INTERNATIONAL BEIT DIN
בית דין בינלאומי לעניני אישות

2015/122

8 Iyyar 5777

May 4, 2017

Plaintiff

v

Defendant

Judgment

Facts of the case:

At the hearing, Plaintiff began her presentation by stating that during the one and a half years of knowing Defendant, he was a successful day trader. He was happy and fun to be with and quite bright. She and her children loved to be with him.

Shortly before she married him, Plaintiff entered Defendant's home and found him acting strangely. He told her that he had taken a sleeping pill called Ambien, which can produce some bizarre side effects, but he promised never to take it again. During the period that she had known him, Defendant never told Plaintiff about any medication that he was taking. However, shortly before the wedding, Defendant did mention that he had suffered from depression years ago, but currently was not suffering from depression nor taking medication for it. After Defendant's disclosure, Plaintiff felt that she would be able to handle the situation and proceeded to marry him.

A few months into the marriage, Defendant began to exhibit signs of depression. He would lay on the recliner all day and do nothing, frequently sleeping during the daytime. At the same time, he lost significant sums of money in the stock market which led him to be further depressed and dysfunctional. He was dirty and would wear unclean clothes during the day. Upon Plaintiff's return from work, she would find the house a wreck. The Defendant would suddenly cry and exhibit unwarranted outbursts of anger. He was prescribed various types of pills, including anti-depressants, in 2012 and 2013. Plaintiff did not know whether Defendant's erratic behavior was caused by taking the medications or by refusing to

take the medications. During the engagement period, Plaintiff never observed such behavior with the Defendant.

In contrast to Plaintiff's presentation, Defendant responded to her claim statement by informing us in writing that he admitted to being predisposed to depression, he had adult Attention Deficit Disorder and was on disability due to his depression. In Defendant's words, "My depression and lack of career ambition were part of our ongoing conversation, starting not long after we began being in each other's lives and continuing well into our marriage". In fact, Defendant contends that Plaintiff came with him to a doctor who informed her that Defendant was suffering from depression. Moreover, whereas at the hearing Plaintiff said that they were dating for one and half years prior to their marriage, Defendant wrote in an e-mail during the summer of 2015 *(me'siach lefe tumo*- innocently) that they were in a relationship for six and half years. He wrote they were "in a relationship for nearly six years" and, in certain periods when her children were with her first husband, "we practically lived with each other". Moreover, he wrote that they were together for three and a half years and Defendant alleges that Plaintiff insists it was 2.5 years. Upon reading Defendant's reply to her claim statement, Plaintiff informed us that she knew Defendant for four and a half years and argued that she had no idea (as well as no experience) of the ramifications of someone who suffers from manic depression and therefore chose to marry him.

Implicitly concurring with Defendant's representation, a health care professional who provided therapy to Plaintiff told us that she was "emotionally compromised" and therefore was unable to discern that Defendant was acting in an abnormal fashion.

Finally, Plaintiff alleges that prior to the wedding Defendant transgressed the Shabbat, did not observe the laws of *kashruth* and she had fights with him when he brought nonkosher food into the house. Plaintiff's allegation concerning Defendant's Shabbat transgression was corroborated by six individuals. His consumption of nonkosher food was corroborated by two individuals, and two of Plaintiff's friends informed us that he was respectful of Plaintiff's right to keep a kosher home though one of the two women admitted to us that the respect may have disappeared with their deteriorating marriage. One individual who has known Defendant for over two decades witnessed, on innumerable occasions, Defendant being "*mehalail Shabbat*" by driving his car, digging and planting in his front lawn, and occasionally mowing his grass on Shabbat. Two neighbors who have known him for over a decade have seen Defendant leaving his house in a car as well as mowing his lawn on Shabbat. Another individual told us that after the family's Shabbat lunch meal was finished, Defendant would proceed to the backyard to engage in planting. Another individual told us that sometimes he would sit at the Shabbat lunch table, but sometimes he would get up and go to work at his computer. A third individual, as well as one of the two individuals mentioned above, observed him many times coming out of his car with bags from McDonald's, which led them to believe that he doesn't keep kosher. Contrary to the above representation, Defendant insists that out of respect for his wife, he never brought non-kosher food into their home. Such a representation implicitly tells us that in fact he had consumed nonkosher food.

Defendant resided in the midst of an Orthodox Jewish community for 25 years. Over 75% of his own block was composed of Orthodox Jewish families. More than ten Orthodox adult Jewish males who reside in the community knew of his violation of Shabbat. For decades, every Shabbat the Orthodox Jews who lived in the neighborhood, including some who were next-door neighbors, were privy to his public conduct. In fact, one of his neighbors claims that Defendant intentionally waited for him to pass his house before engaging in his non-Shabbat activities. Two neighbors told us that a few individuals attempted to influence Defendant "to change his ways" but it was to no avail.

Defendant's non-Orthodox lifestyle dates back to his family upbringing. His parents were not religious. He never received any Jewish education, including Talmud Torah classes, and never had a *bar mitzvah*. All of his siblings and many of his cousins intermarried. Whether Defendant wanted to cremate his father upon his demise or in fact had bought a plot in a Jewish cemetery for his father years before meeting Plaintiff is another point of contention between the couple. However, Plaintiff additionally mentioned that her mother-in-law was cremated by Defendant and this statement went unchallenged by him. Defendant was opposed to any organized religion and, in his wife's words, "on most days he did not believe in God". Even on Rosh Hashanah and Yom Kippur he did not attend synagogue services. As one individual told us, in the few times that he attended a synagogue service, Defendant came in wearing shorts. When his neighbor, who was a Chabad rabbi, persuaded him to a don a pair of *tefillin*, Plaintiff informed us that he allegedly thought the incident was humorous. Given that, one Orthodox Jew, one Orthodox rabbi and one Orthodox Jewish woman told us that Defendant is very bright and an intellectual and read various books on philosophy dealing with religion, and philosophically became an atheist or "almost an atheist" who engaged in philosophical discussions for the sake of advancing his position rather than being open to hearing contradictory views to his avowed position for the sake of changing his position. In short, their presentation corroborates Plaintiff's representation. Moreover, in his reply to Plaintiff's claim statement, Defendant did not challenge Plaintiff's presentation of him as an individual who rejects religion!

Though Defendant seemingly was prepared to have their matters be resolved in a local *beit din* rather than the IBD, which was located thousands of miles away from Florida, at the end of the day, he never pursued their matters in a *beit din*. Moreover, Plaintiff summoned him to a local beit din regarding his claims and he refused to appear. In our estimation, his ideological opposition against organized religion in general, and resolving issues in a religious forum such as a *beit din* in particular, and/or his discomfort to appear in an Orthodox Jewish forum given his lifestyle may serve as the reason(s) for his unwillingness to proceed to a *beit din*.

If one reads Defendant's response to Plaintiff's written claim statement closely, one can discern that his lack of religiosity in general, and its ideological underpinnings in particular, are not in dispute. As an attorney, his reply to Plaintiff's claim statement was nuanced. He mentioned that he respected the religious practices of others who entered his home, a representation confirmed by two women who were guests at his home, but he did not challenge Plaintiff's representation regarding his individual lack of observance. Defendant tried to deflect Plaintiff's representation about him by stating that some of her representations were "half-truths", which may be correct, and that she was also not observant at all times. However, the basic representation advanced by Plaintiff and corroborated by three individuals, that he was an atheist or almost an atheist, is not challenged by Defendant. In fact he writes that publicly "my lifestyle was no secret" and "Plaintiff did not expect me to change lifelong habits". In fact, we asked three men and one woman whether one could categorize Defendant as "a baby who was kidnapped by non-Jews" due to his lack of exposure to Jewish education, and they unanimously and emphatically said, "absolutely not".

We have issued a *psak din* which obligates Defendant to give a *get* to Plaintiff. However, he continues to refuse to give a *get,* alleging that the *get* will only be forthcoming once Plaintiff pays some outstanding monetary debts to him.

Discussion:

1. *Kiddushei ta'ut* - An error in the marriage

The initial question which emerges from Plaintiff's presentation and Defendant's reply to the claim statement is, are there grounds for Plaintiff to argue that prior to the marriage she didn't realize the severity of Defendant's depression and therefore having discovered only after their marriage, she has the right to state "I never would have married him, had I known the extent of the severity of his psychological disorder"?

Prior to invoking the technique of *"kiddushei ta'ut"* to void a marriage and claim there was an error in the creation of the marriage, three preconditions must have been obtained:[1]

(1) The husband's defect must be a major one ("*a mum gadol*") such as sexual impotency, refusing to have children, mental dysfunction, homosexuality and or engaging in a crime. All of the aforementioned examples have been characterized by one or numerous authorities as a *mum gadol*. Clearly, as Rabbi Hayyim Berlin and Rabbi Shalom Messas note, one must be concerned with "the slippery slope", lest a decisor allow an insignificant flaw such as a husband's periodic outbursts of anger, being a spendthrift or stinginess as grounds to void a marriage. See Teshuvot Nishmat Hayyim 87(126); Teshuvot Shemesh Umagen, helek 3, EH 27.

The issue is whether having depression is to be labeled "*a mum gadol*"? Defendant was prescribed medications (which sometimes were allegedly taken and sometimes not) which were for patients who have a major depressive disorder and anxiety disorder. Based upon the anti-depressant medication which was in the home as well as the symptoms described, three health care professionals concluded that Defendant had a major psychological disorder. For *Poskim* who voided a marriage based upon a husband's psychological disorder, see Teshuvot Har Tzvi EH 2:180; Iggerot Moshe EH 1:79, Teshuvot Maharsham 6:159 (with an additional supporting argument to void the marriage), 6:160; Teshuvot Mishpetei U'zziel 5:57 (with an additional supporting argument to void the marriage),File no. 870175/4, Haifa Regional Beit Din, December 29, 2014.

(2) The wife must be unaware of the defect prior to the marriage and must discover it only after the marriage.

Upon reviewing Plaintiff's presentation one finds discrepancies between what was told to us at the hearing, what Defendant wrote as a response to her claim statement, and Plaintiff's reply to his representation. For example, during the hearing (as well as during a telephone conversation prior to the hearing) Plaintiff represented to us that her knowledge of his disorder was only discovered shortly prior to the marriage and at that time he was healthy. However, based upon the written exchange between her and Defendant, her representation is now that she had no idea (as well as no experience) of the ramifications of someone who suffers from manic depression and therefore chose to marry him. In other words, she knew for a long time about his disorder but did not observe the severe symptoms of his suffering from depression.[2]

Implicit in this representation is that during the four and half or six years she knew him, she did not observe him suffering from manic depression. Usually, we are dealing with a situation where a husband

[1] We will only address two of those conditions. Regarding the third condition, see infra. n. 4.

[2] This representation contradicts her earlier claim that she only found out about his depression shortly before the marriage.

fails to disclose, intentionally or unintentionally, that he has a psychological disorder. And therefore, assuming other conditions are obtained, one can void the marriage based upon *kiddushei ta'ut*, an error in the marriage.

However, in our case we are dealing with an awareness of the *mum gadol*. Subsequently, a few years into the marriage, his psychological condition allegedly deteriorated and she exclaimed, "Had I known that his condition would degenerate, I never would have married him." Whereas prior to the marriage she felt that she would be able to handle the situation, the depth and severity of the disorder now preempts that possibility.

Shulhan Arukh EH 154:5 rules,

> A man who is mentally dysfunctional on a daily basis and his wife says, "my father in the time of his stress married me off and I thought I would be able to deal with the matter. Now, I realize that he is mentally dysfunctional and I fear that in his rage he will kill me." [In such a case] we don't coerce him to give a *get*.

Despite the fact that the wife's situation is life-threatening, Shulhan Arukh does not sanction *get* coercion! Explaining the rationale for this ruling, Gaon of Vilna in Bi'ur ha-Gra, SA EH 154:17 states,

> Since she knew we do not say that "she thought she could handle the situation. . ."

To state it differently, a wife cannot initially claim that she thought she would be capable of dealing with her husband's condition and now realizes that she can't deal with him. Therefore, we do not coerce a *get*. In fact, Teshuvot Sha'arei De'ah 171 contends that in a situation which entails a mental disorder which changes "from time to time" we do assume that a wife accepts the situation.

Nonetheless, many authorities disagree with the aforementioned views.

Even though she knew that her prospective husband had skin boils prior to the marriage and she accepted this defect in the form of a *tenai* (a condition to the marriage), nonetheless the students of Rabbeinu Yonah in Shitah Mekubezet, Ketubot 77a note,

> Except for a husband who has skin boils (*mukeh shehin*) that she can say "now I am unable to deal with it since daily the sickness becomes more severe" . . .

See also Teshuvot Mabit 3:212; Teshuvot Birkat Retzeh 109; Teshuvot Divrei Hayyim EH51; Teshuvot Imrei Yosher 2:119.

In other words, her change of heart regarding her ability to live with a husband who was afflicted with boils would trump her *tenai* and *get* coercion is permissible.

The question is, what is the reason why the persistence and the sudden severity of a husband's skin boils, which emerged after the onset of the marriage, ought to undermine the *tenai*? Addressing a

young woman who was dysfunctional the majority of the time and exhibited moments of sanity only portions of the time prior to the marriage, and subsequently became a *shoteh* (completely mentally dysfunctional), R. Aryeh Leibush Horowitz in Teshuvot Harei Besamim, Mahadura Tinyana 72 observes,

> Accepting a *mum* is only applicable if the condition remains the same. However, the degree of mental dysfunction changes from one period to the next, therefore he accepted the situation in her condition, that she was prior to the marriage; and the insanities that emerged afterwards, he could not tolerate them, and therefore one cannot say that he accepted it.

On the basis of this reasoning, R. Horowitz lifts the *herem* of Rabbeinu Gershom, which prohibits a husband to give a *get* against his wife's wishes, and permitted him to remarry.

All the aforesaid rulings deal with grave defects concerning a wife; it is open to debate whether we could apply the same conclusion regarding the flaws of a husband. In recent years, an Israeli rabbinical court applies this conclusion dealing with a wife's defects to a husband's flaws and stated that such a conclusion is acceptable among the decisors. See Piskei Din Rabbanayim 21:279, 283; Teshuvot Minhat Osher 3:85.

Based upon the foregoing, seemingly there ought to be grounds to void the marriage even though prior to the marriage Plaintiff neither fully comprehended nor experienced the severe symptoms of Defendant's disorder. However, based upon the cumulative evidence submitted to this panel which indicates discrepancies in Plaintiff's representation of the chain of events prior to her marriage, as well as the panel's assessment, it is highly unlikely that for four and half or six years prior to the marriage Plaintiff was unaware of Defendant's manic depression. In other words, prior to the marriage, the symptoms of his disorder were "full-blown" in her presence.[3] But as the health care professional testified to us, she was "emotionally compromised" and therefore she was unable to discern that he was acting in an abnormal fashion.

As such, there would be no basis for voiding the marriage utilizing the tool of *kiddushei ta'ut*.[4]

2. **The validity of a *kiddushin* performed by a *mumar***

Based upon the foregoing, prior to the wedding Defendant was nonobservant, transgressed the Shabbat

[3] In contemporary times, at least two *battei din* arrived at the same conclusion that a wife cannot hide her disorder from her husband when the man and woman knew each other and lived with each other prior to the marriage. PDR 13:43; File no. 818315/7, Be'air Sheva Regional Beit Din, September 21, 2015.

[4] Given that in accordance to her presentation, she experienced *for the first time* the symptoms of manic depression a few months into the marriage and chose to remain in the marriage for approximately two additional years rather than immediately bolt the marriage, we would have had to address whether in fact there would be a basis to void the marriage. However, this panel accepted the representation that the severity of the illness manifested itself prior to the marriage, therefore there was no presence of a *mum gadol* which would void the marriage.

and did not keep kosher. The question is whether his behavior impacted upon the validity of the *kiddushin*, the act of halakhic engagement and ultimately the validity of his marriage to Plaintiff? In other words, is an individual who violates the Shabbat publicly labeled a "*mumar*", and if the answer is in the affirmative, we must then address whether such *kiddushin* with such a person is valid?

The threshold question is whether the definition of a *mumar* is limited to an apostate, somebody who leaves Judaism and engages in *ha'marat da'at*, converts to another religion"? Clearly, the Talmud distinguishes between a *mumar* who in practice disavows the entire Torah ("*mumar le'hol ha'torah kula*") and in effect disavows being a member of the covenant faith community or rebels against one sin ("*mumar le'aveira a'hat*"). See Hullin 4b-5a. One example of a "*mumar le'hol ha'torah kula*" is a Jew who publicly desecrates the Shabbat. See Hullin 5a. Another distinction is established between a *mumar* who engages in sin due to principled opposition ("*le-hachi'is*") or out of convenience ("*le'taivon*") and therefore commits the sin. See Hullin 4a. Unlike the apostate Jew, the common denominator of all these types of *mumarim* is that they have not converted to another religion.[5]

The question is whether a Jew who publicly violates the Shabbat is viewed as a *mumar*? In order to be deemed a public violator of Shabbat, notwithstanding that there are some authorities who mandate that ten Orthodox Jewish males have to attest that they observed him publicly transgressing the Shabbat (see Hiddushei R. Akiva Eiger, Yoreh De'ah 264;Teshuvot Binyan Tzion 1:64; Teshuvot Hatam Sofer YD 120;Teshuvot Yehuda Ya'aleh, Yoreh De'ah 50), many *Poskim* only require that ten Orthodox Jewish males were aware that he violates the Shabbat. See Shakh, Yoreh De'ah 157:4; Ba'air Hetev, Yoreh De'ah 157:3(Cf. Ba'air Hetev, YD 2:15);Teshuvot Maharam Schick, Orah Hayyim 128; Teshuvot Tzemach Tzedek, Even Ha-Ezer 259; R. Algazi, Kehillat Ya'akov 696; Sedei Hemmed Hashalem, Ma'arkhet ha-peh, Kelal 16 in the name of Rashba, Tashbetz, Radvaz and Pri Megadim. Moreover, given that Defendant worked the land on Shabbat,[6] even the *shitat yahid*, the minority opinion who argues that only such an individual is deemed a public transgressor of Shabbat would agree in our case that he is deemed a violator. See Beit Yosef EH 44 in the name of Ittur;Teshuvot Lev Hayyim OH 175 in the name of Ittur.

Given that more than ten Orthodox Jewish males would attest to the fact that Defendant publicly violated the Shabbat and therefore he is classified as a public transgressor of the Shabbat (and as such a *mumar*), the issue is whether being *mekadesh*, consecrating and designating a woman as his wife was valid? In accordance to the majority of authorities, his *kiddushin* is valid *me'doraita* , biblically. See Orhot Hayyim, Hilkhot Kiddushin, page 55 in the name of Rashi; Mishnah Torah, Hilkhot Ishut 4:15; Sefer Haittur, Hilkhot Kiddushin; Ohr Zarua, Hilkhot Yibum and Kiddushin 604;Teshuvot Harashba 1162; Teshuvot Tashbetz 3:47; Teshuvot Terumat Hadeshen 219;Tur EH 44;Shulhan Aruch, EH 44:9; Teshuvot Noda Beyehuda, Mahadura Tinyana EH 80. However there are a few authorities who invalidate the *kiddushin*, view it valid *me'derabbanan*, on a rabbinic level or argue that such *kiddushin* is "*a safek kiddushin*", a *kiddushin* which is halakhically in doubt. See Mordekhai Yevamot 4:107 in the name of R.

[5] So, for example whether there is a requirement of *halitzah* from an apostate levir or equally from a Jew who rejected the entire Torah or a Jew who publicly violated the Shabbat is open to debate. See Mordechai, Yevamot 4:107 in the name of the Gaonim and variant views recorded in Teshuvot Yabia Omer, vol. 9, Even Haezer 36:6.
[6] Mowing the lawn (improves the growth of the grass) as well as digging and planting constitute "*avodat karka*", working the land.

Shimshon regarding a *yavam* who is a *mumar*; Ittur, Hilkhot Kiddushin in the name of yesh omrim; Tur, EH 44 in the name of "*yesh omrim*" (some say); Teshuvot Mahari Mintz 12; Teshuvot Maharashdam EH 10 as well as in the name of Rambam and Semag; Levush Mordekhai 64.

Finally, in reply to the question whether due to his lack of religious upbringing and being deprived of a Jewish education and conforming to the prevailing norms and values of the society in which he lives, he is to be labeled "a *tinok shenishbah bein hagoyim"* (loosely translated: a baby raised by non-Jews), as we noted earlier, three Torah observant men and one Torah observant woman unanimously and emphatically said "absolutely not." As noted by the Defendant's own admission , he was in principle ideologically opposed to practicing any religion. He was an *apikores*, an atheist.

Addressing the case of a husband whose maternal grandparents were *mumarim* and were married in a Christian church and he himself was "a *tinok shenishbah bein hagoyim"* who while serving in the army intentionally transgressed various sins in a loathsome and repugnant fashion, including failing to observe the Shabbat, Rabbi Yitzhak Y. Weiss in Teshuvot Minhat Yitzhak 3:107 rules:

"There are four views regarding a *mumar* who was *mekadesh*: One, that the *kiddushin* are recognized biblically. Second that the *kiddushin* is invalid. Third, it is a doubtful *kiddushin*. Fourth, it is *kiddushin* which is valid on a rabbinic level. And delve into Maharsham...who investigated if one should join those who contend that the *kiddushin* is valid only rabbinically. And he wrote that since the majority of *Poskim* that such *kiddushin* are to be recognized biblically, one cannot rule leniently for only this reason. But he joined this doubt to a second doubt that is more frequent and results in leniency....Where one doubt are more frequent and results in leniency, we join a second doubt that more frequently results in a stringency..."

In short, one can invoke a *sefek sefeika* (double doubt) in the context of the presence of apostasy in the husband's family and thereby void the *kiddushin* of the *mumar*. To state it differently, given that Rabbi Weiss aligns himself with the position that in contemporary times a Jew who intentionally is a transgressor and is repulsed by the performance of *mitzvot*, including publically transgressing the Shabbat, is to be subsumed in the category of "a *tinok shenishbah bein hagoyim"* (*Teshuvot Minhat Yitzhak* 1:10) consequently the husband is not to be identified as a *mumar*. Such a person can only be a *mumar* if apostasy to another religion existed in his family.

Seemingly, given the absence of an actual conversion to another religion in the Defendant's family preempts the possibility of deploying the *sefek sefeika*. However, upon further thought, it is a distinct possibility that Rabbi Weiss would agree to the employment of the *sefek sefeika* under our circumstances where the husband was in principle opposed to practicing any religion. He is a *'"mumar le'khol ha'Torah kulah"*, an apostate to the entire Torah generally and every religion in particular. Moreover, the Defendant's parents were equally against all religions and scoffed at those adherents who observed them. In fact, they were civilly married due to their ideological opposition to adopting any religious lifestyle, much less the norms of Judaism. Such an upbringing, as well as Defendant's personal lifestyle and ideological perspective regarding religion, may be equivalent in the eyes of Rabbi Weiss to a Jewish couple who have married in a Christian church. As such, in accordance to Rabbi Weiss there ought to be grounds to void the marriage based upon the invoking of a *sefek sefeika*.

Addressing the validity of *kiddushin* of a *mumar* who transgresses the Shabbat, Rabbi Schwadron in Teshuvot Maharsham 2:110 rules,

"Concerning a *mumar* who was *mekadesh* a woman, there are a few authorities who claim the *kiddushin* is valid rabbinically even though the majority of authorities are stringent, nevertheless there is "a double doubt" to be lenient...When one doubt is more frequent to result in leniency we "join it" to a second doubt though it is more frequent to result stringency... and the presumption of being a married woman is voided, see Maharit, vol. 1 section 138 that one rules leniently in *sefek sefeika* of *kiddushin*...However it seems it is unclear (in our case-AYW) whether in fact he was a Shabbat transgressor at the time of the marriage and if he became a *mumar* afterwards, the two doubts did not emerge simultaneously and therefore we cannot be lenient due to a double doubt."

Lest one argue that in contemporary times Maharsham considers a public transgressor of Shabbat as "*a tinok shenishbah bein hagoyim"*, in another ruling he states that if it is clear that he knows the *halakhot* of Shabbat and still is impudent to transgress them in front of ten Torah observant Jewish males, he is a *mumar gamur*, an absolute apostate and one is prohibited from drinking his wine.

Rabbi Schwadron rules the following in *Teshuvot Maharsham* 1:121:

> "And I read in *Teshuvot Binyan Tzion Hadashot*, Siman 23, that today that they pray on Shabbat and admit that there is a creator of the world and they circumcise their sons and practice *gittin* and *kiddushin* that these are the foundations of religion there is a basis to be lenient that their touching of wine does not make it *stam yeinom* and this applies to the case in front of us. However if it is clear that he knows the *halakhot* of Shabbat and he has the audacity to be impudent and transgresses in the presence of ten, he has the din of a *mumar gamur* and his touching of the wine turns it into *stam yeinom*.

Based upon the cumulative evidence submitted to this panel, the Defendant's conduct would label him in the eyes of Rabbi Schwadron as a *mumar gamur*.

In other words, in accordance with his posture, one may invoke a *sefek sefeika* as a vehicle to void the marriage when dealing with a *mumar*, a public transgressor of a Shabbat.[7]

Therefore, in our case where it is clear that prior to the marriage the Defendant was a *mumar*, namely a public transgressor of Shabbat and an atheist[8], based upon the aforesaid *sefek sefeika* we may invalidate

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[7] As noted by Maharsham, his conclusion is in accordance with Maharit, who argues that in case of a *sefek sefeika* involving *kiddushin*, one may rule leniently. See *Teshuvot Maharit* 1:138(end). In his particular case, since it wasn't clear that in fact the husband was a *mumar* who violated the Shabbat publicly, therefore the *sefek sefeika* could not be utilized in order to void the marriage.

[8] Notwithstanding Rabbis Kook, Henkin, Y. Weiss and others who argue that in contemporary times, a *mumar* is limited to one who is an apostate rather than a public transgressor of Shabbat (see *Teshuvot Da'at Kohen* 153; *Perushei Ibra* 5:5 and *Teshuvot Minhat Yitzhak* 3:107), nonetheless the plaintiff's description of him, as well as the statements of third parties which were all given *"ma'se'ach le'fee tumah,"* lit. speaking with innocence, corresponds to the earlier *halakhic* ruling which dealt with a *mumar* who violated publicly the Shabbat which was accompanied by a principles rejection of the binding authority of *Halakhah* as well as any established religious authority. Finally, though the Defendant challenged certain facets of the plaintiff's depiction of him, the Defendant

the act of *kiddushin*.[9]

Implicit in the opinions of Rabbi Schwadron and Rabbi Weiss is that the definition of a *mumar* is not limited to a Jew who converted to another religion, as has been propounded by other authorities,[10] rather a Jew who is "a *tinok shenishbah bein hagoyim"* who intentionally violates the prohibitions including transgressing the Shabbat publicly and mocks *mitzvot* may be equally identified as a *mumar*.[11] On the basis of these authorities, we assume that the Defendant is to be viewed as a *mumar*. As such, his *kiddushin* is invalid.

Based upon the foregoing, the Plaintiff is free to marry any Jewish man other than a *Kohen*, without receiving a *get*.

IN WITNESS WHEREOF WE HAVE SIGNED THIS 8 DAY OF IYAR 5777 (4 MAY 2017)

did not question the plaintiff's representation of him regarding his principled rejection of religion in general and the Jewish religion in particular.

As is quoted by the Maharsham, our conclusion is based on the ruling of Rabbi Ya'akov Ettlinger. Even though he contends that today a public transgressor of Shabbat cannot be categorized as a *mumar*, nevertheless, if the individual rejects *mitzvot* including being a public desecrator of Shabbat for ideological reasons rather than for economic reasons, he is "comparable to an absolute *mumar."* See Y. Ettlinger, *Minhat Ani*, Jerusalem, 1963, 91a; *Teshuvot Binyan Tzion ha-Hadashot* 23.

[9] *Teshuvot Avnei Ephod* 15 suggests that "the double doubt" entails the fact that the majority of authorities claim that the *kiddushin* of a *mumar* is rabbinic and the minority argues it is biblically valid; we may invalidate the marriage based upon "a double doubt." With all due respect, a review of the rulings regarding this matter will indicate the converse, namely the majority of decisors argue the *kiddushin* is recognized biblically and the minority validated it on rabbinic grounds. See *Teshuvot Beit Yitzhak* 1:25; *Teshuvot Maharsham* 2:110. Hence, Avnei Ephod's suggestion to void the marriage of a *mumar* lacks foundation.

[10] *Teshuvot She'eilat Ya'avetz* 32; *Teshuvot Mitzpeh Aryeh Tinyana* 19; *Teshuvot Hatam Sofer* 2:73, 6/56; *Teshuvot Avnei Nezer* 223; *Teshuvot Be'air Esek* 76.

[11] *Teshuvot be-Zail ha-Hohmah* 1:51(2); *Hazon Ish, EH* 118:5; *Teshuvot Kohav me-Ya'akov* 41; *Teshuvot Yabia Omeir*, vol 9, *EH* 36:6-7; *Teshuvot Sha'arei Tzion*, vol. 2, *EH* 20(7).