INTERNATIONAL BEIT DIN
בית דין בינלאומי לעניני אישות

File no 2017/157

1 Tevet 5778

19 December 2017

Plaintiff

v.

Defendent

JUDGMENT

Facts of the case:

The couple married according to Jewish law in June 1976, and they separated in 1999. In that year the Defendant filed for divorce in the civil court, and in July 2004, the civil divorce was granted. After the separation, the Defendant moved in permanently with a non-Jewish woman, and according to the evidence submitted by the Plaintiff and one of the relatives, as well as an article in a newspaper, he married this woman in a civil ceremony.

To this day, the Defendant has made the giving of a *gett* conditional upon the withdrawal of the Plaintiff's financial claims in the civil court.

Although we summoned the Defendant to appear before this *Beit Din* for a hearing on the matter of the *gett*, he refused to comply with our request. Owing to a medical problem from which the Defendant suffers, we twice suggested to him that we would hold the hearing in his home, but he rejected this offer.

In a hearing that took place in the absence of the Defendant, the Plaintiff recounted that the Defendant had taken at least ten trips to distant destinations in order to participate in work-related meetings. He travelled on Shabbat, he said, in order to attend meetings on Monday. The Plaintiff had thought it strange that he left so early in order to attend a Monday meeting, but she said nothing to him. On one of the trips, the Plaintiff called the hotel at which the Defendant was staying, and when the call was put through to his room, a woman answered. The Plaintiff was surprised, and asked the Defendant, "Who is this woman?" He replied that it was a woman from the hotel cleaning staff. At that time, the Plaintiff accepted his explanation.

In 1996, the Plaintiff found a photograph in which the Defendant appeared with women at the beach, dated at a time when he was in Brazil. After finding this photo, the Plaintiff warned the Defendant to put an end to his contacts with other women.

On the couple's honeymoon, the Plaintiff discovered that the Defendant was strongly attracted to prostitutes. He planned the honeymoon so that they would stay in a hotel close to a street which was known as a "prostitutes' place". When the Plaintiff was with her children in Israel, a cousin of the Defendant stayed

with him in New York, and while he was there they checked out the rates of prostitution services in the city. Several times during the course of their marriage, the Defendant asked the Plaintiff about the going rate for prostitutes.

At the end of 1996, or at the beginning of 1997, the Defendant went to a neighborhood in New York where there were prostitutes, and he asked one of them, "What is your rate?" To his surprise, she answered that she was a policewoman (undercover as a prostitute), and took him to the police precinct. At the end of the court hearing, a penalty of community service for a short period was imposed on him. The Plaintiff also recounted that she received a report from the police which mentioned the date of the incident and details of the arrest described above; she also received a legal document to the effect that the Defendant must perform a number of hours of community service due to the offense that he had committed.

Although these documents had been thrown away, the Plaintiff submitted to this *Beit Din* a recording from September 1998, in which the Defendant is heard to admit to the occurrence of the above incident. According to one of the sons, too, the Defendant admitted that this had indeed happened. After this incident, the Plaintiff again warned the Defendant to put an end to his contact with prostitutes.

After this incident, in December 1997, the parties' younger son (who at that time was 13-14 years old) discovered email correspondence with a strange woman on his father's computer. According to him, these emails indicated that his father had "an inappropriate relationship with the woman." When we asked him if his father had had intimate relations with that woman, he answered that this happened many years ago, and he does not remember being under the impression at the time that his father had an intimate relationship with the woman. He added, however, that he remembers that when he confronted his father with these emails, his father was very angry that he had discovered them. Subsequently, the son showed these emails to the Plaintiff, and she claims that they show clearly that the Defendant had an intimate relationship with this woman. The Plaintiff approached the Defendant on the matter, but he did not admit to having an intimate relationship with this woman. At the same time, he expressed his intention to stop corresponding with her by email. In the said recording, we heard the Defendant admitting that he was in contact with this woman, even though he refrained from admitting that he had an intimate relationship with her or any other woman.

From the Plaintiff's words it emerges that in the course of their marriage, she warned the Defendant at least six times to put an end to any contact he had with other women.

In March 1998, the parties' older son (who at the time was aged 18-19) found similar emails on the Defendant's computer. We asked him whether the contents of the emails indicated that the Defendant had an intimate relationship with the woman with whom he was corresponding, and the son answered that he did not know. Clearly, however, even according to what he did say, this was a "suspicious relationship." After discovering these emails, the son showed them to the Defendant, and in this case too, the Defendant got angry but did not admit that he had an intimate relationship with that woman. The Plaintiff did not see these emails herself. That year (1998), the Defendant began to frequent pornographic websites; already in 1993, the children had found a pornographic film in the house.

DISCUSSION

A. Does Infidelity on the Part of the Husband Constitute Grounds for Divorce?

It clearly emerges from the facts described above that the Defendant was unfaithful to the Plaintiff and even lived, at times, with another woman, and that despite the Plaintiff's warnings,[1] he continued in his

[1] It is enough that the wife warns her husband, and there is no need for a warning from the *beit din*, for the purpose of the warning is to see whether there is a chance for the continuation of the marriage, see: File no. 873491/1, Netanya Regional Beit Din, (11 Shevat 5774). Similarly, it must be said that what Rashba (Resp. Rashba 1:693, cited in Beit Yosef 154) and Rema (*Even ha-Ezer* 154:3) said to the effect that there is a requirement to warn the husband before obligating him to give a *get*, applied to their particular time, when wife-beating was common, which is not the case today, for it is now accepted that such a thing is prohibited, and even constitutes a criminal offense – so he is deemed to be warned and to persist (see: *Pithei Teshuva*, *Even ha-Ezer* 115:11, in the name of *Shevut Ya'akov*).

adulterous ways, and he continues to act in this manner even after separating from his wife. Therefore, he is to be defined as a "philanderer".

According to *Darkhei Moshe* (*Even ha-Ezer* 154:21), Rema rules (*Shulhan Arukh*, *ad loc*., 21) as follows:

> "A person who is a philanderer and his wife complains about it: if there is evidence that he was seen with adulterers or that he confessed, some say that he is forced to divorce her."

The Rabbinical Court in Netanya commented regarding this matter (File no. 1-24-4564, 8 Shevat 5766):

> "This means that he was seen in the company of adulterers, and it means that it is not necessary for him to be seen committing adultery, which would be the case if the issue was prohibiting an adulterous woman to her husband. But in order to determine that he is a philanderer it is sufficient that he is seen in the company of those who are habitual adulterers, and the circumstances in which they are seen then attest to the fact that he is a philanderer … In all cases in which there is a strong presumption that he is a philanderer, we rule in accordance with this presumption and with his conduct which clearly proves his deeds, even though we have not seen him in the act."

In the present case, it is not necessary to invoke a presumption in order to conclude definitively that the Defendant is a philanderer, for as we described in detail above, the circumstances attest to the fact that he indeed availed himself of the services of prostitutes, such as in the incident in New York with the undercover policewoman, proving that he moved about in places where adultery and prostitution were to be found. Following this incident, other events that occurred throughout the course of the marriage become comprehensible (choice of location for the honeymoon; his long-distance journeys; the phone call with the woman in his hotel room; the email correspondence, the pornography on the internet, etc.), which indicate that he is a philanderer.

The first of the Sages to discuss this definition and its halakhic meaning is Rabbi Alexander Zuslin HaCohen (Germany, 14th century) in his *Sefer ha-Agudah* (*Yevamot* 65a:77), who writes:

> "A matter once came before me: Leah claims about Reuven that he is a philanderer and he denies it. I ruled that if she brings witnesses that he is so – he must divorce her and pay out her the *ketubbah*, whether according to Scripture, or to the Talmud, or on rational grounds. Scripture – for it is written (Genesis 31:50): "[i]f thou shalt take wives beside my daughters". The Talmud, for it says there: "A person may take more than one wife only when he is able to provide appropriately for all the needs," and in this context, it is written (Proverbs 29:3): "But he that keeps company with harlots wasteth his substance." And on rational grounds, since philandering is worse than all the grounds cited in *perek ha-medir* [Tractate *Ketubot*] for compelling a man to divorce his wife."

But this is only when there are witnesses who saw him with the Aramean woman in the manner of adulterers; but if gentile women bring him children [claiming that he is their father], he is not forced [to divorce his first wife], because there have been several incidents in which [Jewish men] have been conspired against in this way.

Three reasons are brought in the above passage for the right of a woman to be divorced following infidelity on the part of the husband. First, intimate relations with another woman constitute a fundamental breach of the marriage, particularly at present, when there is a halakhic prohibition on marrying two wives. Second, when the husband is unfaithful, there is a very good chance that he will not be able to provide for his wife's needs. Third, if it is possible to compel a man to give his wife a *gett* when he emits a bad odor, *a fortiori* can he be compelled to give a *gett* in a case in which he is unfaithful to his wife!

In the nineteenth century, hundreds of years after the appearance of the *Sefer ha-Agudah*, Rabbi Yehiel Michel Epstein suggested additional reasons for compelling a philandering husband to give a *gett* (*Arukh ha-Shulhan, Even ha-Ezer* 154:16):

> "[Rema] wrote further, that if a person is a philanderer, and his wife complains, if there is evidence that he was seen with adulterers or that he confessed, there are those who say [*yesh omrim*] that he is compelled to divorce … and even though in relation to other sins which have no direct bearing on

> the woman he is not compelled to divorce, in the case of philandering, however, we do compel him, for in this case the sin does have a direct bearing upon her. First, it affects her right to sexual gratification, for philanderers "despise that which is permitted to them and are attracted by the sweetness of stolen waters"; second, there is no doubt that he is certainly repulsive in her eyes, and finally, he might even pose a danger to her. And this is true not only according to Maimonides, who maintains that if a wife complains that her husband is repulsive to her, he is compelled to divorce her, but even those who disagree with him would admit that in this case [compulsion is justified]. The Talmud explains that a person who refuses to fulfil conjugal duties is compelled [to divorce], and how much more so a philanderer, who is of course worse. All this applies when the truth of the matter has been thoroughly investigated."

According to the above, the husband is liable, due to his infidelity, to refrain from intimate relations with his wife. His infidelity causes him to be repulsive to his wife. Finally, a husband who lives with another woman poses a danger to his wife (presumably referring to the risk of contracting a sexually transmitted disease).

The common denominator of the reasons offered by *Sefer ha-Agudah* and *Arukh ha-Shulhan* in support of this ground for divorce does not inhere in the transgression of adultery itself, but rather in the destruction of family life caused by the husband as a result of these actions, and the wife is therefore entitled to demand a *gett* (see *Resp. Mishpatekha le-Ya'akov* 6, 4:108).

In such circumstances, not only is there cause for obligating the husband to give a *get*, but he may even be compelled to do so, as we already pointed out in explaining the words of the *Sefer ha-Agudah* and *Arukh ha-Shulhan*, and as implied in *Resp. Mahari Bruna* (168), and as ruled by a string of Aharonim (see: Tur, *Even ha-Ezer* 154; *Erekh Lehem, Even ha-Ezer* 154, end of no. 20; *Biur ha-Gra, Even ha-Ezer* 154:65; *Resp. Mahane Hayyim* 2, *Even ha-Ezer*, 45 (on condition that there are witnesses who so testified); Rabbi Eliyahu of Tarla, *Resp. D'var Eliyahu* 73; *Arukh ha-Shulhan, ibid*.; *Resp. Noseh ha-Ephod* 32; File (Tel Aviv Regional R.C.) 7831/27, PDR 8 254, 256-7).

According to *Noda Beyehuda* (*Even ha-Ezer*, 2nd ed., no. 90), if in fact the husband is no longer living with another woman, he is not to be compelled to give a *gett*. This implies that if the husband continues living with another woman, such as in the present case, where he has been living with another woman for 18 years and is even married to her civilly, *Noda Beyehuda*, too, would agree that he is to be compelled to give a *gett*.

Moreover, today, given our concern about the transmission of AIDS when a man is unfaithful, there are further grounds for compelling a *gett* on the basis of *Sefer ha-Agudah* (see File no. 1-21-2569, Jerusalem Regional Beit Din, *Hadin veha-Dayan* 5, 10 (5764), *Rabbinic Authority*, vol. 2, pp. 177-181). As opposed to these authorities, *Shulhan Arukh* did not cite the words of *Sefer ha-Agudah* as *halakhah*: its ruling was explained thus (*Beit Yosef Even ha-Ezer* 154):

> "And in any case, it appears to me that the words of *Sefer ha-Agudah* and *Rabbenu Simha* and *Or Zarua* are not to be relied on to compel a *gett*, because they are not cited by any of the famous authorities."

Other authorities, too, opposed compelling a *gett* in the case of adultery (see: *Resp. Maharitz*, 229; *Resp. Rosh Mashbir* 1, *Even ha-Ezer* 27; *Resp. Rabbi Azriel Hildesheimer* 2:89; *Tiferet Ya'akov*, *Gittin* 154; File no. 1315/5713, Jerusalem Regional Beit Din, PDR 7, 65 (12 Iyyar 5727), 73; App. File no. 183/5739, Supreme Rabbinical Court, PDR 12, 24 (1 Nissan 5740); File no. 210913-1, Tel Aviv-Yaffo Regional Beit Din (5 Av 5759); File no. 10836/6, Netanya Regional Beit Din, (8 Shevat 5775).

However, as we have said, Rema (*Even ha-Ezer* 154:1) invested this with practical halakhic force.

B. A Wife Who Claims, "He is Repulsive to Me" with a Clear Pretext – Grounds for Compelling a *gett*?

According to some Aharonim (later authorities), divorce cannot be compelled on grounds of the husband's infidelity, and we must therefore examine the Plaintiff's claim that her husband is repulsive to her due to the

very thought that in his adultery, his body was in intimate contact with the body of another woman; she is sickened by the very notion of resuming intimate relations and of reconciliation with him!

1. *Rebellious Wife due to Revulsion*

From the Talmud in *Ketubot* 63b it emerges that there are two types of claim of rebellion on the part of the wife regarding marital relations:

a) Rebellion due to a dispute (She says, "I want him as a husband but I wish to torment him") – A wife who does not want to divorce, but refuses to engage in marital relations, in order to cause distress to her husband due to her dispute with him (*Mishneh Torah*, *Ishut* 14:9; *Shulhan Arukh*, *Even ha-Ezer* 77:2. However, in *Tosafot, Ketubot* 63b, s.v. *aval*, the opinion of Rabbenu Tam is cited, according to whom the said rebellious wife is interested in divorcing without providing reasons, and she is tormenting her husband so that he will divorce her and pay out her *ketubah*; this also appears in *Perishah*, *Even ha-Ezer* 77:18).

b) Rebellion due to revulsion ("He is repulsive to me") – the wife can no longer bear to engage in marital relations with her husband (Rashi, *Ketubot* 63b, s.v. *aval amra*).

In our view, the arguments of the Plaintiff cannot be classified as rebelliousness of the first type, for she has no interest in causing her husband distress, neither due to any argument with him, nor so that he will pay out the value of her *ketubah*. On the other hand, the Plaintiff is not claiming that her husband is repulsive to her regarding marital relations; rather, life together with him is repulsive to her, and she no longer wishes to be married to him. The question, therefore, is whether this second type of argument of rebellion due to revulsion is limited only to cases in which the woman can no longer bear having intimate relations with her husband, or whether it can also be made in circumstances in which the wife can no longer tolerate married life with her husband due to his conduct towards her.

Rabbi Aharon Sasson (*Resp. Torat Emet* 186) had doubts in relation to this question, particularly with regard to the correct understanding of Maimonides' opinion:

> "When the Talmud says, "He is repulsive to me", … her claim is that she can no longer engage in sexual relations with him due to revulsion, like the precise understanding of the expression, "He is repulsive to me like the flesh of a pig etc." But if her argument does not relate to revulsion at intercourse, then her argument is not that of "He is repulsive to me", and even if she says, "I do not want him because I hate him," or "He will no longer be called my husband" etc., as is said in this case, these statements do not indicate a claim of "He is repulsive to me" etc., for it is possible that the hatred arises not due to revulsion but only because of a dispute with him, or something else, and then her claim is not one of revulsion.
>
> …
>
> And it might also be possible to say the contrary, i.e., "He is repulsive to me" is one way of saying "I hate him and I do not want to be with him" etc., … as is implied in Maimonides words there: "She is not as a prisoner who is forced to have relations with one who is hateful to her" etc. The formulation "He is repulsive to me" is not used [by Maimonides], from which we may deduce that hatefulness and repulsiveness are one and the same thing. And the reason that the *gemara* did not include hatred in general is because it wanted to be sure that there is an objective reason for the hatred."

And after discussing various proofs for each side of the argument he writes:

> "In light of all this I have doubts in the present matter, since I have not found a definitive answer in any of the authorities, or even the slightest indication of a preference in relation to any of these arguments. This may be because the matter was so clear to them that they did not feel the need to provide any definitive rulings. Therefore, my tendency is that wherever the wife says, "I do not want him and I hate him and he is no longer to be called my husband," we will apply the law of "He is repulsive to me." "

Indeed, from the writings of a number of authorities a distinction emerges between the two possible claims of the wife that she is revolted by her husband, and according to this, only in relation to being revolted by intimate relations will the law of the rebellious wife ("*moredet"*) due to revulsion be applied to the wife (*Hiddushei* רא"ה, *Ketubot* 63b, s.v. *heikhi dami*; *Beit ha-Behira*, ad loc., s.v. *ugedolei hamehaberim*). Rabbi Herzog defined revulsion by a medical analogy in a more narrowly-focused manner (*Resp. Heikhal Yitzhak* 1:2):

> "And one must further distinguish: the claim "He is repulsive to me" is not just a matter of simple hatred, but deep revulsion at having relations with that body, and this is one of the deep secrets of the soul [in our days, the doctors have discovered a disease known as haphephobia – fear of being touched , i.e., for a reason which cannot be explained, a person is reluctant to touch a certain person or object, and Maimonides, in his divine wisdom, preceded modern day physicians in many things, including this]."

In all events, from the words of many other authorities it emerges that the claim of revulsion also applies in circumstances in which the wife is not interested in continuing to live with the husband, and there is not even a need for an explicit statement of revulsion (*Resp. Mahari*, 102, discusses compelling *halitzah*, and explains that according to Maimonides and others, "Not only does this apply in relation to a claim of "He is repulsive to me," but in any case in which she claims a *gett*, we give it to her immediately"; *Resp. Maharashdam*, *Even ha-Ezer*, 41, writes that the sanctions of Rabbenu Tam do not apply only to the claim "He is repulsive to me", and cites Maharik (*ad loc*.); *Beit Shemuel*, 77:1, cites the above responsum of Rabbi Sasson discussing the case in which the claim was formulated in words other than "He is repulsive to me", and this means that he ruled similarly; *Resp. Zemah Zedek* (Lubavitch), *Even ha-Ezer*, 262:11; *Resp. Penei Moshe* 1:55).

The position of these authorities was adopted in the rulings of the rabbinical courts in the State of Israel [File nos. 1087/5724, 1337/5724, Haifa Regional Beit Din, PDR 5, 154 (6 Nissan 5724), 157; File no. 759/5729, Haifa Regional Beit Din, PDR 8, 124 (8 Iyyar 5730), 126; File no. 8523/31, Tel Aviv-Yaffo Regional Beit Din, PDR 9, 171 (30 Adar I 5733), 181-184; File no. 32555/1, Ashdod Regional Beit Din, (9.5.2011); *Resp. Ateret Devorah* 1, *Even ha-Ezer* 37, etc.).

The following appeared in the reasons for the judgment in File no. 284462/9, Netanya Regional Beit Din, (9.4.2014):

> "… According to many of the authorities, and also according to Maimonides and the *Shulhan Arukh*, the definition of "repulsive" does not depend on this particular form, nor does it necessarily depend on marital relations; rather, the criterion is substantive, relating to the whole of the shared life, and insofar as it is clear to us that the woman hates her husband and does not want him, and in the opinion of the *beit din* her words are sincere and are based on clear pretexts, then it is as if she said "He is repulsive to me", even though she does not insist that marital relations with him are repulsive to her. And as emerges clearly from the enactment of the law of the Academy [Geonim] (which is attributed to the law of "He is repulsive to me", and as was proven also by Rabbi Sasson above, and nothing need be added), where it was clear that she wass not claiming that he is repulsive to her due to sexual relations, nevertheless the law of "he is repulsive to me" was applied."

In the present case, the Plaintiff did not say explicitly "He is repulsive to me", but her words clearly express the revulsion she feels at the husband's infidelity, and her unwillingness to continue her married life with him.

We therefore rule in accordance with the opinion that the laws that apply to the rebellious wife due to her husband being repulsive to her also apply when the wife claims that she no longer wishes to live together with her husband.

2. *The Evidence Required to Prove the Claim "He is Repulsive to Me"*

Although several authorities are of the opinion that accepting the claim "He is repulsive to me" is conditional upon evidence being brought in relation to the cause of the revulsion [*Beit he-Behira, Ketubot*

63b, in the name of Maimonides; *Resp. Maharit*, *Even ha-Ezer*, 40; Resp. *Divrei Malkhiel* 3:145; *Hazon Ish*, *Even ha-Ezer* 79:16; App. (Supreme R.C.) 9922361/1 (17.5.2015)], many authorities hold that there is no need for admissible proof for this purpose, and it is sufficient that her revulsion is evident from what she says or from the circumstances (*Tosafot, Ketubot* 63b, s.v. *aval* – "Where there is a basis [for saying] that the husband is intolerable to her"; *Resp. Rashba*, cited in Beit Yosef, *Even ha-Ezer*, 77, s.v. *uma sh'amar sherabbi Meir*; *Resp. Maharimat* 2, *Even ha-Ezer* 40. And see *Resp. Yabia Omer* 3, *Even ha-Ezer* 18:2), or if she presents an explanation, a pretext [=*amtalah*], for her claim that he is repulsive to her [*Tosafot Ri"d, Ketubot* 64a; *Resp. Rosh* 43:8 in the name of Maharam of Rothenberg; *Resp. Tashbetz* 4 (*ha-Hut ha-Meshulash*) col. 3:35; *Resp. Rashbash* 93. There are indeed those hold that there is no need for any explanation on the part of the wife, but this is not how the *halakhah* has been decided: see: *Resp. Rashba* (attributed to Maimonides) 138; *Resp. Pri Zedek* of Rabbi Raphael Zror, 2, in the opinion of several Rishonim].

Regarding the "pretext": the majority of authorities are of the opinion that it is not sufficient simply to provide some sort of explanation for the claim, "He is repulsive to me," and what is necessary, according to them, is a "clear pretext" [*Resp. Tashbetz* 4 (*ha-Hut ha-Meshulash*) col. 3:35; Rema, *Even ha-Ezer* 77:3, and the super-commentaries; *Resp. Yabia Omer* 3, *Even ha-Ezer* 18:3-4; File no. 1530/42, Haifa Regional Beit Din, PDR 16, 145 (Shevat 5750).

The assumption is that despite the emotional/psychological aspect of the claim, "He is repulsive to me", the wife who is suffering has the ability to express her feelings in a rational manner in front of the *beit din* by explaining the source or the reason for these feelings with a "clear pretext", and the *beit din* must determine whether there is a true, justified ground for divorce.

3. *Discretion of the Beit Din in Accepting the Claim, "He is Repulsive to Me"*

In fact, determination of whether the "clear pretext" is sufficiently strong to attract the application of the laws of the rebellious wife whose husband is repulsive to her is subject to the discretion of the *beit din*, in accordance with "what the *dayanim* see for themselves": the *dayanim* assess the sincerity of the claim that the husband is repulsive (Rabbi Yitzhak Nissim, Rabbi Joseph Shalom Elyashiv and Rabbi Bezalel Zolti in App. File no. 139/5718, Supreme Rabbinical Court, PDR 3, 201 (30 Sivan 5719) at 206-207, and App. File no. 5016, Supreme Rabbinical Court, PDR 20, 197 (14 Shevat 5751), at 200].

In other words, the *beit din* must believe that the wife is making the claim for real, relevant reasons, rather than as a trick or a tactic because "she had cast her eyes on another" (*Beit he-Behira, Ketubot* 63a; *Resp. Rosh* 43:6). Thus, for example, if the woman waives collecting the money from her *ketubah*, the sincerity of her claim has a better foundation (*Resp. Maharit* 2, *Even ha-Ezer* 40; Hazon Ish, *Even ha-Ezer* 79:4).

Rabbi Kook (Resp. Ezrat Kohen 56) defined, in his clear, articulate manner, the nature of the "clear pretext" as part of the investigation conducted by the *beit din*:

> "Where it is clear to the *beit din* that justice is on her side, and his bad deeds and conduct warrant his being repulsive to her, then her אונס is certain אונס, and there is no element of meanness. And because he caused all of this, there is no reason for her to lose anything, as long as he holds her back and does not give her a *gett* …"

In the present case, the Plaintiff's claim that her husband is a philanderer constitutes an example of one who claims that her husband is repulsive to her with a clear pretext, in the words of *Arukh ha-Shulhan* (*Even ha-Ezer* 144:16) quoted above: "for philanderers despise that which is permitted to them and are attracted by the sweetness of stolen waters and he is certainly repulsive in her eyes."

Other authorities regarded this as conduct which by its very nature caused the wife to be repelled. For example, Rabbi Eliyahu of Tarla (*Resp. D'var Eliyahu* 73) writes as follows:

> "With regard to compelling a person to divorce, this is certainly worse than the defects in relation to which the husband is compelled to divorce, and there is no greater revulsion than this."

In our days, Rabbi Uriel Lavie writes (*Ateret Devorah* 1, *Even ha-Ezer* 37):

> "It appears from the *Sefer ha-Agudah* … that such conduct on the part of the husband usually leads to him losing his money and to deprivation regarding marital relations and causes the woman distress, i.e., the conduct itself by its very nature entails revulsion on the part of the wife and justifies compelling the husband to divorce … revulsion that is recognized and accepted in these circumstances in relation to all wives, and the husband is to be compelled to divorce."

In the present case, it is clear on the one hand that the amount of maintenance paid to the wife ($400 per month) was not affected by the husband's liaisons with another woman or other women. On the other hand, according to the Plaintiff, the infrequency of the marital relations with her husband must be attributed to his adultery.

Rabbi Shlomo Dichovsky defines the discretion of the *beit din* in determining that he is repulsive (App. (Supreme R.C.) 168/54 (14 Kislev 5755, unpublished): a summary of the judgment was published in *Ha-Din veha-Dayan* 2, 3 (5763). The following excerpt was quoted by the High Court of Justice in HC 1371/96 *Miriam Refaeli v. Yosef Refaeli* IsrSC 51(1) 198 (20.4.1997) para. 17:

> "The need for a clear pretext in relation to one who says "He is repulsive to me" is not because such a claim without a pretext is not sufficient, but because in such a case we are concerned that she might have cast her eyes on another. But as long as her revulsion is clear in the eyes of the *beit din*, even if it is not justified, the woman is considered as saying "He is repulsive to me" with a clear pretext, and as Hazon Ish said (*Even ha-Ezer* 69:16): "The main thing depends on the impression of the *beit din*, if there is mean-spiritedness in her demanding her *ketubah*, but if her claim that "he is repulsive to me" appears to be sincere, but she is demanding her *ketubah* in order to support herself, she will not lose her claim."

Rabbi Eliyahu Bakshi-Doron adds (in App. 168/54 *ibid*., as cited in the High Court)

> "Even those who disagree with Maimonides that a *gett* is to be compelled when there is a claim of revulsion, agree that if there is a clear pretext, and the claim is sincere and no concern arises that she has cast her eyes on another, the divorce is to be compelled."

In the present case, according to the impression of the panel of the *Beit Din*, the Plaintiff claims that the husband is repulsive to her with a clear pretext, and he may therefore be compelled to give her a *gett* (see: *Sefer Meisharim* 23:8 in the name of Rashba, *Resp. Mahari Bruna* 211; *Resp. Rashbash* 93; *Resp. Yakhin u-Boaz* 2:21, in the name of Maharam; *Resp. Maharshal* 41; *Resp. Rema* 26, 96; *Resp. Tzitz Eliezer* 17:53).

C. Admissibility of Evidence Obtained in Breach of Privacy

Another question which must be discussed is the validity of the evidence defining the Defendant as a philanderer which was obtained in violation of his privacy, by means of the Plaintiff planting a recording device and by the two sons reading the email correspondence on his computer. The computer was owned by the Defendant, but the two sons guessed the password and succeeded in getting into the computer in order to read his email.

What law applies to evidence that was obtained in breach of privacy? Does the fact that permission had not been given for this breach disqualify it as evidence?

The dilemma with which we are faced is whether the need to establish the truth outweighs the need to allow evidence which was obtained unlawfully (i.e., in violation of the *halakhah*), or does protection of the public interest requiring that privacy be preserved override, in the case at hand, the need to reveal the truth?

The American, English and Israeli legal systems are adversarial systems in which the judge is supposed to be passive and the parties lay out their arguments before him. Accordingly, the judge does not endeavor to uncover evidence that the parties did not present. In accordance with this system, it was ruled that the

proceedings in court have finality, since the process is a value in itself, even in cases where justice is not exhausted (see: Herbert L. Packer, *Limits of the Criminal Sanction* (Stanford University Press, 1968).

On the other hand, a halakhic system requires the judge to be active (on the involvement of the *beit din* in the procedural process, see: *Mishneh Torah, Sanhedrin* 21:10-11; *To'en ve-Nit'an* 6:1; *Edut* 1:4-6, 2:1-5), and his function is to rule according to the truth (*Shabbat* 10a): "Any judge who renders a judgment that is absolutely true, even [if he sits in judgment for only] one hour, is considered by Scripture as if he became a partner with the Holy One, Blessed is He, in the act of creation," and elsewhere (Sanhedrin 7a): "Any judge who renders a judgment that is not absolutely true causes the Divine Presence to depart from Israel."

(Another alternative: the transgression *per se* does not disqualify the halakhic outcome, but the value of truth overrides the value of human dignity. This was the opinion of the *beit din* in File no. 1004240/1, Haifa Regional Beit Din, PDR 14, 289 (24.5.16).

Rabbi Shlomo Dichovsky discussed this matter, stating (App. File no. 1-21-7661, Supreme Rabbinical Court, (10 Tammuz 5764)) as follows:

> "I believe that it is correct to say that in relation to a married couple, there is no concept of individual privacy. The joint privacy of them both is one unit, one tree. This is the nature of married life, which renders the individual intimacy of each as one intimacy. The cooperation between the spouses is in the areas of intimacy, emotion, physicality and property all together. How can one talk of intrusion into the privacy of one spouse vis-à-vis the other, when the whole essence of marriage is expansion of the individual privacy into joint privacy? Even when the couple are in conflict, as long as the marital bond has not been severed or as long as no decree of divorce has been issued, the collective privacy in which the two sides are partners remains in effect. I agree that this privacy is intended for them alone, and it is not permitted for outsiders to enter, but in our case, the *beit din* is supposed to investigate the problems in the marriage and to arrive at conclusions. The status of the *beit din* is like that of a doctor, and each party can and must present before it the problems in their married life, even if one party discloses the misdeeds of the other.
>
> Moreover, although the ruling in practice is that a breach of privacy constitutes a transgression (on the matter of Rabbenu Gershom's prohibition against reading the letter of another without his knowledge, see: *Resp. Maharam of Rothenberg* (Prague ed.) 1022; *Be'er ha-Gola, Yoreh De'ah* end of no. 334; *Resp. Hikekei Lev* 1, *Yoreh De'ah* 49; Resp. *Halakhot Ketanot* 1:276; *Resp. Torat Hayyim* 3:47. On the question of "*hezek reiyah*" [=damage caused by viewing the property of another] in relation to reading the material on another person's computer, there is a dispute, and we will not expand this here), the halakhic principle is that the evidence that was obtained as a result of this violation is not to be disqualified. This principle is learnt from the law pertaining to a person who for three consecutive years ate the halakhically-forbidden fruit of a particular field: these three years count for the purpose of a presumption of ownership, even though the eating of the fruit was forbidden (see *Bava Batra* 36a (according to the reading of *Ba'al Halakhot Gedolot*, Rabbenu Hannanel and Rif); *Mishneh Torah, To-en ve-Nit'an* 12:12; *Arukh ha-Shulhan, Hoshen Mishpat* 141:8; *Resp. Mishpetei Ouziel* 4, General Matters 18; *Resp. Rabaz* 1 (*Orah Hayyim-Yoreh De'ah*) 54; *Resp. Mishneh Halakhot* 2:59, 17:183). According to this position, "evidence that was obtained unlawfully is admissible as evidence, and the prohibition does not detract from the right of the possessor" (See: Eliav Shochetman, *Ma'aseh Haba Ba'avera* (5741) 111, note 40)."

This principle derives from a wider principle that was articulated by Abaye (*Temura* 4b): "Any act which the Divine Law forbids, if it has been done, it has legal effect." In other words, committing a prohibited act does not negate its legal consequences, for according to the *halakhah*, there is a distinction between the sphere of prohibitions and the legal sphere, and therefore, an unlawful violation of privacy does not disqualify use of the evidence that was obtained by means of this violation (for further discussion on this matter, see Shochetman, *ibid*., at 104 ff.).

D. The Probative Value of the Recording and the Email

In the present matter, despite the fact that it was the Defendant who sued for civil divorce, the Plaintiff claims that she decided to divorce the Defendant even before he instigated the proceedings. In addition, she claims that the incident with the policewoman posing as a prostitute indeed occurred, even though she does not have documents to prove it, for unfortunately she threw away the police report and the decision of the court which sentenced the Defendant to community service for this incident, and therefore she cannot submit them to our *Beit Din*.

In order to prove her claims, the Plaintiff submitted to the *Beit Din* a recording which indeed proved her activities in anticipation of civil divorce proceedings, as well as the Defendant's admission of the incident with the undercover policewoman.

Apparently, the recording cannot serve as evidence, for as is known, there is a dispute as to whether voice identification constitutes evidence or not. According to Nahmanides (in his *Commentary to the Torah*, Genesis 27:12), there are people who are able to produce a voice like that of another person. According to *Ketzot ha-Hoshen* (81:13), voice identification is a weak proof. And according to Netivot ha-Mishpat (81, Biurim 7), voice identification is regarded as mere information. Rabbi Dichovsky already ruled that a recording cannot be relied upon by itself, without additional evidence (Rabbi Shlomo Dichovsky, "Wiretapping", *Torah She-be'al Peh* 36, 58 [5755], 68 (Heb.)).

We listened to two recordings that included two hours of conversations between the Plaintiff and the Defendant, but we could not recognize their voices on these recordings, which were made 19 years ago. Similarly, we listened to conversations of one and a half hours that concentrated on the subject of the family debt of the Plaintiff's brother-in-law in connection with the couple's house and additional disagreements between them, particularly concerning the way in which the Plaintiff's brother-in-law, who is a lawyer, dealt with the apartment.

It is clear that the planned entrapment by the Plaintiff by means of the recording constituted preparation in anticipation of the claim for divorce that she planned to submit to the Court. From an examination of the judgment of the Court, which was rendered after the recording, the connection between the recording and paragraphs 10, 12-13 of the judgment emerges clearly. Accordingly, despite the fact that it was the Defendant who formally instigated the divorce proceedings in Court, the recording proves that the Plaintiff had begun, already a year beforehand, "to prepare the ground" for divorce. Moreover, she also notified the Court that at that time she had consulted with two lawyers on the matter of divorce.

On the second matter, it is possible to rely on the last quarter of an hour of the recording, which includes the husband's admission that the incident with the undercover policewoman had indeed occurred. In this recording, the Defendant also confirmed his association with another woman, without admitting that he had an intimate relationship with her.

The probative support for what was said in the recording about the intimate connection is provided by the testimony of the sons of the couple concerning the immodest email correspondence with a woman, as mentioned above. The younger son, who saw the correspondence in 1997 (he was then 13-14 years old) described it as "an inappropriate connection with a woman", and testified that the Defendant promised that he would put an end to this correspondence. The Plaintiff, to whom the son presented these mails at the time, claimed in the *Beit Din* that the contents of the correspondence clearly attest to lewdness and adultery, and in her words, "sexually explicit messages". The older son discovered similar messages in 1998 (he was then 18-19 years old), and he, too, could not say whether this correspondence pointed to an intimate relationship between the Defendant and the woman, but he too defined this connection as "suspicious". In other words, the Plaintiff and the two sons separately raised the matter of the email correspondence of the Defendant, and when they confronted him with it he got very angry, but he refrained from admitting that he had an intimate relationship with another woman.

Apparently, the ruling of Rabbi Zvi b. Ya'akov, a *dayan* on the Tel Aviv Rabbinical Court, provides a basis for the position that the conduct of the Defendant defines him as a philanderer. He rules (*Resp. Mishpatekha le-Ya'akov* 6:4, 107) as follows:

> "In all events, it emerges from *Sefer ha-Agudah* that we don't require actual witnesses to the fornication, as we would in the case of a wife suspected of adultery, but insofar as he is seen with the adulterers, he is classed as a philanderer. It appears that if he exchanges lewd messages on the internet and participates in these things … visiting these sites constitutes his being amongst the adulterers, and he is to be compelled to divorce her and pay out her *ketubah*."

In the present case, however, we cannot rely on the email correspondence, for the writing is electronic and it is clearly impossible to identify who wrote the messages. Even if we could know with certainty from which computer the messages were sent, and thereby determine, *prima facie*, that the owner of the computer is the person who sent them, this is not absolute proof, for the technological possibility of penetrating the virtual space of the individual, to read, to change and to copy the digital information stored in the computer exists; such penetration is an everyday occurrence, and the phenomenon of hackers is well-known. Therefore, who can assure us, beyond all doubt, that the Defendant, the owner of the computer, was the one who wrote these messages, and not another person?

Authorities from earlier ages were not aware of modern technology in general, and of computers in particular, but the Aharonim already discussed this point. *Resp. Avnei Nezer* (*Even ha-Ezer* 34) discusses a letter that was found from the wife to the suspect, which contained several unseemly expressions; the author wrote that if it was not written explicitly in the letter that the wife was adulterous, then this is considered to be no more than unseemliness. And if it emerges that this is her writing, then even though the writing is similar to her handwriting in another document which she admits is hers, this is not proof that she indeed penned the unseemly words. First, the other document might be forged, and should you wish to say that it is not possible to replicate each individual letter, but only a signature, then the handwriting is not identifiable. But if you wish to say that it is possible to make each letter identical, then forgery is possible; and furthermore, proving the similarity will not serve with respect to her being prohibited to her husband, because the only acceptable method in such a case is visual identification of her handwriting.

In *Resp. Emek She'elah* (17), Rabbi Berlin discusses the case of a wife about whom there was a persistent rumor, and the suspected lover admitted to impropriety and also showed letters from her demanding that he not reveal the truth. Rabbi Berlin said that the rumors had no weight and that the testimony of the suspect, who was the single witness to the impropriety, was inadmissible, and he wrote at length that she not be prohibited [to remain with her husband], for what is written there does not constitute impropriety.

On the basis of the above, one must be sure that the correspondence was in fact written by the husband and the woman to whom it was addressed.

In the opinion of this *Beit Din*, the email correspondence is not to be presumed to be authentic, and it is therefore possible to accept the claim that it was edited and forged. In this case, the computer was not tested, and it is therefore impossible to prove from the electronic correspondence that the Defendant was indeed a philanderer. As such we cannot accept the ruling of Rabbi Zvi Yehuda b. Ya'akov that lewdness in the Defendant's emails constitutes an instance of the approach of *Sefer ha-Agudah* (i.e., being seen with adulterers) with respect to the definition of a philanderer.

At the same time, because the *Beit Din* is obliged to render true judgment according to how the *dayanim* see matters, all the matters that we have mentioned that preceded the discovery of the email correspondence, and all the events that occurred thereafter, fit in with the pattern of conduct of the Defendant in general, and the encounter with the undercover policewoman in particular, and clearly indicate that the Defendant is to be labeled as a philanderer.

E. *Iggun* of the Wife – Grounds for Divorce

In addition to the abovementioned grounds for divorce – the fact of the husband being a philanderer, and the Plaintiff being repulsed by him with a clear pretext – justifying compulsion of the *gett*, there is, in the circumstances of this case, another reason for compelling the *gett*, i.e., the *iggun* of the wife.

The Defendant has already lived in a different state for a number of years, he prevents his wife from engaging in any type of intimacy (including refraining from fulfilment of his obligation regarding marital relations and maintenance), and has already left her in a state of *iggun* for 18 years. He must therefore be compelled to divorce her.

True, there are some authorities who do not accept the wife's chained state as grounds for divorce in relation to which the *gett* can be compelled or declared an obligation (see: *Resp. Divrei Malkhiel* 3, 144-145; *Resp. Divrei Shmuel* 145; *Resp. Shema Shlomo*, *Even ha-Ezer* 3:19; File no. 501/2713, Jerusalem Regional BEit Din, PDR 1, 161 (1 Av 5713); App. File no. 67/5719, Supreme Rabbinical Court, PDR 4, 97 (5719) 112; File no. 1497/322, Haifa Regional Beit Din, PDR 7 109 (4 Adar I 5719) and more), but on the other hand, there are authorities who do accept the wife's *iggun* as grounds for divorce (See: *Resp. ha-Mabit* 1:76, 287; *Resp. Hakham Zvi* 1; Resp. *Divrei Hayyim*, *Even ha-Ezer* 1:45; File no. 8720/41, Tel Aviv-Yaffo Regional Beit Din, PDR 13 264 (30 Sivan 5742); App. File no. 847350/3, Supreme Rabbinical Court, (11 Av 5775); File no. 1460333/11, Jerusalem Regional Beit Din, (15 Sivan 5740); File no. 846913/2, Haifa Regional Beit Din, (18 Sivan 5777); File no. 865704/1, Zefat Regional Beit Din, (11 Iyyar 5777).

F. Decision on the Question of Compelling the *gett*

From the above it emerges that there are several halakhic doubts in our case. The *halakhah* might be in accordance with the approach of *Sefer ha*-Agudah and *Arukh ha-Shulhan*, that a philanderer is compelled to divorce. Alternatively, the *halakhah* may be in accordance with the view of Maimonides, Rashbam, Rashi, Ra'avad, Smag and others (See: *Resp. Zel ha-Kessef* 1:13), who compel a person to divorce when the wife claims "He is repulsive to me", even without a clear pretext. One might say that the *halakhah* is not decided in accordance with that view, but rather with the view of Rabbenu Tam, Rosh, *Shulhan Arukh*, Rema and others (see: Rabbenu Tam's *Sefer Hayashar, Hateshuvot* 24; *Resp. Rosh*, 43:6; *Shulhan Arukh*, *Even ha-Ezer* 77:1; Rema, *ad loc*. 3), whereby one does not compel in the case of this claim; or the *halakhah* might be decided according to Rashbash and those who follow his view (*Resp. Rashbash* 93), whereby if there is a clear pretext, one does compel. Or it may be that one does not compel, as Rashbash says; rather, the *halakhah* is in accordance with Rosh, Rashba and *Beit Yosef* as understood by Maharam (see: *Resp. Asher Hanan* 4, *Even ha-Ezer* 77, whereby even with a clear pretext one does not compel. Or the *halakhah* may be as in the enactment of the Geonim, as explicated in Rif and in Or Zarua (Asher Hana, ibid) that in fact, according to the fundamental legal doctrine one does not compel, but the husband is to be compelled due to the enactment pertaining to the maintenance of Jewish women at a certain standard. Similarly, in the present case, the *halakhah* may be in accordance with the approach of *Mabit*, *Hakham Zvi*, *Divrei Hayyim* and others, whereby a *gett* can be compelled due to the wife's *iggun*, and not in accordance with the approach of *Divrei Malkhiel* and those who follow his view, that *iggun* is not a reason for compelling. In the circumstances of the present case, therefore, there are five doubts in relation to the question of compelling the Defendant to give a *gett*.

In view of these halakhic doubts, how must we decide?

One of the great authorities of the 19th century, Rabbi Moshe Sofer (*Resp. Hatam Sofer*, *Even ha-Ezer* 2:116, and see: *Resp. Dvar Yehoshua* 3:30; *Resp. Hatam Sofer*, *Even ha-Ezer* 59) limited the scope of Maimonides' ruling (*Mishneh Torah, Gerushin* 2:20), and explained that the pressure that the *beit din* exerts on the husband concerning *gett* coercion in order to express his willingness to comply with what the authorities say is conditional upon it being clear to the husband giving the *gett* that the compulsion is lawful according to all views; however, in cases in which there is a dispute amongst the authorities, we cannot

compel the husband, because there is equivocality in his expression of willingness (*Resp. Hatam Sofer*, *ibid*.): "The divorcing person can surely claim, 'On what basis do you prefer the Rosh to the Mordechai?'"

We argued that because there was no face-to-face confrontation like in the Sanhedrin, the minority opinion cannot be dismissed (*gett Pashut, Klalim*, 5).

According to this distinction, apparently the husband cannot be compelled to give a *gett*.

However, this approach was not accepted by other later authorities. Relying on the ruling of R. Yitzhak Elhanan Spektor (*Resp. Ein Yitzhak* 2:35), Rabbi Yitzhak Herzog (*Resp. Heikhal Yitzhak*, *Even ha-Ezer* 1:2) is of the opinion –

> "… that because the *beit din* ruled that he is to be compelled, the husband – despite being aware that there are those who rule against compulsion – accepted the ruling, because it is a *mitzvah* to comply with what the authorities in one's generation say."

Rabbi Hayyim Hizkiahu Medini, too, cited the position of Hatam Sofer, but he questioned it (*Sde Hemed Hashalem, Ma'arekhet Gerushin* 1:15):

Because all who come to court are presumed to be experts in the law, and therefore both those who are unaware of the above dispute between the holy rabbis, and those who are learned with regard to it, may be compelled to divorce. For it is the law that all are required to obey the judge in their time, and if the *beit din* dealing with the case decides that the law is in favor of compulsion, we may very well say that the parties accept this decision with all their hearts, since it is an obligation to listen to the words of the contemporary judges. It is surely inconceivable that a litigant will enforce his opinion of the law against that of the court sitting in his days.

And see further in *Resp. Sha'arei De'ah* (1:119), and *Resp. Har Zvi* (*Even ha-Ezer* 2:183).

The conclusion in relation to our case at this stage is that there is a basis in the words of the halakhic authorities for compelling the *gett* for a series of five reasons or a series of three reasons: a *gett* is compelled in the case of the infidelity of the husband, who has been warned several times about his conduct; a woman who claims, "He is repulsive to me" with a clear pretext – her husband is compelled to give her a *gett*; and where the woman is left in a state of *iggun*, there is a basis for compelling the *gett*.

G. Invalidation of the *Kiddushin* by Virtue of the Assessment (*umdana de'mukhah*) that "She Did Not Give Herself in Marriage with This in Mind"

Even though we have concluded that there are sufficient reasons for compelling the Defendant to give a *gett*,[2] such compulsion would be practical only if the Plaintiff were living in the State of Israel, where there is a legal possibility of compelling a *gett*, and she could therefore have expected that her marriage would be brought to an end by implementation of the means of compulsion.

However, in our case the couple are at present living in the United States, in which there is no legal authority (and therefore, no halakhic authority) on the part of the *beit din* to compel a *gett*. In accordance with Rabbi Moshe Feinstein (*Iggrot Moshe*, *Even ha-Ezer* 1:79, 4:קכ"א) and Rabbi Zvi P. Frank (*Resp. Har Zvi*, *Even ha-Ezer* 2:181; *Resp. Har Zvi*, *Even ha-Ezer* 2:133) in the absence of such authority, relying on the facts that were described and the evidence that was brought before the *Beit Din*, the *kiddushin* may be invalidated by invoking the assessment, *the umdana de-mu'khah*, that "she did not give herself in marriage

---

[2] The focus of the discussion at hand is on the question of whether there is a basis for compelling a *get* in a case of a philandering husband. As stated, we have reached the conclusion that there is a basis for compelling the husband to give a *get*. We adopted the halakhic tradition whereby in the absence of the possibility of compelling the husband to give a *get*, it is possible to invalidate the kiddushin on certain conditions (see: Resp. Ein Yitzhak 1, *Even ha-Ezer* 23; Resp. Dvar Eliyahu 48; Resp. Iggrot Moshe, *Even ha-Ezer* 1:79). True, it is quite clear that an examination of the Responsa literature shows clearly that invalidation of the kiddushin on certain conditions totally ignores the question of compulsion of the *get*, and also that of the philandering husband. Thus, for example, without referring to the question of compelling the *get*, as our colleague, Rabbi Ariel Holland noted, Rabbi Massas concluded that the conduct of a philandering husband is regarded as "as great a defect as impotence" and invalidated the kiddushin (Resp. Shemesh u-Magen, *Even ha-Ezer* 4:100).

with this in mind" (which means that there is an implied condition in the constitution of the marriage and its validity, see: *Resp. Binyamin Zeev* 61; *Resp. Terumat ha-Deshen* 123; *Sha'arei Yosher* 5:18). Consequently, it is of no surprise that numerous authorities have employed *umdana* as a vehicle to void a marriage. (for examples of clear assessments that were invoked in the past in order to invalidate *kiddushin*, see: *Resp. Maharam of Rothenberg*, Prague ed., 1022 (*Chalitzah*); *Resp. Zikhron Yehonatan* 1, *Yoreh De'ah* 5; *Resp. Avnei Hefetz* 30; *Resp. She'ilat Moshe*, *Even ha-Ezer* 2; *Resp. Meshivat Nafesh*, *Even ha-Ezer* 73-74; *Resp. Sha'arei Ezra* 4, *Even ha-Ezer* 26; *Resp. Iggrot Moshe*, *Even ha-Ezer* 4:121 ; *Resp. Harei Zvi*, *Even ha-Ezer* 2:133), and see, regarding the validity of the assessment, in detail in the judgment of our *Beit Din* (File 101/2014). Recently, see File no. 113995/3, Beer Sheba Regional Beit Din, (1/4/2018) (opinion of Rabbi Dershowitz).

Without going into the validity of the assessment as a means for invalidating *kiddushin*, one formulation of the statement "for that reason she married" is found in the words of the Gra of Turla, who says (Resp. Dvar Eliyahu 73):

> "And even though we accept Rava's opinion, whereby a person may marry several wives on condition that he can fulfil their needs, Ritba pointed out that where the custom is to marry only one wife, Rava would admit that in such a case, he must divorce her and pay out her *ketubah*, for this is an implied condition on the basis of which she agreed to marry him. Therefore that which it is written concerning a man who takes a mistress promiscuously, it is a proven assessment that had she known this would happen she would never have agreed to marry him…"

In our context, the import of the assessment is that the Plaintiff never considered marrying a man who was a philanderer.

Conclusions and Judgment

On the basis of the above, although there are authorities (e.g.: *Resp. Avodat Gershuni* 35; *Resp. Beit Yitzhak* 1:106; *Resp. Heikhal Yitzhak*, *Even ha-Ezer* 2:25) who opposed use of this assessment that "she did not give herself in marriage with this in mind" as an instrument for invalidating the *kiddushin*, nevertheless, in reliance on the authorities mentioned above we rule that this assessment can be invoked as a means for invalidating the *kiddushin* in this case.

Therefore, the Plaintiff is permitted to marry any Jew, including a *Kohen*, without receiving a *gett*.

In witness whereof we have signed this 9 day of Shevat 5778 (25 January 2018)