INTERNATIONAL BEIT DIN
בית דין בינלאומי לעניני אישות

File no. 191-2018

12 Tammuz 5778

25 June 2018

Plaintiff

v

Defendant

JUDGMENT

Facts of the case:

In the summer of 1993, the Plaintiff and the Defendant were married in a ceremony conducted by a Conservative rabbi. In March 2015, the couple separated. The Plaintiff asked the Defendant for a *gett*.

We summoned the Defendant to a hearing in our Beit Din, but he refused to comply with the summons. Previously, another Beit Din had issued an Order of Refusal (a *seruv*) against him because he refused to litigate in their beit din. We set a date for a hearing at which we heard the arguments of the Plaintiff. In light of what was said, we obligated the Defendant to give his wife a *gett*. We also watched a video of the wedding ceremony of the parties.

The parties obtained a civil divorce at the end of 2016, but the Defendant persists till today in his refusal to give the Plaintiff a *gett*.

Rabbi Avraham Shapira (*Sefer Minhat Avraham* 4:6), a former Chief Rabbi of Israel and President of the Supreme Rabbinical Court, has ruled that in a case in which there is no cause for concern, the wife will become an *aguna* saying, "there is no need to search for all kinds of leniencies," but "where an *aguna* is concerned, the beth din must search for ways to release her so that she not remain an *aguna*."

In keeping with this ruling, we too have endeavored to bring to light the halakhic grounds for invalidating the *kiddushin* of the Plaintiff and the Defendant, in order to release the wife from the chains of her husband's *gett* recalcitrance.

Discussion:

a. The Validity of the *Kiddushin* Conducted by a Conservative Rabbi

The *mesader kiddushin* who conducted the wedding of the couple was a Conservative rabbi. His religious affiliation emerges from what he wrote in an article published in the *Sun Sentinel*:

> "What are rabbis supposed to do? They're supposed to be like any ordinary human being: keep the commandments, observe the law, man to man."

In other words, observance of the Torah in his opinion is limited to the *halakhot* between man and man. Indeed, on the one hand, the said *mesader kiddushin* was ordained to the rabbinate by an Orthodox *yeshiva*, which at the time was known for producing graduates who were not conversant with Jewish law. On the other hand, however, the Plaintiff told us that in a consultation with the Rabbi on the subject of marriage, he advised the parties that they must decide if they wish to observe Shabbat and the dietary laws. In this context, he told them that he himself travels by car on Shabbat because he has trouble walking. Moreover, in a eulogy for him (which was available on Google), his granddaughter said that her grandfather believed that all religions were valid.

We questioned a particular rabbi in Florida, and he told us that the said *mesader kiddushin* was a Conservative rabbi, and his affiliation also appeared on Google. An additional important detail is that the said *mesader kiddushin* belonged to the Rabbinical Assembly, which is the official international organization of Conservative rabbis, founded in 1901 (see the website of the Organization: www.rabbinicalassembly.org).

Regarding the validity of the *kiddushin* conducted by a Conservative rabbi, Rabbi Moshe Feinstein (*Resp. Iggrot Moshe*, *Even ha-Ezer* 4:13) writes, on the basis of Maimonides' rulings (*Mishneh Torah*, *Teshuva* 3:25) as follows:

> "Even if he was among the best of them, one who did not eat forbidden foods and did not desecrate Shabbat in public by coming to his synagogue by car, nevertheless, apart from the fact that he certainly cannot benefit from the presumption of eligibility and he is in any case ineligible on account of a doubt, because he is a member of the Conservative Rabbinical Assembly, according to whom it is possible to discount even scriptural laws, and most of the rabbinical prohibitions, which amounts to heresy, they are ineligible as witnesses even if they themselves have said nothing … and there is no better evidence of the fact that he follows the Conservative approach which denies many of the scriptural precepts, and possibly even denies the very fundamental principle of the Revelation on Mount Sinai, when he is a rabbi in one of their synagogues. And even if he does this only to make a living, he is deemed to be a heretic who is ineligible as a witness."

In another responsum (*ibid.*, 46) dealing with a wife who was married by a Conservative rabbi, was unfaithful to her husband, and now wants to marry her lover, Rabbi Feinstein writes:

> "Simply, in my view, he [the Conservative rabbi) is ineligible as a witness, even though he is reported to observe Shabbat and the dietary laws. Because the very fact of being a Conservative rabbi … is prohibited as a matter of heresy, and this disqualifies him as a witness."

Rabbi Ahron Soloveitchik espoused the same view (see: "*Kiddushin* Conducted by a Conservative Rabbi" (Heb), *Tehumin* 20 297 (5760), 309-310), that *kiddushin* that was conducted by a Conservative rabbi, whose denial of some of the main principles of faith is known and who belongs to the Conservative Movement – do not constitute *kiddushin*, because the rabbi is ineligible as a witness to the validity of the *kiddushin* (see also: Rabbi Haim Jachter, "Conservative *Kiddushin*" (Heb), *Tehumin* 18 84 (5758).

As such, according to the rulings of Rabbi Moshe Feinstein and Rabbi Ahron Soloveitchik, because the rabbi belonged to the Conservative movement, the *kiddushin* he conducted are invalid.

b. *Kiddushin* Conducted by One who is Not Expert in the Nature of *Kiddushin*

The *Talmud* states (*Kiddushin* 6a): "Rav Yehuda said in the name of Shmuel, 'Anyone who does not know the nature of divorce documents and *kiddushin* should have no dealings with them.'" The *halakhah* was decided accordingly (*Shulhan Arukh*, *Even ha-Ezer* 49:1 and the glosses *ibid*.; *Resp. Noda Beyehuda*, 2nd edition, *Even ha-Ezer* 105; *Resp. Shevut Ya'akov* 3:121; *Resp. Knesset Yehezkel* 72; *Resp. Divrei Malkhiel* 119).

The reason is that *kiddushin* that is conducted by one who is not an expert in their laws gives rise to doubts and defects in the act of *kiddushin.* Below we will discuss the doubts and the defects pertaining to the *kiddushin* of the Plaintiff and the Defendant.

1. *Failure to designate eligible witnesses for the huppah and kiddushin*

In the present case, standing under the *huppah* (wedding canopy) were a quorum of relatives (men and women), together with the *mesader kiddushin* and the cantor who were not related to them.

At the time of the recitation of the words, "You are hereby betrothed…" by the groom and the handing over of the ring from the groom to the bride, the *mesader kiddushin* and the cantor were both present; they both belonged to the

Conservative movement, and as noted, Rabbi Ahron Soloveitchik's view is that they are ineligible as witnesses (*Tehumin*, *ibid.*, 305).

But even if we assume that the *mesader kiddushin* and the cantor are eligible witnesses, the practice in many communities is to designate the witnesses (see: *Hagahot ha-Semag*, Precept 183(7); *Resp. Radbaz* 2: 707; *Siftei Kohen, Hoshen Mishpat* 36:8; *Beit Meir* 42d). One of the reasons for this practice is the concern that arises from Ritba's view, according to whom ineligible witnesses disqualify eligible witnesses (see: *Hiddushei Ritba*, *Kiddushin* 43a), and some authorities have ruled accordingly (see: *Tosafot Yeshanim*, *Bava Batra* 113a in the name of *Rashbam*; *Resp. Zikhron Yehuda* 81; *Rabbenu Yeruham*, *Mesharim* 7; *Resp. Tzitz Eliezer* 8:37:9, in the name of Ritba, who wrote: "And many held like him"). However, other authorities took Ritba's view into consideration only as an additional grounds for ruling leniently (see: *Resp. R. Akiva Eiger*, 2nd ed., 56:28; *Resp. Maharsham* 2:101; *Resp. Sha'arei Tzion* 2, *Even ha-Ezer* 11). In the present case, we take Ritba's view into consideration as a supporting argument (as a *sneif)* for invalidating the *kiddushin* (for extensive discussion of Ritba's view in general, and of the basis for determining the *halakhah* in accordance with a minority view in particular, see the judgment of this Beit Din in File 105-2015 www.internationalbeitdin.org). In the case at hand, the *mesadeir kiddushin* did not designate witnesses.

2. *Lack of intention of the ineligible and eligible witnesses to testify*

Another basis for leniency is the view of *Siftei Kohen* (*Hoshen Mishpat* 36:1), whereby if there were relatives and ineligible witnesses, and none of the witnesses (including the eligible ones) intended to testify, all the testimony is nullified (see *Ketzot ha-Hoshen* 36:1, who is of the view that the opinion of *Siftei Kohen* should be taken into consideration).

Amongst the guests in the wedding hall, there were three men who were religiously observant, but even so, the opinion of *Siftei Kohen* (*ibid.*) must be taken into consideration; therefore, the situation here is one of a double doubt that disqualifies these three people, as Rabbi Soloveitchik contends (*Tehumin*, *ibid.*, at 305) in the following words:

> "Even if it had emerged that amongst the guests in the hall, there were two men who refrained from desecrating the Sabbath in the presence of an ultra-Orthodox rabbi, even then there is a double doubt because we must adjoin the view of *Siftei Kohen* (*Hoshen Mishpat* 36:3), whereby even though an eligible witness is fit to testify even if he did not intend to do so, in any case if amongst the witnesses there were relatives or ineligible persons then the eligible witness is fit to testify only if he had intent to testify. But if the eligible witness did not have intent to testify, then the presence of the relative and the ineligible witness disqualifies his testimony. And if so, even if we assume that amongst the guests there were two Jews

> in the category of *tinokot shenishbu* [this refers to those who sin inadvertently, but are not held accountable due to having been deprived of a Jewish education because they were captives], who desecrated the Sabbath only in private, and they stood up in their places to watch the *kiddushin* – in any case, because the Conservative rabbi and the relatives who stood on the stage were certainly scripturally ineligible, therefore the fact that the Conservative rabbi and the relatives on the stage were watching disqualifies the testimony of the two Jews who desecrated the Shabbat in private and were deemed to be *tinokot shenishbu.*"

3. *Validity of the kiddushin by virtue of anan sahadi – "We are witnesses"*

Prima facie, even in the absence of two eligible witnesses such as in our case, we should adopt the rulings of *Havot Yair* and *Hatam Sofer* whereby halakhically observant Jews who sat amongst the guests and watched the *kiddushin* ceremony, without hearing the husband's statement, "You are hereby betrothed ..." and without seeing the passing of the ring from the groom to the bride, may serve as witnesses by virtue of the concept of *anan sahadi* - "We are witnesses."

Our response to this is that were this a matter of *kiddushin* that were voidable due to the ineligibility of the witnesses, and our intention was to validate the marriage by means of other people amongst those present at the *kiddushin* ceremony, we would have considered invoking the views of *Havot Yair* and *Hatam Sofer* (*Resp. Havot Yair* 19; *Resp. Hatam Sofer*, *Even ha-Ezer* 1:100, quoted in *Pithei Teshuva*, *Even ha-Ezer* 42:11). However, in the present case, we are seeking a way to invalidate the *kiddushin* due to the *igun* of the wife! Therefore, notwithstanding the argument that there is a tradition in relation to rulings concerning forbidden relations, whereby the authorities must take into account all the strict views (Rema, *Even ha-Ezer* 17:15; *Helkat Mehokek*, *ibid.*, 31; *Bi'ur ha-Gra*, *ibid.*, 61; *Mahazit ha-Shekel*, *ibid.*, 56; *Resp. Kedushat Yom Tov* 9, in the name of Rabbi Yom Tov Elgazi; *Arukh ha-Shulhan*, *Even ha-Ezer* 42:2; *Resp. Sha'arei Rahamim* (Rabbi Haim Rahamin Franco), *Even ha-Ezer* 19; *Resp. Pnei Yitzhak* 1:10, 13. *Cf. Turei Zahav*, *Even ha-Ezer* 17:15), in a situation involving *igun*, many authorities argue that the ruling should be lenient (*Resp. Rosh* 51:2; *Resp. Zichron Yehuda* 92; *Resp. Maharik* 121; *Resp. Bezalel Ashkenazy* 32; *Resp. ha-Mabit* 1:135; *Resp. Mas'at Binyamin* 109; *Resp. Tzemah Tzedek* (Krochmal) 103; *Resp. Noda Beyehuda* 141, *Even ha-Ezer* 29, 57; *Resp. Simhat Yom* Tov 12; *Resp. Hayyim ve-Shalom* 2:110; *Resp. Yabia Omer* 7, *Even ha-Ezer* 8:19), as emphasized by Rabbi Sinai Sapir (*Resp. Minhat Ani* 51):

> "In relation to the *halakhot* of *igun*, it is not right to cobble together strictures on the basis of fine distinctions and subtle rejections of *halakhic* arguments; rather, we ought to prefer the superior path of lenient

decision-making, for at the end of the day we are dealing with people's lives..."

Since we rule leniently, it is appropriate that we follow the majority of the authorities (*Resp. Yeheveh Da'at* 6, *Kelalei ha-Hora'a*, p. 32:9; App. (Supreme Rabbinical Court) 184/5720 PDR 4, 164, 166 (11 Tishri 5720, the bench comprising Dayanim Rabbi Hadaya, Rabbi Elyashiv and Rabbi Zolti). Owing to the fact that the majority of authorities reject the view of *Havot Yair* and *Hatam Sofer* (*Resp. Maharil Weil* 7; *Resp. Mishpetei Shmuel* 20; *Resp. Shem Aryeh* 1:31; *Resp. Tzitz Eliezer* 8:37; *Resp. Or Li* 73b; *Resp. Ein Yitzhak* 2, *Even ha-Ezer* 64), we have refrained from adopting it in the circumstances of this case, particularly in view of the fact that in addition to the above authorities, their view was rejected by several leading contemporary decisors (Rabbi Ovadia Yosef, Rabbi Asher Weiss and Rabbi Zion Boaron. See: *Resp. Yabia Omer* 8, *Even ha-Ezer* 3, and 8:5; *Resp. Minhat Asher* 2:83; *Resp. Sha'arei Zion* 2:11, 3:22).

Moreover, recourse to *anan sahadi* is conditional upon the fact that the *mesader kiddushin* is halakhically observant in general, and is an expert in the *halakhot* of *kiddushin* and marriage in particular, as stated above (*Resp. Shevut Ya'akov* 3:121; *Resp. Knesset Yehezkel* 72; *Resp. Divrei Malkhiel* 4:119; *Resp. Shem Aryeh*, *ibid.*; *Resp. Iggrot Moshe*, *Even ha-Ezer* 1:76-77; *Resp. Tzitz Eliezer* 8:37:9. According to *Turei Zahav*, *Even ha-Ezer* 19:1, too, the *mesader kiddushin* must have a basic knowledge of the *halakhot* pertaining to conducting the wedding ceremony. And see: *Resp. Iggrot Moshe*, *ibid.*, 77). The fact that the *mesader kiddushin* did not designate witnesses to the *kiddushin*, was not expert in additional *halakhot* relating to the *kiddushin* and marriage ceremony, and was unaware of the problem that was liable to arise as a result of Ritba's view, attests to a lack of halakhic expertise. As such, in the case before us one cannot invoke "*anan sahadi*", which is based on the implied assumption that it is possible to rely on the expertise of the *mesader kiddushin*; hence, guests amongst the invitees who watched the *kiddushin* ceremony cannot serve as validating witnesses to establishing act of the *kiddushin*.

4. *Doubt as to whether the couple understood that the kiddushin was affected by the handing over of the ring*

The Torah states (*Devarim* 24:1): "When a man taketh a wife...", and the Talmud comments (*Kiddushin* 4b): "When a man taketh a wife, and not when [a woman] taketh [a man]."

Moreover, at the beginning of Chapter 1 of *Mishnah Kiddushin* we read: "The man betroths" and "the woman is acquired." In other words, as opposed to sale in which the money is handed over in consideration of the object that was acquired, here, in *kiddushin*, the money is given as an act of undertaking a duty.

According to the literal interpretation of the Torah and the Mishnah, the man executes the act of undertaking an obligation of halakhic marriage through *kiddushin* vis-à-vis the wife, and the wife is passive, and negates her mind and her will in the face of those of the husband. This appears to be the case according to the well-known words of Ran (*Nedarim* 30a, s.v. *ve-isha*):

> "But because the Torah said, 'When a man taketh a woman", and it did not say, "When a woman be taken to be with a man", she has no legal capacity to transfer herself into his legal jurisdiction. Rather, in agreeing to be taken in marriage by the man, she negates her own will and mind and is then considered as ownerless property vis-à-vis her husband. At that point, the husband transfers her into his jurisdiction, hence the act of "taking someone in *kiddushin*" can only be executed by a man and never by a woman."

However, if one examines Ran's words (see: *Hiddushei R. Shimon Shkop*, *Kiddushin* 1; *Sha'arei Yosher* 7:12) and those of other authorities, one sees that an act is required on the part of the woman, whereby she negates her will with respect to the act of *kiddushin* (and see: *Sha'arei Yosher*, *ibid.*; *Kehilot Ya'akov*, *Kiddushin* 7 (Comments); *Mishneh Shlomo*, *Kiddushin* 2; File (Haifa Region) 870175/4 (7 Tevet 5775); File (Netanya Region) 116792/1 (11 Tisri 5778); *Minhat Asher*, *Kiddushin* 1). Lest one misunderstand the Ran's words as suggesting that the consummation of *kiddushin* entails that the man is acquiring a monetary asset, namely his spouse, nothing could be further from the truth. As Ran notes elsewhere (*Ran on Rif, Gittin, 9a, s.v. ve'Katuv*) "a wife is not the property of her husband."

The couple must be aware of the fact that the act of *kiddushin* is executed with intent for the purpose of halakhic *kiddushin* (see: *Shulhan Arukh*, *Even ha-Ezer* 27:1-3; *Helkat Mehokek*, *ibid.* 1, 4; *Beit Shmuel*, *ibid.*, 5, 7; *Rema*, *Even ha-Ezer* 26:2 ruled: "But a man is not believed when he says that his intention was not for *kiddushin*." Apparently, according to Rema, there is an assumption that a person executing the *kiddushin* intends for it to be for the purpose of *kiddushin*. What does this refer to? It refers to the situation in which the person executing the *kiddushin* is halakhically observant in general, and knows that there is an obligation to have intention for the act of *kiddushin* in particular. However, in the circumstances of the present case, the person executing the *kiddushin* was raised in a Conservative family, and attended Conservative religious studies classes (extra-curricular) and confirmation classes from the age of eight until the age of sixteen. It is therefore not possible to assume that the person executing the *kiddushin* in these circumstances intended that the act be for the purpose of *kiddushin*.

In the present case the couple exchanged rings. Although the Plaintiff gave a ring to the Defendant after the *ketubah* (the marriage agreement) had been read, it is altogether doubtful whether the Plaintiff understood that the ring that had been

given to her earlier at the time of the *kiddushin* was an act of undertaking the duty of a halakhic marriage, rather than a merely ceremonial act. Even if the *mesader kiddushin* understood the halakhic difference between the exchange of rings, and therefore arranged it so that the Plaintiff would give a ring to the Defendant after the reading of the *ketubah*, he did not explain to the couple the significance of this. Therefore, given the limited Jewish education of the officiating rabbi, a doubt arises as to whether the *mesader kiddushin* was able to explain the difference between the giving of the *kiddushin* ring by the groom to the bride, and the ring given as a gift by the Plaintiff to the Defendant after the reading of the *ketubah*; in relation to both rings, the intention may have been only to exchange gifts.

As Rabbi Moshe Feinstein writes (*Resp. Iggrot Moshe*, *Even ha-Ezer* 3:25): "Even if he gives her a ring, the fact that she also gives him a ring proves that the ring that he gave was also a mere gift on account of them becoming man and wife, but it does not relate in any way to executing *kiddushin*."

5. *Giving a ring before saying, "You are hereby betrothed"*

The groom must recite the statement of *kiddushin* – "You are hereby betrothed to me ...") prior to giving the ring (see: *Mishneh Torah*, *Ishut* 3:1; *Knesset ha-Gedola*, *Even ha-Ezer* 27, *Hagahot Tur* 8; *Hamakneh*, *Kiddushin* – Final Booklet 27:9), and if the bride received the ring prior to the statement having been recited – the validity of the *kiddushin* is doubtful (*Otzar ha-Poskim*, *Hil. Kiddushin* 28:31:41-43).

In the present case, as appears in the video of the ceremony, the giving of the ring by the groom preceded his reciting of the statement, "You are hereby betrothed." In other words, the act of *kiddushin* was executed without the statement. Now, if the man would have spoken with the woman about matters of *kiddushin* and given her the ring in silence – the *kiddushin* would be valid (*Kiddushin* 6a; *Shulhan Arukh*, *Even ha-Ezer* 27:1), and apparently, in the present case the *kiddushin* are valid. However, as we noted, the parties were not aware of the fact that they were dealing with "matters of *kiddushin*," for they viewed the ceremony as the exchange of presents, and had no awareness of the *kiddushin* which entails the undertaking of duty in a halakhic marriage. Therefore it is very doubtful whether the couple understood that giving the ring is an act of acquisition or whether they regarded the ring simply as part of the marriage ceremony.

6. *Ownership of the ring by the mekadesh (the person who executes the kiddushin)*

The *kiddushin* ring must belong to the *mekadesh*, upon his purchasing it outright (*Tur*, *Even ha-Ezer* 28), and therefore a ring that has not been purchased outright and clearly by the *mekadesh*, such as a borrowed ring (*Resp. ha-Rosh* 35:2), a stolen ring (*Shulhan Arukh*, *Even ha-Ezer* 28:1), or one belonging to his partner (*ibid.*, 18)

cannot be used for *kiddushin*. It is the responsibility of the *mesader kiddushin* to establish that the ring does indeed belong to the *mekadesh* (*Beit Shmuel* 28:49).

In the present case, prior to the ceremony, the parents of the Defendant told the Plaintiff that they had purchased a ring as a gift, and it should be used in the ceremony. In the absence of an act of acquisition, ownership of the ring vested in the Plaintiff, since the Defendant's parents announced that they bought the ring <u>for her</u> as a gift (*kinyan oditah* – acquisition by way of a statement attesting to a legal transfer of ownership). However, a preliminary condition for recognition of this type of acquisition is that the statement was made before two eligible witnesses (*Shulhan Arukh*, *Hoshen Mishpat* 39:8; *Ketzot ha-Hoshen* 194:4; *Imre Bina*, *Halva'ah* 16, in the name of Maharsha and Maharam Lublin).

In our case, however, there were no eligible witnesses who were present when the statement was made. Therefore, before the *kiddushin* ring was given by the Defendant to the Plaintiff, ownership of it vested in his parents, and the *kiddushin* were in fact executed with a ring that did not belong to the Defendant, hence the *kiddushin* are not valid.

7. *Absence of finality of intention in a matter requiring appraisal*

A wife cannot be acquired by means of an object the value of which cannot be appraised by experts, since its value may be wrongly appraised; therefore, the bride cannot be assured [of its appraisal] (*Shulhan Arukh*, *Even ha-Ezer* 31:2), and the validity of such *kiddushin* is doubtful (Rema, *ibid*.; *Helkat Mehokek*, *ibid.*, 4; *Beit Shmuel*, *ibid.*, 3).

In our case, the Plaintiff was married by means of a ring containing several diamonds, and she had no idea of the value of the ring and its worth prior to the *kiddushin*; as we mentioned, she knew only that she would receive this ring in the wedding hall in the course of the wedding ceremony.

Moreover, when the face of the bride is covered at the moment of the giving of the ring, this indicates that she is not particular about the object with which she is being betrothed, and the value of the ring is not important to her (Rema, *Even ha-Ezer* 31:2, in the name of Rashba). In the present case, however, the bride's face was uncovered at the time that the ring was given. Furthermore, in order to dispel the concern about the absence of finality of intention on the part of the bride, the *mesader kiddushin* ought to have asked her whether the ring was indeed worth one *peruta*. In the present case – he did not ask.

8. *"Yihud"(seclusion) of the bride and groom*

There are several interpretations of the definition of "*huppah*". According to some views, it is the bringing of the bride to the house of the groom for the purpose of marriage (*Beit Shmuel*, *Even ha-Ezer* 55:4; *Bi'ur ha-Gra*, *ibid.*, 9). Others are of the opinion that it is obligatory for the couple to seclude themselves in a special place

for the purpose of marriage (Rema, *Even ha-Ezer* 55:1; *Helkat Mehokek*, *ibid.*, 9), and there are other interpretations as well. See: *Arukh ha-Shulhan*, *Even ha-Ezer* 55:4-11. According to the second view, which is the common practice in Ashkenazic circles, the bride and groom seclude themselves in a "seclusion room" after the ceremony, and two eligible witnesses must be present when the couple goes into the room (*Resp. Radbaz* 1:121; *Hamakneh*, *Kiddushin* – Final Booklet 55:1; *Resp. Imre David* 29).

In the present case, the Ashkenazic couple secluded themselves without the presence of two witnesses. In other words, the *mesader kiddushin* was not aware that the *kiddushin* and marriage ritual require the presence of two witnesses at the time of the *yihud*.

Decision

In view of all the above, the *kiddushin* of the Plaintiff and the Defendant are voidable for the following reasons:

First, according to Rabbi Ehrenberg (*Resp. Devar Yehoshua* 3:20), who writes as follows:

> "Since this witness who desecrates the Sabbath was also the rabbi who conducted the ceremony of *kiddushin*, there is cause for concern that he did not conduct the *kiddushin* properly in a way that would give them effect ... the witnesses might not have watched the giving of the ring, or possibly the constitutive words "to me", as required by *Even ha-Ezer* 27:4, were missing, and as a result there is no valid *kiddushin*, and the *mesader kiddushin* must check this; this is acceptable if the rabbi who is the *mesader kiddushin* is an observant person who is expert in the nature of *kiddushin* – we can rely on the presumption that the *kiddushin* were in accordance with the law ... . If there are no witnesses to this, and in particular *mesader kiddushin* is not an expert and cannot be presumed to have conducted [them] in accordance with the law ... it is doubtful whether *kiddushin* took place, and the woman is presumed to be unmarried, even if we know that there were eligible witnesses at the time of the *kiddushin* to attest to their validity."

In other words, even if there were eligible witnesses, according to Rabbi Ehrenberg, the woman is deemed to be unmarried, because the *mesader kiddushin* was not expert in the laws of the ceremony of *kiddushin* and marriage!

Indeed, in our case, *anan sahadi* – "we are witnesses" would be inapplicable, and secondly the *mesader kiddushin* did not attend to all that was required in order for the *kiddushin* to be valid.

Finally, in accordance with the ruling of Rabbi Moshe Feinstein and Rabbi Ahron Soloveitchik, due to the fact that the *mesader kiddushin* belonged to the

Conservative Movement in general, and subscribed to its views in particular, the *kiddushin* that he conducted were not valid.

Accordingly, the Plaintiff is permitted to marry any Jew, except a *Kohen*.

IN WITNESS WHEREOF WE HAVE SIGNED THIS 4 DAY OF AV 5778 (16 JULY 2018)