INTERNATIONAL BEIT DIN
בית דין בינלאומי לעניני אישות

International Beit Din

File no. 206-2018

29 Tishri 5779

8 October 2018

RESPONSE TO A QUESTION

Question

Esther approached us and asked us as *mor'eih hora'ah,* qualified expositors of *Halakhah* (and not as *dayanim* sitting in judgment)[1] to void her *kiddushin* and to permit her to marry any other Jew without receiving a *get* from her husband.

Answer

1. The facts:

Esther and Boaz married in December 2000 in accordance with *Halakah*. They had six children. Over the years, Esther felt that something was not in order with her husband, and therefore, on Friday evening, February 21, 2014, she asked him, "Did something happen before we got married?" He then admitted to her that he had had intimate relations with her sister after the wedding and that he had also abused 19 young children before they were married. The next day, on Shabbat, Boaz admitted to her that he had had illicit relations with a second sister of hers after the marriage.

In mid-November 2015, following instances of abuse, one of the rabbis who headed his community fired Boaz from his administrative position in the community center.

[1] In other words, this is a question of *halakhic* laws of prohibitions and permissibility (*dinei issur ve-heter)* whether a husband is obligated to give a get to his wife and done may resolve this questions in front of three rabbis in the absence of the husband.
As we know, there is a debate whether matters of divorce such as *get* coercion and obligating a *get* may only be resolved in front of a *beit din* of three rabbis, one rabbi, or in the presence of only an individual Jew. See *Yam shel Shlomo, Bava Kama* 3:9; *Ketzot ha-Hoshen, HM* 3:1,2; *Netivot ha-Mishpat, HM* 3:1; *Teshuvat Yehudah (*Gordin) *EH* 51:2; *Teshuvot Ma'ashe Hiyah* 24; *Teshuvot Hatam Sofer, OH* 51, *EH* 2:64-65, *HM* 177; *Teshuvot Avnei Nezer HE* 167:1, 178:2; ; PDR 6:265, 269; *Beit Hora'ah* File 957-61, Jerusalem Beit Din for Civil Matters and Status Clarification, vol. 7, 515; File 448866/3, 7.11.13, Tel Aviv-Yaffo Regional Beit Din; File no. 1086123/1, Be'er Sheva Regional Beit Din, 12.20.18. In the present matter, three rabbis convened to decide an issue of ritual *Halakhah*.

One of the witnesses told us that the said rabbi indeed informed Boaz that he was fired due to the abusive acts. We heard testimony from a Jew who deals with matters of abuse. He examined the list of the 19 victims of abuse, and he recognized one of the names. He contacted him, and the person confirmed the fact that he had indeed been a victim of abuse. One rabbi spoke with two relatives of the husband's family, who told him that Boaz had admitted to illicit relations with his wife's two sisters and had also admitted to having had a sexual relationship with a child during a summer camp. There was also an exchange of letters between two rabbis who discussed the matter of Boaz's conduct and his effect on the community, from which it emerged that they assumed that he had indeed become addicted to acts of abuse. One of them wrote that Boaz was a philanderer, and there is a copy of a letter from a doctor which stated that there had been "instances of sexual or other inappropriate relationships."

Ultimately, we as rabbis believed that Esther was indeed telling the truth about the conversations she had with her husband concerning his "liaisons with her sisters" and the acts of abuse. The civil court too, in its judgment accepted what Esther said concerning an act of intra-familial violence. Referring to the contentions regarding the acts of domestic violence, the civil court judge said the following with respect to credibility:

"In assessing which version of events to believe the court looks to the credibility of the witnesses. Esther presented her testimony credibly, maintaining good eye contact with the court and not wavering about her description of the escalating harassment from Boaz."

The court's impression of Boaz was different. Although he appeared calm at trial, the court observed his failure to maintain eye contact, especially when asked about the September 30th incident, and has found his version of the escape from the marital residence not to be credible.

Following the conversations with her husband on February 14, 2014 and February 22, 2014, Esther left the house for a few days. When she returned home, she decided that they would occupy separate rooms in the house. We were presented with more than 50 emails from the years 2014-2015 that had been sent to Esther by her husband in attempts to get close to her through declarations of self-blame, thoughts about becoming religiously observant and praise for the character of his beloved, praiseworthy wife. Despite his declarations, Esther eventually realized that her husband was lying and in September 2015, he began to abuse her and threatened to harass her at her place of work and at family celebrations. These occurrences were confirmed as true in the judgment of the civil court.

As of February 21, 2014, Esther tried to understand whether Boaz had really become religiously observant, and whether there was any chance of rehabilitating the marriage. He went for treatment to several mental health practitioners, some of

them expert in sex addiction. Esther finally understood that all his “love letters” were a manipulative ploy, and the couple separated on September 30, 2016.

On August 1, 2016, Boaz summoned Esther to adjudicate the matters of the divorce action (i.e., the *get*), custody of the children, maintenance of the children, financial relations between the spouses, and a monetary claim connected to his community center, in the local *Beit Din*. Three additional summons were sent, but Esther refused to appear before the *Beit Din*. Following this, an attempt was made to hold an arbitration hearing. Two arbitrators were appointed by the parties, but to date no arbitration has taken place.

Although Esther attempted to adjudicate matters in the framework of arbitration, the *Beit Din* issued a citation for contempt (*ktav seruv*) against her due to her failure to appear before them.

Not long ago, Esther and the director of another local *beit Din* sat with the director of the above *Beit Din*, and it emerged that the latter had signed the *ktav seruv* without delving into the details of the matter, and he even stated orally that the *ktav seruv* was sent to her by mistake.

The civil decree of divorce was issued during the Fall of 2018.

Although Esther’s attorney and the civil court judge adjudicating the divorce proceedings raised the matter of the *get*, to date the husband has refused to give a *get*. In the absence of any chance of reconciliation and in view of the civil decree of divorce, and after a separation of 18 months, there are grounds for ordering that a *get* be given. See *Resp. Hayyim ve-Shalom* 2:102; *Iggrot Moshe, Yoreh De'ah* 4:15:2. If there are other claims, these matters must be adjudicated in a *beit din*, although deliberations and judgment in the *beit din* does not postpone executing the *get*. See *Iggrot Moshe, ibid.*

2. Mistaken Kiddushin *due to Pedophilia*

Before the mechanism of mistaken *kiddushin* can be implemented in order to invalidate the *kiddushin* and claim that there was a mistake in the inception of the marriage, three pre-conditions must be fulfilled:

(1) The defect must be serious, e.g., impotence, insanity, homosexuality or exposure of the wife to a dangerous disease such as AIDS.

In a judgment of the Supreme Rabbinical Court [App. (Sup.R.C.) 1-22-1510 (7.9.2004)], Rabbi Shlomo Dichovsky, the presiding Dayan of the Supreme Rabbinical Court, states as follows regarding the definition of defects on the part of the husband:

> “The matter of defects for which a woman may sue for her get is not scripturally ordained law, but reason and logic, as Rambam writes (Hil. Ishut 25:2):
>
> These matters are concepts that reason dictates; they are not decrees of the Torah.” The whole subject of defects is a matter of human reason, and the emotional unwillingness of one spouse to endure an intolerable situation on the part of the other spouse. For this reason we have the halakhah of “he assessed and accepted” or “she assessed and accepted.” It is possible to say that if the general opinion concerning a particular defect changes, then it may not be said that “she assessed and accepted” on the basis of her past acquiescence. A defect may not necessarily be a physical one: defective behavior, such as consorting with prostitutes, may entail an order to give a get. Indeed, this halakhah concerning consorting with prostitutes appears in Shulhan Arukh 154, which is the section dealing with defects. In all civilized countries, it is very humiliating for a woman to share her bed with another woman, and a husband who takes another wife will be ordered to give a get, not only due to the ban of Rabbenu Gershom, but also due to the humiliation and the flaw in this. The parties came from Yemen, where it was acceptable to marry two wives. Here, this is considered a great disgrace, and must be regarded as a major defect. The wife’s past acquiescence does not obligate her at present, and therefore this is not only a matter of “he is repulsive to me,” but also a matter of a defect in the husband, due to which the wife cannot live with him. In the case of divorce due to a defect, the wife does not lose her ketubah. It is plausible to say that even if the wife married a philandering husband, and later repented of her decision and can no longer tolerate this situation, the husband will be ordered to give her a get, and will not be able to claim that she “assessed and accepted.” Equally, in my opinion, the claim “She assessed and accepted” cannot be made in a situation in which a woman married a man who was an avowed homosexual, even though she was perfectly aware of his proclivity, and later learnt about the severity of the prohibition, and wishes to divorce him due to the husband being repulsive to her. Here, too, there is no room to argue that “She assessed and accepted.””

There is therefore no doubt that the argument of repulsion is also available to the wife with regard to her husband’s sexual conduct with children. For example, in a case of a husband who “touched young girls,” R. Weinberg (*Resp. Seridei Esh* 1:94) wrote: “She can say, ‘He is repulsive to me,’ and he is subject to *Halakhah* as stated in Rema on *Even ha-Ezer* 77:3.” On the basis of this definition, the Netanya Regional Rabbinical Court, in File no. 860977/1 (20.5.2013) rules in the matter of a

husband who was convicted of aggravated indecent assault of a minor in the family that he must divorce his wife:

> "The wife talks about the repulsiveness of intimate relations … and therefore in this case, a fortiori she has a strong argument for repulsion, for this is a case in which the husband perpetrated his repulsive, evil acts on his daughter for a period of more than two years, as he himself admitted … and the opinion whereby a claim of repulsion does not make a get obligatory even when there are grounds applies to cases in which some women would not be repulsed by such a husband; the conduct of this husband, however, would be found repulsive by every woman. Therefore, all agree that he must be ordered to give her a get, for this is not a case in which she is following her heart, or that she wishes to leave her husband for another man; rather, it is clear that her repulsion in this case makes it impossible for her to live with him."

In another case of the Netanya Regional Rabbinical Court (File no. 869531/2, 31.7.2014), the *Beit Din* heard a case dealing, *inter* alia, with a husband whose computer had been found to contain child pornography, and the *Beit Din* defined the wife's resulting claim as "total revulsion on the wife's part due to her husband's acts":

> "After the husband left, the wife found child pornography on the computer, and she therefore turned to the police; a file was opened against the husband, and ultimately the police recommended to the District Attorney's department that the husband be prosecuted. This caused the wife to be repulsed by her husband … . From what the wife said, it is clear that she is totally repulsed by her husband due to his evil acts."

The Supreme Rabbinical Court denied the husband's appeal in this case, and the order to give a *get* remained in place [see: App.(Supreme Rabbinical Court) 1004198/1 (13/12/2015)]. It states:

> "The Beit Din is of the opinion that the respondent's suspicion about the acts attributed to the appellant are sufficient in order to establish her revulsion with him and the ground that justifies suing him for divorce without losing her ketubah."

The Jerusalem Regional Rabbinical Court [File no. 917387/1 (17.11.2013)] too, heard a wife's action for divorce from her husband on grounds of revulsion "at the husband, following a verdict in the civil court convicting the husband of indecent acts perpetrated on minors." In fact, the majority opinion adopted the approach that in principle, the husband is not to be ordered or compelled to give a *get* on grounds of repulsion, and that in the circumstances of the case, it was not proven that the actual repulsion was so great; however, the majority was prepared to accept the argument that in general, such conduct arouses great disgust in the wife, which can be defined as repulsion with a clear pretext ("*amatla berurah*"), and that this was a matter of

"repulsion that intensified as time passed." Indeed, the minority opinion in this decision is that this was a case of absolute repulsion:

> "The wife came with an argument that "he is repulsive to me" with a clear pretext – because the husband committed sex crimes against minor girls, and it is impossible for her to get close to her husband and he is repulsive to her due to his actions which are liable to repeat themselves, according to the opinion of professionals.
>
> Our opinion, too, is that this wife will never agree to return to her husband, and there is no chance of reconciliation with her husband, who is repulsive to her with such a clear pretext."

It appears to us that the minority approach ought to be adopted.

(2) In order to invalidate the *kiddushin*, it must be clear that the defect indeed existed prior to the wedding, and that the wife did not know about it prior to the wedding.

As for the Esther's awareness of the defect: the question arises as to whether she is to be believed that she did not know prior to her marriage that Boaz was a pedophile, i.e., in her claim that the mechanism of "mistaken *kiddushin*" should be activated to invalidate the *kiddushin* (and her status as a married woman). Should we therefore believe the wife as "a sole witness who is to be deemed credible in capital matters" with respect to a matter of sexual prohibitions in her claim that her husband disclosed to her his proclivity for pedophilia only after they were married? She is not credible, because in matters of sexual prohibitions no less than two witnesses are required!

Following her claim that she was not married to Boaz due to the mistaken *kiddushin*, or that this was a case of doubtful *kiddushin*, her *halakhic* position is as if she did not have the status of a married woman, and therefore, the evidence of one witness only is sufficient, even though the issue is that of a sexual prohibition: see: *Resp. R. Akiva Eiger* 107 citing Tosafot *Gittin* 2b, s.v. *ho'*; *Resp. Maharik, shoresh* 72.

There are however, authorities who maintain that a single witness is not sufficient to dissolve marital status, even in cases where that status has not been definitively established (see: *Hiddushei ha-Ramban, Gittin* 2, s.v. *ha'amrinan davar she-ba-ervah*).

However, several of the *Aharonim* object to this approach. See *Resp. Noda Beyehuda*, 1st edition, 54; 2nd edition 75; *Resp. R. Akiva Eiger* 97 (as a further consideration); *Resp. Ahiezer* 6; *Resp. Minhat Osher* 1:73.

3. *Delay and Non-Acceptance of the Defect*

The question of whether or not Esther should have left the marriage immediately upon finding out about her husband's serious defect has not been ignored in the debate amongst the authorities. Although according to SA EH 39:9; *Beit Shmuel, ad loc.* 16; *Resp. Maharik, shoresh* 24*; Resp. R. Akiva Eiger,* 2nd ed., 57), she should have left immediately upon discovering the defect, according to R. Feinstein and Dayanim Goldschmidt and Bablicki (*Resp. Iggrot Moshe, Even ha-Ezer* 3:45, 48, 4:113; File (Tel Aviv Regional Beit Din) 3899, 5713, PDR 1:5 (9 Shevat 5714), pp. 11-12), she could remain in the marriage, on condition that her reasons were justified. However, if ultimately the problems cannot be solved, such as in the case of an insane husband who is not helped by psychological treatment or medication, then the wife must leave her husband.

Furthermore, despite the fact that the wife failed to protest immediately upon discovering the defect, relying on the rulings of *Tiv Kiddushin* (39:12), R. Weiss held that remaining with him after discovery of the defect does not prevent her from later claiming that there was a mistaken transaction. He writes as follows (*Responsa Minhat Osher*: 1:73(4))

> "For we are witnesses that the reactions of people differ. It is very common that when a person discovers defects in a spouse, he does not react immediately for various reasons, sometimes due to distress and shock, and sometimes in order to preserve his sanity or in order to consider how not to hurt the feelings of the spouse, and this is not proof that he has pardoned or that he does not care …
>
> But it appears that even though she surely regretted her marriage, in any case she was prepared to try, to see if matters could be sorted out by adoption etc., but when all these attempts failed, we return to the original finding, namely that this is a case of mistaken kiddushin …"

In the present case, Esther did not become reconciled to the defect.[2]

Esther became aware of the defect on February 21, 2014, and she left Boaz in September 2016. According to the first view, the *kiddushin* should not be invalidated, since she is deemed to be one who "considered and accepted," for she only left him two and a half years after discovering the defect.

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[2] Seemingly, this *responsum* cannot serve as proof. The *responsum* deals with a case of bastardy (*mamzerut*), and as we know, different opinions may be invoked to rule leniently with respect to the children and to allow them to marry Jews (see, e.g., *Kovetz ha-Teshuvot* 4:164). However, in citing the approach of *Tiv Kiddushin* together with the logical opinion, there is clearly no mention that the motivation is connected to bastardy; moreover, in *Resp. Minhat Osher* 1:85(2), R. Weiss was prepared to invalidate the *kiddushin* (subject to the fulfillment of certain conditions) if there was a reasonable explanation for the delay, but in the circumstances of that particular case (which did not involve *mamzerut*), there was no such justification. In other words, this responsum proves that according to R. Weiss, the above opinion may be implemented in any case of "mistaken *kiddushin*," even where there is no question of *mamzerut*!

According to the second opinion, on the other hand, it may be said that she had ample reasons not to leave her husband as soon as she found out about his situation. It is clear to us that when Esther found out about her husband's situation, she thought that had she known about this in advance, she would never have married him; however, she tried through therapy to rehabilitate the marriage. She also thought that her husband would repent of his deeds and they would be able to continue their lives as a married couple. But it eventually became clear that all his love letters were a mask for a manipulative character.

Another reason for Esther not leaving immediately was that they had six children, and she was unable to support them alone. Until today she does not have sufficient financial resources to support them.

Nevertheless, when she finally understood that there was no chance of a change on his part, she could no longer tolerate living with him and she left him.

Seemingly, the *kiddushin* cannot be invalidated due to a defect that was discovered, because the discovery was made a long time after the wedding?

In *Resp. Ahiezer* (3:19), R. Grodzinski is asked about the case of a person who had a disease, from which he died a short time after the marriage. The wife required halakhic release (*halitzah*) from her brother-in-law, who was deaf, but there was uncertainty as to the disease which caused the husband's death. R. Grodzinski writes that even if the husband had died from a disease that the wife could not identify, this would be considered a defect:

> "Moreover, because the wife did not know that the groom had an internal disease from which he was in constant danger – there is no greater defect than this."

That is to say, a disease that the wife did not know about is considered to be a defect for which *kiddushin* may be invalidated, even if it was discovered after the death of the husband.

In other words, both according to the question and according to R. Grodzinski's answer, the main point is that the wife did not know about the disease at the time of the marriage. The fact that knowledge of the defect greatly post-dated the wedding has no bearing on the question of invalidating the *kiddushin*.

4. *Fraud and Misrepresentation ("*Kiddushin *in an Improper Manner") as a grounds for a get compulsion order*

In the present case, there is additional justification for compelling the husband to give a *get*, due to the fact that he married his wife on fraudulent grounds ("*kiddushin* in an improper manner"), for he did not reveal to her prior to the wedding that he had abused children.

In *Resp. ha-Rosh* (35:2) it rules as follows:

> "A widow … was betrothed before two witnesses … should he be compelled to give her a get, for she says that she is repulsed by him… Answer … . If it seems to you, the rabbis who are close to the matter, that if the man is not a fair and decent man who should become attached to a girl of good family, and he lured her with deceit and underhandedness he ….. A fortiori because he acted in an improper way, … Granted that we do not annul the kiddushin, but all events in this matter reliance should be placed on the minority of rabbis who ruled that he is to be compelled to divorce her."

Although Rosh usually adopted the position that a *get* should not be compelled on the claim "he is repulsive to me" due to the disagreement amongst the authorities, and "why should he insert himself between two great mountains, to release a married woman and to increase the number of halakhic bastards (*mamzerim)* in Israel" (see: *Resp. ha-Rosh* 43:6), in the case of a husband who committed a despicable act and fraud, the *get* should be compelled.[3] In the course of the responsum, Rosh relies upon the discussion in *Yevamot* 110a concerning a person from Neresh who betrothed an orphan when she was still a minor (*kiddushin* on rabbinic grounds), and before he had intercourse with her [after she had reached majority], another man came and effected biblically-valid *kiddushin*. Since the bride-snatcher acted improperly, he was treated "improperly" and the *kiddushin* were annulled. Following this discussion, Rosh decided that there is a basis for compelling the *get* in the case of misrepresentation on the part of the husband, who concealed his identity prior to the marriage.

Following Rosh's view, R. Meshulam b. Shemaya, a scholar who lived at the time of Rema, ruled that the *get* should be compelled in a case of a husband who wasted the money of the dowry, was involved in fraud and therefore had to flee, and his wife claims that it is impossible to live under such conditions (*Resp. Rema* 36).

Apparently the two cases cannot be compared, for the cases discussed by the Talmud and Rosh, involved a matter of "acting improperly" in the creation of the act of *kiddushin* by means of fraud. As opposed to these cases, the case discussed by R. Meshulam dealt with concealment of a defect on the part of the husband.

And indeed, Hazon Ish (*Even ha-Ezer* 69:23) rules as follows:

> "The words of the Rosh are clearly applicable only to a case in which an absolutely unworthy man seduced a fine woman into marrying him in the full knowledge that she would never be able to live with him. The sole purpose of his deceit was either to extort money in exchange for a divorce, or in order to have sexual relations with her. In any case, after having overcome the

[3] In other words, the *get* should be compelled *ab initio*. This was the ruling of Rema (*Even ha-Ezer* 77:3), in accordance with the view of Rosh as follows: "If he acted in an improper manner in that he married deceitfully and with ploys, he is compelled to divorce her."

> woman's will with all manner of seductive ploys, the marriage was performed in a clandestine manner which is entirely unacceptable in *Halakhah*. It is only in such a case that Rosh agrees that the appropriate remedy is annulment, as specified in Yevamot 110a (see Helkat Mehokek 20:28 and Beit Shmuel, ad loc., 30, whose words in relation to the issue of inheriting the wife support the contention that Rosh is in favor of marriage annulment in such a case). Rosh also supplements his approach with the Gaonic reuling that the husband of a woman who claims that he is repulsive to her – *moredet* – is to be forced to divorce her, as well as the opinion of Rif that this law is an enactment of the Babylonian yeshivot. However, in a case in which a man marries a woman in the hope that she will reconcile herself to his defects, there is no question that the marriage is a valid one, and the Rabbis would never see fit to annul it or to compel him to divorce her. The reason for this is that in many cases of male defects, the couple is nevertheless able to live together amicably, since as the Sages said: "Women will accept defective men rather than remain unmarried." We may not therefore extend Rosh's view to compel husbands to divorce in such cases. Similarly, the opinion of Beit Shmuel that a blemished husband may be compelled to divorce his wife who was ignorant of his defects at the time of marriage is not based upon the deceit but upon the law of the moredet, i.e., the wife claims that her husband is repulsive to her."

(This was also the ruling in *Resp. Mahari b. Lev* 1:18; *Pithei Teshuva*, *Even ha-Ezer* 39:5 citing *Galia Massechta, Kuntras Aharon* 5. For an identical conclusion from another direction, see *Hafla'ah, Ketubot, Kuntras Aharon* 18).

In contradiction to the above position, on the basis of the above words of Rosh, as Hazon Ish mentioned, *Beit Shmuel* rules (*SA Even ha-Ezer* 117:24) in relation to a defect that is not major that one does not compel a *get*, but there may be circumstances in which the *get* is compelled when there are such defects. He writes as follows:

> "And it would appear that we do not force her to accept a *get*, neither in a case in which her blemishes occurred after the marriage nor if her husband knew of the defects prior to the marriage. If, however, he was unaware of the defects at the time of the wedding, then she may be compelled to receive a *get* since she acted in an underhanded fashion. It is in such a context that Rosh ruled in his Responsa 35 that if the husband acted in an underhanded fashion and married deceitfully, he is compelled to divorce his wife. Similarly, in our case, the wife may be compelled to accept a *get*."

Beit Shmuel rules similarly in another case (*SA Even ha-Ezer* 154:2):

> "But if she does not know, this is a mistaken transaction, and he is compelled to divorce her, as is written in Even ha-Ezer SA 39 and 117, 'If a defect be

found in her'". In other words, in reliance on Rosh's ruling in the case of fraud, there are grounds for compelling the husband to give his wife a get."

In today's Israeli rabbinical case law (as opposed to the decision in File (Tel Aviv Regional Beit Din) 78/5716, no. 731/5716, 2 PDR 188 (26 Elul 5716, p. 193), many of the dayanim have applied Rosh's ruling in cases in which there was concealment on the part of the husband prior to the marriage, and they have concluded that an order must be issued to give a *get*, but it is not to be compelled (see: File (Tel Aviv Regional Beit Din) no. 3899/5713, 1 PDR 5 (9 Shevat 5714) pp. 10-11; App. (Supreme Rabbinical Court) 222/5723, 5 PDR 193 (13 Av 5724) p. 203; File (Tel Aviv Regional Beit Din) no. 7121/5735, 10 PDR 241 (3 Kislev 5737) p. 247; App. (Supreme Rabbinical Court) no. 891291/1 4 *Hadin vehaDayan* 36 (20 Shevat 5773).

The conclusion is that a *get* is not to be compelled in the case of improper *kiddushin* involving a despicable act and fraud, and particularly after rejection of the view of *Beit Shmuel.*

However, according to other authorities, a *get* may be compelled when the *kiddushin* involved deception. See: *Resp. Maharam of Rothenberg*, Cremona ed. citing Ra'aviyah; *Resp. Divrei Malkhiel* 3:100; *Resp. Sha'ar Asher* 45; *Resp. Ein Yitzhak*, *Even ha-Ezer* 2:35 (34); *Bi'ur ha-Gra, SA Even ha-Ezer* 77:35; *Resp. Agudat Izov* 22(20) citing *Mar'ot ha'Tzovot*; *Resp. Or Gadol 5; Resp. Yabia Omer 3, Even ha-Ezer* 20.

5. *Mistaken* Kiddushin *Due to Deceit and Misrepresentation*

Owing to the fact that throughout the Diaspora, the secular state authorities are not prepared to enforce the order of a rabbinical court compelling the giving of a *get*, R. Klatzkin, R. Feinstein, R. Frank and R. Ovadiah Yosef are of the opinion that the mechanism of "mistaken *kiddushin*" may be used in order to invalidate *kiddushin*, insofar as the circumstances of the case justify such a solution. See: *Resp. Dvar Eliyahu* 48; *Resp. Iggrot Moshe*, *Even ha-Ezer* 1:79; *Resp. Har Tzvi*, *Even ha-Ezer* 2:81; *Resp. Yabia Omer* 9, *Even ha-Ezer* 38.

As is known, when a *get* is compelled, there is no basis for applying the talmudic presumption (*Yevamot* 118b; *Ketubot* 75a; *Kiddushin* 7a; *Bava Kamma* 111a to the effect that "It is better to live as two together than to be alone," or "A woman is satisfied with any man." See *Resp. Birkhat Retzah* 107; *Resp. Be'er Yitzhak* 4:3; *Resp. Ahiezer* 27; *Resp. Iggrot Moshe, op. cit*.

As pointed out above, in the absence of the possibility of compelling the *get*, there is justification for invalidating the *kiddushin* on grounds of mistake. Several authorities rule accordingly, i.e., that in a case in which a husband acted deceitfully prior to the marriage, the *kiddushin* may be invalidated. See: R. Yehiel Weinberg, "Mistaken Marriage in the Case of an Apostate," *Ha-Maor* (Tishri 5757-1997), 24 (Heb.); *Resp.*

Mahari ha-Cohen, 2nd ed., 13; *Resp. She'erit Yosef* 19; R. Moshe Zweig, *Resp. Ohel Moshe* 123 (in theory but not in practice); *Resp. Beit Av* 7:28; *Resp. Hashavit* 4:30.

6. *Clear Assessment: "She Did Not Give Herself in Marriage with This in Mind"*

In addition to what has been said on the question of mistaken *kiddushin* in the present case, in these circumstances there is a proven assessment (*umdena demukhah*) that a woman would not have married a man who was having intimate relations with her sisters.

The difference between "mistake" and "clear assessment" (*"umdana de'mukhah")*:

In order to invalidate *kiddushin* on grounds of mistake as to the facts, two fundamental conditions must be fulfilled: the defect must have existed prior to the *kiddushin*, and the spouse must have been unaware of it at the time of the *kiddushin*. Thus, in certain circumstances, if a defect existed in the husband prior to the *kiddushin* and the wife was not aware of it, the *kiddushin* can be invalidated on grounds of the defect. However, if the defect eventuated after the *kiddushin*, we cannot say that the *kiddushin* are now invalid due to mistaken transaction.

On the other hand, on the clear assessment that "she did not give herself in marriage with this in mind," even in a case in which the defect appeared only after the *kiddushin*, under certain conditions it is possible to invalidate the *kiddushin*. This was the opinion of R. Meir Simha, head of the *Beit Din* of Dvinsk (*Resp. Or Same'ah* (Machon Yerushalayim ed.) 2:29): "There are occasions on which we say that there is an assessment, even in relation to something which came about later … that she did not give herself in marriage with this in mind." (For a similar view, see R. Moshe Rozin, *Resp. She'ilot Moshe*, *Even ha-Ezer* 2).

This in fact warrants further elucidation, for it is necessary to properly understand the matter of cancelling the transaction, and to examine the relationship between mistake, assessment and condition. According to the *halakhoth* relating to transactions, we find several cases in which the transaction is void. One possibility is that it was a mistaken transaction: this is when the purchased item was defined, and after the purchase, it emerged that the item was different from that which was agreed. Another possibility for voiding a transaction is when a sale was made on a certain condition: if that condition does not eventuate, the sale is void. In addition, *Shulhan Arukh* (*Hoshen Mishpat* 207:4) mentions that there is a case in which the transaction is not voided:

> "But in a regular sale, even though he had in mind that he sells on such and such a condition, and even though it is logical that he did not sell other than in order to do a particular thing and this was not done, he may not retract, for he did not specify, and unarticulated thoughts have no legal validity. And even

> though prior to the sale he said that he is selling with the intention of doing a particular thing, because he said nothing at the time of the sale he may not retract."

Rema's gloss states: "However, something about which there is a proven assessment – the transaction is invalidated." It must be stressed that Rema did not write this as a matter of dispute in terms of "there are those who say" (*yesh omrim*), as he does unfailingly when he wishes to disagree with, or cite a view that disagrees with, *Shulhan Arukh*. The reason would appear to be that in Rema's opinion, *Shulhan Arukh* too will concede this, and in truth, the Vilna Gaon there comments that Rema relies on cases mentioned by elsewhere *Shulhan Arukh* itself (A person who heard that his son had died overseas, and he gifted his property; a document attesting to a fictitious transfer of ownership – *shtar mavrahat*). Therefore, it would appear that this ruling is basically undisputed, and we follow a proven assessment.

One of the differences between mistaken transaction and condition is that a condition may relate to something that may or may not come about in the future, and therefore the sale may be valid or it may be invalidated retroactively. It is therefore necessary to clarify whether the assessment is like a mistaken transaction, where the particular flaw had to have existed at the time of the transaction, and what the assessment adds is that even if he did not say specifically that he is buying with this in mind, nevertheless it is clear that this was his intention when he purchased the item; or rather, whether the assessment is like a condition, and the transaction may be invalidated by virtue of the assessment even if the flaw came about only later. From what Rambam writes (*Mishneh Torah*, Acquisition, Halakhoth of Selling 11:9) as well as *Shulhan Arukh*, the assessment would appear to be similar to a condition, for these *halakhoth* were included in the *halakhoth* of conditions and not in the laws relating to mistaken transaction and fraud, and from the order of things we may infer that the grounds for invalidating the transaction do not have to be evident at the time of the transaction. Even amongst the authorities who dealt with *umdena* it appears that it makes no difference whether the defect existed and was discovered only after the *kiddushin*, or whether it actually came into being only after the marriage, and in all events it would appear that from this aspect, a proven assessment is similar to a condition (and see also *Otzar ha-Poskim, Even ha-Ezer* 44:9).

Though his ruling was handed down "in theory and not in practice", his students agreed with him in practice ex post facto (*be-di-avad*). See Maharam of Rothenberg, op.cit. However, other decisions subsequently relied upon ex ante (*le-hatchilah*). See *Ohr Zarua* 1:605; *Teshuvot Maharah Or Zarua* 50; *Teshuvot Tashbetz* 2:47; *Teshuvot Radakh, Bayit* 9, *Heder* 4; *Teshuvot Hatam Sofer EH* 2:73; *Teshuvot Imrei Yosher* 126.

And Meiri (*Yevamot* 118b, s.v. *kvar yadata*) writes that although we find in the Jerusalem Talmud that even if she was the wife of a rogue and a person afflicted

with a serious skin disease, she has the right not to divorce, due to the presumption that "it is better to be two together than to be alone." However, the wife of an apostate has the right to be divorced from him. He states: "If I could muster significant support amongst my colleagues, I would rule that the wife of a Jewish apostate (*mumar*) for whom a *get* would unquestionably be a net benefit should be given one in such a way that it would be irrevocable one it reaches her agent's hands."[4] In other words, Meiri is of the opinion that sometimes, it is the wife's right to be divorced, and we do not say that it is better that she should be married: rather, we say that she did not give herself in marriage with living with such a man in mind.

7. *Assessment Concerning a Wife and a Husband*

Here we should recall the words of those who held that in relation to the wife, the assessment that she would not enter into a marriage with a husband who has a defect is stronger than her husband, for the reason that she cannot affect the divorce herself against the will of the husband if it transpires that she cannot live with him. And if it is the case that the husband, who does have the possibility (of effecting the divorce himself) has the right to claim that the *kiddushin* are invalid, *a fortiori* this could be equally said of the wife (see: *Hokhmat Shlomo, Ketubot* 75a, 5; *Resp. Noda Beyehuda*, 2nd edition, EH 80; *Resp. Ahiezer, Even ha-Ezer* 27d; *Resp. Iggrot Moshe, Even ha-Ezer* 1:79; *Minhat Avraham* 2:10. *Noda Beyehuda* (*ibid*.), discussing the invalidation of *kiddushin* in the case of an apostate husband, says as follows:

> "There are grounds for saying that we do not invoke the presumption that he did not marry with this in mind, for he does not have so much to lose, since he is able to divorce when he wishes, and he is also able to marry another, which is not the situation in relation to the wife, who is not able to divorce herself and she cannot marry another, so it is better to say, 'she did not give herself in marriage with this in mind.' "

True, *Noda Beyehuda* was writing as a matter of theoretical rather than practical *Halakhah*, but other authorities put this into practice, as we wrote above (see: *Sde Hemed* 9*, Kelalei ha-Poskim* 16:47*; Resp. Yabia Omer* 3, *Even ha-Ezer* 18:14, who wrote that the later authorities rely in their rulings also on authorities who issued theoretical and not only practical rulings); practical rulings in this vein were issued by R. Tzvi Pesach Frank (Resp. Har Tzvi, *Even ha-Ezer* 2:133) and R. Avraham Shapira, who was Chief Rabbi of Israel, in *Minhat Avraham* (pt. 2:10).

In light of the fact that a wife cannot divorce herself against her husband's will, is there any basis to argue that the *umdana* can apply to a husband who engages in illicit affairs? Rema in *Even ha-Ezer* 154:1, *Sefer ha-Agudah* (*Yevamot* 65a, no. 77)

[4] R. Tzion Boaron told R. Krauss personally that it is a *mitzvah* to publicize these words of Meiri.

and *Arukh ha-Shulhan* (*Even ha-Ezer* 154:16) rule that the husband's consorting with prostitutes is grounds for divorce and a *get* may be compelled. The common denominator of *Sefer ha-Agudah* and *Arukh ha-Shulhan* is that the grounds for divorce is not the actual offense of the philandering, but the breakdown in family life that the husband causes with such behavior. In addition, following the concern about contracting AIDS if the husband is unfaithful, there are additional grounds for compelling the *get* (and this was the ruling in File (Jerusalem Regional *Beit Din*) 1-21-22569, *Ha-Din veha-Dayan* 5, 10 (5764-2004), according to the above-cited *Sefer ha-Agudah*).

Other authorities regarded this as conduct that in its very essence causes revulsion in the wife. For example, R. Eliyahu of Tarla (*Resp. Dvar Eliyahu* 73) wrote as follows: "Regarding compelling a man to divorce – this is certainly worse than the blemishes in respect of which he is compelled to divorce her, and there is nothing more repulsive to her than this."

And in our days, R. Uriel Lavi (*Ateret Devorah* 1, *Even ha-Ezer* 37) writes:

> "From what the Sefer ha-Agudah wrote we see … that such conduct of the husband usually leads to him losing his money, and detracts from sexual intimacy with his wife and causes the woman suffering, that is, his conduct in its very essence entails repulsion and justifies compelling the husband to divorce … [in the case of] repulsion that is recognized and normal in such circumstances for all women – the husband is to be compelled."

As we said above, because there is no possibility of compelling the *get* in the United States, therefore, in reliance on the facts and the testimony presented to us, the *kiddushin* may be invalidated by means of implementation of the assessment that "she did not give herself in marriage with this in mind" (meaning that there is an implied condition in the constitution of the marriage and its validity. See: *Resp. Binyamin Ze'ev* 62; *Resp. Terumat ha-Deshen* 223; *Sha'arei Yosher* 5:18).[5]

R. Aharon Levine of Rzeszow (*Resp. Avnei Hefetz* 30) teaches us as follows:

> "One may add a further consideration to our argument regarding this case, namely, that in the light of the fact that we now know that the husband is a despicable criminal engaged in human trafficking, his marriage is voided

[5] Certain authorities have had recourse to this assessment in order to invalidate *kiddushin* in other circumstances. See: *Resp. Maharam of Rothenberg,* Prague ed., 1000:22 (*halitza*: in theory not in practice); R. Meir Posner, *Tzela'ot ha-Bayit* 6; *Resp. Zichron Yehonatan* 1, *Yoreh De'ah* 5; *Resp. Hessed Avraham,* 2nd ed., *Even ha-Ezer* 55; *Resp. Radakh* 9; *Resp. Meshivat Nefesh, Even ha-Ezer* 73, 76-7 ; *Resp. Torat Hessed, Even ha-Ezer* 20:6 (*halitzah*); *Resp. Divrei Malkhiel* 4:100; *Resp. Maharsham* 7:95; *Resp. Sho'el u-Meshiv,* 1st ed., 1:198; *Resp. Noda Beyehdua,* 2nd ed., *Even ha-Ezer* 80 (in theory rather than in practice); *Har Tzvi, Even ha-Ezer* 2:133. In accordance with the views of R. Feinstein and R. Lavi whereby the assessment can be applied on condition that there is another view whereby the *kiddushin* can be invalidated (see: *Iggrot Moshe, Even ha-Ezer* 4:121; File (Safed Regional Beit Din) 861974/2, 5.10.2014), in the present case we have applied the mechanism of mistaken *kiddushin* due to the abuse of the children, together with employment of the assessment in connection with infidelity.

notwithstanding its formal validity. There can be no doubt that had she known of these activities, she would never have consented to marry him. They constitute an *umdana*, i.e., a compelling circumstantial presumption in favor of voiding the marriage. This is analogous to the case cited in Bava Kamma 106b regarding a levirate wife whose levir is suffering from a serious skin disease. The Talmud suggests that in such circumstances, the levirate wife may claim that she is no longer bound by the levirate bond, since she would never have married her husband had she known that this situation would arise in the future; hence, her original marriage is now voided The reason that the Talmud rejects this claim is the adage of Resh Lakish that "women will accept defective men rather than remain unmarried." This adage is, however, inapplicable in our case, since by virtue of his criminal activities the husband's life is constantly in danger, and the couple live in constant fear and dread. Moreover, what woman could be expected to live with such a despicable and loathsome person? There can be no doubt that she would never have knowingly consented to marriage in these circumstances and this case is a classic one for the application of the *umdana* principle Now, it is true that Hatam Sofer (Responsa, Even ha-Ezer 82) rejected *umdana* as a basis for annulling a marriage, but the reason was because of the weak nature of the *umdana* in that case, i.e., the husband told the wife that he was rich and he turned out to be poor, and that he was a learned man but he turned out to be an ignoramus. The weakness of the *umdana* lies in the fact that he may very well have been rich but in the meantime, he lost his fortune. Likewise, he was once learned but in the meantime he forgot his learning. At the most the marriage in this type of case is of doubtful validity. In our case, however, the *umdana* is strong and powerful and free from all doubt as to the absolute unacceptability of the marriage on the part of the wife. Hence, we rule that she would never have consented to marry had she known the facts about her husband."

It therefore may be said that according to numerous opinions on this issue, *kiddushin* can be voided by virtue of a major or a proven assessment. As opposed to some authorities who object to the implementation of the technique of *umdana* (*Resp. Avodate ha-Gershuni* 235; *Resp. Beit Yitzhak* 1:106; *Resp. Nishmat Hayyim* 129; *Resp. Ohalei Aharon* 2:44; *Resp. Ahiezer* 3:19; *Resp. Heikhal Yitzhak, Even ha-Ezer* 2:25), we have adopted the approach of many authorities who utilized the mechanism of *umdana* in order to invalidate *kiddushin*. See above, footnote no. 5.

Therefore, in the present case, there is a major *umdana* that a woman does not want to live with a philanderer. In any case, the *kiddushin* are voided for the reason that she did not give herself in marriage with this in mind. This, in addition to what we said about the voiding of the *kiddushin* due to the husband deceiving his wife by

hiding the fact that he was a pedophile – these are mistaken *kiddushin* both because of the undisclosed pedophilia and because of the deceit and misrepresentation.

8. *Implementation of a Double Doubt as to the Halakhah in Matters of Scriptural Law*

At this juncture, it has become evident that it is possible to void the *kiddushin* by means of the technique of "mistaken *kiddushin*" due to two matters that had not been revealed to the plaintiff before the *kiddushin*, i.e., that the husband was a pedophile and acted deceitfully and misrepresentation, and also due to a proven assessment that a wife is not prepared to marry a man who is having intimate relations with her sisters.

Alternatively, in light of the fact that there are many authorities who object on principle to implementation of "mistaken *kiddushin*" and "assessment" as techniques for voiding the *kiddushin*, the *kiddushin* can be voided through use of "double doubt as to the *halakhah* in matters of scriptural law."

One of the rules of decision making in relation to the *halakhoth* of doubts is that we rule strictly in relation to scriptural doubts, and leniently in relation to rabbinical doubts (see: *Beitza* 3b; *Yevamot* 31a; *Avodah Zarah* 7a). Rambam (*Mishneh Torah, Tum'at Met* 9:12) rules as follows:

> "It is well known that all these and other similar instances which are ruled impure, although there is a doubt involved, are Rabbinic safeguards. According to scriptural law, only one who has definitely contracted impurity is deemed impure. All stringencies stemming from doubt, whether with regard to ritual impurity, forbidden foods, forbidden intimate relations or the observance of the Sabbath, are only rabbinic in origin…"

The principle that under scriptural law, doubtful cases are to be resolved leniently, has already been stated in other rulings of the *Mishneh Torah* (see: *Issurei Bi'ah* 15:29; 16:17; *Kela'im* 10:27; *Avot Ha-tum'ah* 16:1). In his *Responsa* (no. 310) Rambam writes: "That we rule strictly in relation to a scriptural doubt is a rabbinical dictate and not scriptural." (This is also cited in *Iggrot HaRambam,* Shilat edition, 382 ff, and quoted in *Maggid Mishneh, Shabbat* 27:3. See also Rif and Rosh, *Kiddushin* 5b. See *Resp. Beit Yosef, Even ha-Ezer* 2, citing Rif; *Bnei Shmuel Hayyun* citing Rosh; R. David Bonfid, Rambam's pupil, *Hiddushei R. David Bonfid, Pesahim* 9b; Meiri, *Beit ha-Behira, Kiddushin* 5b; Semag, Lavin 121; Mordekhai, *Yevamot* 21; Resp. She'elat Ya'avetz 2:143; Pri Hadash 110; *Pnei Yehoshua, Ketubot* 9a*, s.v.* ve-omer Ri*;* Pesahim 10a, s.v. *haynu shnei kupot*; *Kreti u-Pleti, Beit Hasafek* 110:1; *Resp. Torat Hessed, Orah Hayyim* 7:4; Shakh, *Yoreh De'ah* 110:66, Laws of *S'fek S'feka* 34, citing Mordekhai, *ad loc*.; *Resp. Radbaz* 4:93, citing most of the authorities).

On the assumption that we accept the position that we rule strictly on a scriptural doubt by virtue of a rabbinical ruling, as opposed by many of the authorities (*Mishneh le-Melekh, Tum'at Tzara'at 2:1; Taz, Yoreh De'ah* 110:15; *Knesset Hagedolah, Even ha-Ezer* 68; *Hagahot Tur* 23*; Resp. Tumim Yeshari* 149; *Resp. Ra'anah* 27; *Resp. Maharhash* 30), in the said case, we have relied on a string of *Aharonim* (later authorities) in general, and Sages of Ashkenazic and Sephardic countries alike, and Spain in particular, that a double doubt can be invoked in order to restore the woman to her original presumed unmarried status (see *Tosafot, Niddah* 45a, s.v. *hi*; *Resp. Mabit* 1:49; *Resp. Ra'anah* 1:68; *Resp. Maharit* 1:138; *Resp. Beit Yitzhak, Even ha-Ezer* 1:92 end; *Resp. Ein Yitzhak, Even ha-Ezer* 1:35; 2:16 (3-4); *Resp. Minhat Moshe, Even ha-Ezer* 11*; Resp. Be'er Moshe, Kuntras Binyan Yerushalayim* 18; *Resp. Yabia Omer* 8, *Even ha-Ezer* 3:16; 9, *Even ha-Ezer* 20d).

According to Rambam and those who agree with him, the double doubt is effective because the one doubt transforms the scriptural prohibition into a rabbinical prohibition, and the second doubt is a rabbinical doubt and therefore entails leniency (see *Penei Yehoshua, Ketubot* 9a, sv. v*e-omer Ri; Resp. Shem Aryeh, Yoreh De'ah* 2).

In contradiction to this approach, according to Rashba, Ran and those who hold a similar opinion the double doubt is effective because the single doubt is "like a fifty percent chance", whereas the two doubts constitute an absolute majority (see: *Resp. Rashba* 1:401; *Pri Hadash, Yoreh De'ah* 110:49; *Resp. Maharimat, Yoreh De'ah* 2; *Resp. Torat Hessed, Orah Hayyim* 3:4. According to most of the authorities, the doubt is effective due to the principle of majority rule. See: *Resp. Binyan Tzion* 1:14; *Resp. Yabia Omer* 7, *Even ha-Ezer* 36:5).

And indeed, R. Hizkiya Medini notes (*Sder Hemed Hashalem, Get* 4, s.v. *veharav*): "From what we have written it emerges that when the need arises due to a situation of *igun*, if there is a doubt regarding disqualification, and it is accompanied by another doubt, she may be released by virtue of a double doubt."[6]

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[6] According to Rashba (*Resp. Rashba* 1:401; *Hiddushei ha-Rashba, Kiddushin* 73a; *Torat ha-Bayit, Bayit Revi'I* 1) and Ran (on Rif, *Kiddushin* 15b; *Resp. ha-Ran* 51), ruling strictly in the case of a scriptural doubt is scripturally mandated. See also,: *Resp. Bnei Shmuel* 41; *Resp. Hasabah Kadisha* 1:23; *Mishneh le-Melekh, Gerushin* 8:11; *Kehunat Olam* 266; *Pnei Yehoshua, Hullin* 10b, s.v. *ela*; *Resp. Shev Ya'akov, Yoreh De'ah* 48 citing *Penei Yehoshua; Beit Meir, Yoreh De'ah* 228; *Resp. Hatam Sofer, Yoreh De'ah* 286; *Resp. Mishkenot Ya'akov, Orah Hayyim* 136; *Yeshu'ot Ya'akov Orah Hayyim* 17:3; *Resp. Hikrei Lev, Yoreh De'ah* 1:118; *Resp. Divrei Hayyim* 1, *Orah Hayyim* 8). The view of Rashba and like-minded authorities, whereby strictness is scripturally mandated in the case of a scriptural doubt, the reason that a double doubt may be ruled leniently is that one doubt involves a fifty-fifty chance, whereas two doubts constitute a majority (see: *Resp. Rashba, idib.; Pri Hadash, Yoreh De'ah* 110:49; *Resp. Torat Hessed mi-Lublin, Orah Hayyim* 3:4).
Grounds for invalidating *kiddushin* through use of a double doubt are also found in Rambam's approach ("That we rule strictly in relation to a scriptural doubt is a rabbinical dictate") which is the view of the majority of authorities. See: *Resp. Radbaz* 4:93; *Penei Yehoshua, Pesahim* 10, s.v. *hinei*; *Resp. She'ilat Ya'avetz* 2:143; *Resp. Zichron Yosef, Yoreh De'ah* 19; *Noam Si'ah* 12(b).

In the present case, the first doubt regarding invalidation of the *kiddushin* due to the fact that the husband is a pedophile is the dispute amongst the authorities as to whether the mechanism of mistaken *kiddushin* can be applied. The second doubt is that, the authorities disagree as to whether the technique of mistaken *kiddushin* can be used regarding a husband who acted deceitfully in order to invalidate the *kiddushin*. The third doubt is as to whether the assessment that "she did not give herself in marriage with this in mind" can be invoked in a case in which the husband is a philanderer.

In applying the double doubt as to the *halakhah* to the present *agunah* as a vehicle to void the marriage,[7] we presume:

(1) Since all the rivers run into the sea and in effect, all the various doubts distill into one large doubt as to whether or not the marriage is a valid one, Tosafot maintain we are confronted with a *halakhic* situation in which "all the factual doubts fall into one conceptual category" and, according to Tosafot, the principle of double doubt – *sefek sefeika* – is inapplicable in such a situation (*Ketubot* 9a s.v. *ve'iba'iteima*; see also Shakh, *Yoreh De'ah* 110, Rules of the *Sfek Sfeka* nos. 11013). Nevertheless, it has already been proven at length by the *Kreti u-Pleti* (*Beit Safek, ad loc.*) that the principle of double doubt is applied ubiquitously both in the Talmud and the *Shulhan Arukh* even in this type of situation, in order to reach lenient decisions (see: *Resp. Mahari b. Lev* 3:41; Appeal (Supreme Rabbinical Court) 59/477, PDR 21, 10 (13 Av 5759) 23.

Now, according to Shakh (*ibid.*, 12) and R. Reisher (*Minhat Ya'akov, Kuntras ha-Sefeqot* 20), the double doubt can be implemented in the same rubric only if the second doubt is more lenient (and see: *Resp. Yabia Omer* 4*, Orah Hayyim* 43:6). In the present case, the second doubt is not more lenient, but several authorities are of the opinion that it is only at the scriptural level that a double doubt cannot be applied in the same rubric (*meshem ahad*). Under rabbinical *halakhah*, however, as is the case before us, a double doubt is applicable even if they both belong to the same rubric (see *Resp. Sho'el u-Meshiv*, 1st ed., 2:82; *Resp. Ein Yitzhak* 1, *Orah Hayyim* 19; ibid., 16:5; *Resp. Teshorat Shai* 1:385 end; *Resp. Binyan Olam, Yoreh De'ah* 33; *Resp. Maharash Engel,* 2:39; *Resp. Maharsham* 1:33; *Darkhei Teshuva, Yoreh De'ah* 110:11:280).

(2) An opinion that was not cited in *Shulhan Arukh* may not be part of a *sefek sefeika* (see: *Resp. Tuv Ta'am ve-Da'at,* 2nd ed., 219; *Resp. Beit Shlomo, Yoreh De'ah* 101*; Resp. Maharsham* 1:7).

In the present case, the three doubts that are found in the disagreements of the authorities were not mentioned in the *Shulhan Arukh*, and apparently a double doubt is ineffective in such circumstances. However, according to several authorities, the above rule does not pose an obstacle, and it is possible to attach to a double doubt

[7] See *Resp. Yabia Omer* 3 *Even ha-Ezer* 18; 6 *Even ha-Ezer* 3 (9 14-15), 6(5).

militating for leniency another view that was either not mentioned in the *Shulhan Arukh* or that contradicts it (see: *Sde Hemed Hashalem* 9, *Kelalei ha-Poskim* 13:5; *Resp. Yabia Omer* 6, *Yoreh De'ah* 7, *Even ha-Ezer* 8 (18), 8, *Yoreh De'ah* 6 (4). R. Yitzhak Yosef, *Resp. Ein Yitzhak* 3:118-119).

(3) Regarding invalidation of *kiddushin* on the grounds that the husband is a pedophile: there is a dispute amongst the authorities as to whether the mechanism of mistaken *kiddushin* can be applied in such circumstances. Regarding a husband who was deceitful in hiding his defect prior to the marriage, i.e. that he is a pedophile, there is a dispute amongst the authorities as to whether this would allow for recourse to the mechanism of mistaken *kiddushin* in order to invalidate the marriage. Furthermore, can the assessment that "she did not give herself in marriage with this in mind" be applied? The case in which the husband is a philanderer is a subject of dispute amongst the authorities. The common denominator of all these disputes is that the number of those permitting and the number of those prohibiting in each dispute are not even "*shakul*". And therefore the doubts are not evenly balanced.

As opposed to *Shakh* (*Yorah De'ah* 110, *Kelalei Sefek Sefeika* 33) and *Erekh ha-Shulhan* (*Hoshen Mishpat* 3, *Kuntres Sefer ha-Zikharon,* 1:52) who require a balanced double doubt in accordance with their approach that a scriptural doubt entails scripturally-mandated strictness (see: Y. Yosef, *Ein Yitzhak* 2:323), according to other authorities who support the approach of Rambam, ruling strictly in the case of a scriptural doubt is only rabbinically mandated. It is not necessary to have a balanced *sefek sefeika*. See: *Resp. Torah Hessed, Even ha-Ezer* 9; *Resp. Shemen Rokeah Talita, Yoreh De'ah* 3; *Resp. Yabia Omer* 4, *Yoreh De'ah* 12 (14), 6, *Yoreh De'ah* 24.[8]

We accepted this posture.

(4) We apply double doubt in relation to *kiddushin* and permit a woman to remarry in order to avoid *igun*, and how much more so when there are three doubts (as in the present case), even when there is disagreement amongst the authorities (see: *Shakh, Yoreh De'ah* 111, *Kelalei Sefek Sefeikot* 29 ff.; *Resp. Ra'anah* 27; *Resp. Torah Hayyim* of *Maharhash* 30; *Resp. Yabia Omer* 6, *Even ha-Ezer* 3:8-15).

9. Conclusion

On the basis of the above, we are voiding the marriage based upon four grounds (i.e. *Kiddushei Ta'ut* for failing to disclose pedophilia and misrepresention, *umdana*, that a wife does not want to be married to a philanderer and the implementation of

[8] To understand a doubt that is balanced between those who permit and those who prohibit see: *Get Pashut* 129:26; File 917387/1, Yerushalayim Regional Beit Din, 14 Kislev 5774.

three *halakhic* doubts), if Boaz does not give Esther a *get* by November 30, 2018, Esther will be permitted to marry any Jewish man, even a Kohen.

IN WITNESS WHEREOF WE HAVE SIGNED THIS 28 DAY OF TISHREI 5779 (8 OCTOBER 2018)