECISION:

Plaintiff is directed to either personally deposit a *get* or appoint an agent ("*shaliach le-ho'lacha*") to deposit a *get* with an Orthodox Jewish *beit din* and Defendant may personally receive the *get* from the *beit din* or receive the *get* from the *beit din* via her appointed agent (*"shaliach le-kabala")* at her earliest convenience. Upon depositing the *get* with the *beit din*, Plaintiff is free to remarry.

[36] Beit Yosef in the name of Rivash, EH 1; Teshuvot Noda be-Yehuda, Mahadura Tanina, EH 102.
[37] Teshuvot Yabia Omer7, EH 3.
[38] Yerushalayim Regional Beit Din, supra n. 23.

We have therefore signed this 18th day of Av 5775 (3 August 2015)