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ת"ב

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**Question:**

This unfortunate woman, the plaintiff, turned to us and told us of her many tribulations and great suffering, and the humiliations she has endured and continues to endure since her wedding day. She asked us, as explicators of the law (and not as Dayyanim sitting in judgment) to rule and provide instruction on the question of the validity of her marriage, and to permit her to marry any other Jewish man without having received a *get* from her husband.<sup>1</sup>

She married the defendant in a civil ceremony – or at least that is what she thought at that time – as well as in a halakhic ceremony (*huppah* and *kiddushin*) in the month of June, 2018. She was then 21 years old, and the husband was 34. It should be noted that the woman told her husband expressly that she is not prepared to marry him in a religious ceremony unless it is preceded by civil marriage according to the law.

The rabbi who conducted the Jewish ceremony was a dayyan in the Beit Din in Canada, who also served as a witness at the ceremony, together with another qualified witness.

After the *huppah*, the groom and bride entered the “seclusion room”. They returned from the “seclusion room” to the hall towards the end of the wedding, the recitation of the “Seven Blessings” began, and the groom began searching frantically for the *ketubah*. When he could not find it, he asked the bride’s family where it was, and the bride answered that apparently it had

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<sup>1</sup> This is a halakhic question relating to the ritual law of whether the woman is permitted to marry another man without having received a *get*, and in order to provide halakhic instruction on the question the presence of the husband is not required. See: File 3898/26 PDR 6, 265 (7 Kislev, 5726); File 957/61, *Piskei Din Yerushalayim le-Dinei Mamot ve-Yohasin* Pt. 7, p. 515; File (Regional Beit Din Tel Aviv) 448866/3 (11.7.2013); File (Regional Beit Din Be’er Sheva) 1086123q1 (20.12.2018); Rabbi Z/N. Goldberg, *Lev ha-Mishpat* pt. 1, pp. 149-150. In the present case we have convened three rabbis to rule on this question of ritual law.

been left in the seclusion room, and she said that she would go and bring it. The groom began to make a scene and to shout, and his family joined in the shouting, until the bride's family took the bride to the car that was standing outside. The groom's brother banged on the car on one side, the groom banged on the other side, and the violence included the use of a baseball bat. The bride's uncle attempted to calm things down, but did not succeed in doing so. The bride's parents got into the car together with the bride, and as they were driving away, the bride's cousin phoned and told them that the grandmother had been hit and the uncle had been attacked, and that the police had arrived after having been summoned by the bride's uncle.

The next day, the bride turned to the Beit Din and said that she wanted a divorce, after realizing who the groom was and seeing his violent behavior, but it transpired that the groom had preceded her in the Beit Din, claiming that it was the bride's family that started the fight. The rabbi tried to convince the bride to wait a few months, to see how things would develop, but the bride was adamant in her refusal: "I have protected myself, now that I know who he is, I absolutely do not want to get pregnant."

Some time later, since her suit to divorce was not granted by the Beit Din, the woman embarked on the civil track in order to receive relief from the state, thinking that she had also been married civilly: before the Jewish wedding, the parties had met with a notary public – a friend of the husband – and had registered with him to be civilly married. To her utter surprise, she discovered that the registration for civil marriage with the notary public was one big deception (and this was also the unequivocal impression of the Beit Din after an investigation of the behavior of the husband prior to the weddings, i.e., that this deception had been planned by the husband).

The notary public, who was a friend of the husband as well as his client, denies everything and says that nothing took place and that they did not register with him for civil marriage. Naturally, no registration of the marriage appears anywhere. It should be mentioned that the notary public's license had been revoked indefinitely by the State, and it emerged that in the past, too, he had had ethical problems in which the husband, himself a lawyer, represented him to the authorities.

The Beit Din received a letter signed by the Rabbi in which he states that he never conducted *huppah* and *kiddushin* for the couple. This Beit Din has the impression that this notice was obtained fraudulently from the Rabbi.

The husband is not prepared to give his wife a *get*, and he also announced that he would never divorce her unless she paid him a certain amount of money: only then would he agree to give her a *get*.

The wife stressed repeatedly that there had never been violence on his part – neither verbal nor physical – prior to the wedding, until that violent outburst at the wedding.

The wife is a young woman with her whole life in front of her; the husband is holding her prisoner driven by sheer cruelty, and she is searching for a way to free herself from the chains of *aginut*.

The husband has remarried, and as far as the wife knows, his life is proceeding normally.

**Response:**

It would appear that the marriage is valid, and that the plaintiff is a married woman in all respects, as stated in the *Shulhan Arukh (Even ha-Ezer 61:1)*: “Once a man enters the *huppah* with his betrothed, even though he has not been with her, she is his wife in all regards.”

**Misleading and Misrepresentation in Kiddushin**

However, in the present case it appears that the woman married on condition that there would be a valid civil marriage, and the husband even created for that purpose a whole charade of civil marriage, which in retrospect turned out to be baseless.

In relation to such misleading information, the *Shulhan Arukh* ruled expressly (*Even ha-Ezer 38:24*) that the woman is not married:

“On the condition that I am wealthy” and he is found to be poor, or “On the condition that I am poor” and he is found to be wealthy, or “On the condition that I am a Kohen” and he is found to be a Levite or a Levite and is found to be a Kohen, “a *natin*” and he is found to be a *mamzer*, or a “*mamzer*” and he is found to be a *natin*, a “town dweller” and he is found to be a city dweller, or “a city dweller” and he is found to be a town dweller, “on condition that my house is close to the bathhouse” and it is found to be far, “far [from the bathhouse]” and it is found to be close; “On condition that I have a maid-servant, or an older daughter or a baker” and he does not have one, “on condition that I do not have any of these” and he does, in all these cases or if he said, “Become betrothed to me with this cup of wine,” and it is found to be honey, or “honey” and it is found to be water, (if it was found to be covered and she could not discern what was inside until later, in all these cases, and those similar to them, even if she said, “I intended to become betrothed even if the condition was not fulfilled,” she is not betrothed. It is not relevant if she received the betrothal herself or if it was received by an emissary who was instructed to receive it with the condition and the emissary made changes to the terms. Similarly, if she deceived him, even if he said, “I intended to betroth her even if she deceived me,” she is not betrothed. Rem’a: Unless she said explicitly at the time of the betrothal, and the husband heard and was silent. Also if she deceived him (and he explicitly said, “even if it is not the case”) the betrothal is valid. However, if he married her without stating a condition and then he said, “I thought she was a Kohenet and she is a Leviah” or “a Leviah” and she is a Kohenet, “she was wealthy” and she is poor, “she was poor” and she is wealthy, she is betrothed.

The words of the *Shulhan Arukh* and Rema are clear. The moment the husband misled the wife, or she misled him, the *kiddushin* are mistaken *kiddushin* and she is not betrothed: there is no dispute about this. In our case, the husband certainly misled his wife, who thought she was marrying him in a valid civil ceremony prior to the halakhic marriage.

*Hatam Sofer (Responsa, Even ha-Ezer 1:82, cited in Pithei Teshuva, ad loc. 14)* discusses the manner of misleading as follows:

First, let us examine the words of the rabbi posing the question, who said as follows: "He said that he is rich and he is found to be poor, he said he is a great scholar and it is found that he has no understanding": it would appear at first sight in accordance with the explanation of Tosafot which is codified in *Hoshen Mishpat* 207 that there are certain matters in relation to which we decide on the basis of unarticulated thoughts and general representation of intent. And in my opinion, a woman's betrothal is one of these, as we may infer from the language of *M. Kiddushin* 62a, that a person who betroths a woman and he says, I thought that she was a Kohenet etc., rich and she is poor, she is betrothed, because she did not mislead him. From this we may infer that she never said anything or revealed any mental reservation with regard to her not being a Kohenet or rich. It was entirely in his mind that he thought she might be in one of these categories, and therefore she did not mislead him. Only in such circumstances that she is betrothed. Had there been any misleading whatsoever, even if she did not affirm at the time of the *kiddushin* that their validity is conditional upon her being a Kohenet or rich, she would nevertheless not be betrothed, since that mental representation is dispositive. However, it would also appear on the basis of *M. Kiddushin* 48b and 49a, "on condition that I am rich etc. on condition that I am a Kohen etc.," the opposite inference ought to be made. In other words, the issue turns on what was said at the time of the *kiddushin* and not on any representation of intent, because they are unarticulated thoughts. This inference also receives some support from the passage there (50a). If so, we have two opposing mishnaic inferences. Now, I had initially thought that a distinction must be made between a man betrothing a woman, and a woman being betrothed by a man, since a woman is satisfied with any groom.

But Maimonides, at the end of chap. 8 of the Laws of Marriage wrote: One who betroths and says, "I thought that she was a Kohenet etc.," and likewise a woman who said, "I thought he was a Kohen etc.," in both cases the marriage is valid because he did not mislead her. And see the words of the *Maggid Mishneh* according to whom it is quite clear that in this respect the man and woman are equal. Indeed, it is my view that the major thrust of Maimonides' ruling is to reject the view that there is a difference between the man and the woman as long as one party did not mislead the other. If, however, there was an element of deception, then even if it was not perpetrated during the act of *kiddushin*, we apply an *umdenah*. This means that we must also understand the *mishnah* about "the man who betroths on condition that he is a kohen" as involving a case in which he merely represents himself as a kohen. The *kiddushin* will not be valid even if the conditional form "*al menat*" was not used at the time of the betrothal. Any form of deception is sufficient to render the *kiddushin* invalid. Now, the reason that the Mishnah employs the phrase "on condition that he is a kohen" is because of the second clause which deals with the scenario in which she says that she had it in her mind to marry him even if it turned out that he was not a kohen. The Mishnah rules that the *kiddushin* are nevertheless invalid, but this is only in a case in which the condition was stated at the time of the betrothal. If it was not so stated then her mental reservation is sufficiently

dispositive to overcome any other such reservations. ...and as a consequence it would appear that the other *mishnah* is dealing with a case in which the woman did not mislead the man in any way, for if she had done so even with a mild representation of intent, the *kiddushin* are not valid. The same applies to a case in which he deceived her which, as I have already demonstrated, is Maimonides' view at the end of the eighth chapter of the Laws of Marriage.

We learn two rules from the above passage of *Hatam Sofer*:

1. It is not necessary to say the words, "on condition that..." at the time of the *kiddushin* in a case in which there was mutual misrepresentation: the *umdenah* and the representation of intent are sufficient.
2. There is no difference between a man who misled a woman and a woman who misled the man. In both cases, the *kiddushin* are invalid.

In the present case it is clear that the husband misled her deliberately when he said that they were marrying civilly, and even took her to a "notary" and staged an entire misrepresentation whereby they were registered as having married civilly. Clearly, the purpose of this misrepresentation was so that the woman would not be entitled to rights from the State as a married woman.

#### The Husband's Violence at the Wedding – An Assessment that "She Did Not Marry with This in Mind"

Clearly, the violent public conduct of the husband during the wedding is deviant and very exceptional, and there were many witnesses to this violent conduct. No woman would be prepared to marry a person who behaves in such a manner at his wedding.

*Resp. Havvat Yair* (221, additional gloss, cited in *Pithei Teshuva, Even ha-Ezer* 39:4) deals with the laws of misleading and assessment :

A case occurred involving a dowry of 350 ducats in the form of a promissory note drawn on the account of a very rich person living in the distant community from which the groom hailed. Immediately following the *kiddushin*, as the couple entered the wife's father's home, it transpired that the promissory note was a complete forgery and there was no other dowry. There was no doubt in anyone's mind that the *kiddushin* were perfectly valid, and a *get* would be required before the woman could be released from the marriage. I too would not, G-d forbid, venture to rule to the contrary, but it ought to be pointed out that in the days of the Gaonim, or the very early authorities, it would have been the prerogative of the greatest sage of the generation to have disagreed with this view on the basis of the fact that in the time of the *Gemara*, a significant period of time elapsed between the *kiddushin* [betrothal] and the *nissuin* [marriage], giving rise to the possibility that during that time period any condition, even one articulated during the wedding ceremony, may have been abrogated. This would certainly be the case if intercourse had already taken place, which would have happened once the groom entered into his father-in-law's home (see: *Even ha-Ezer* 33). But the present case is different since the bride immediately returned to her father's house following the

*kiddushin* and no intercourse had taken place (before the forgery was discovered). This would be the case even according to Maimonides, who rules that someone who betroths a woman and then discovers that she is blemished or is subject to asseverations is still required to give her a *get*, since his ruling may be restricted to blemishes or asseverations, and not all grooms are particular with respect to these faults. In the case of an agreed dowry, however, it is universally accepted that failure to deliver the promised sum is absolutely unacceptable and is, indeed, an implied condition of the marriage. Even if the dowry had only lacked one third of the promised amount and, *a fortiori*, one half, there would have been no *huppah* or *kiddushin*. Since intercourse has not yet taken place, the issue of the need to avoid promiscuous sexual relations does not arise, so that there is no basis for saying that there was an implicit renunciation of the dowry. I would even go as far as to say that in certain cases, renunciation is not assumed even if intercourse had taken place. Nevertheless, it would appear that if she is betrothed to someone else she ought to receive a *get* from him.

In the present case, she certainly did not marry with such an eventuality in mind. No woman could imagine a situation where the groom would assault members of the family on the day of the wedding, and what is more, that this would occur publicly, where all the guests could witness the husband's violent behavior on what ought to have been her day of joy and hope for a new beginning in life as a married woman who would establish a household in the Jewish community. It is patently clear that this is something about which a person would be very particular.

As a marginal observation, we would add that in the discussion in Resp. Sho'el u-Meshiv (1<sup>st</sup> ed., 1:197) of a wife who did not have sexual relations with the husband after the wedding, it is written that she is not considered to be betrothed but married (and on this matter, R. Nathanson wrote that there must be a strict ruling in relation to mistaken transaction). But the *Kuntras Aguna* at the end of *Sefer Even Shoham* (which deals, *inter alia*, with releasing a woman from the obligation of levirate marriage by invalidating the *kiddushin* of a husband who dies a short while after the wedding from a defect that was present before the wedding), discusses R. Nathanson's ruling, and writes that the Sho'el u-Meshiv ruled strictly only because his reasoning related solely to the assessment that "she did not marry him with this in mind"; but had there also been grounds for arguing mistaken transaction, leniency would have been possible, and he cited Resp. Birkhat RaZH (107) who said that his words must be understood as follows:

It is clear from the words of the author of blessed memory that ....

At the end of the *kuntras* we find that he presented what he wrote to Maharsham, and Maharsham answered with the following brief response, which also supports this conclusion

## Conclusion

We find that the *kiddushin* is invalid for the following reasons:

1. Misleading. The husband misled the wife concerning the civil marriage, and it was due to this that she entered into a halakhic marriage with him (according to the *Shulhan Arukh, Even ha-Ezer* 38:24), compounded with the approach of the *Hatam Sofer*, that an express condition is not necessary, and a representation of intent and an assessment are sufficient.
2. It is a proven assessment that she did not give herself in marriage with this in mind. No woman is prepared to marry such a violent man, who acted with such aggression in public, to the point where it was necessary to spirit the bride away from the wedding hall and even to call the police in order to break up the fight, as we found in the opinions of many authorities (*Resp. Sho'el u-Meshiv*, 1st ed., 197 and others). In the present case, the assessment is very strong, since throughout the whole period of their acquaintance, there was no sign of his violence, and it came as a complete surprise to her, such that it can in no way be said that she had any mental preparation for such violence. Here, it cannot even be said that the fact that they remained together invalidates the assessment, since they did not engage in any sexual relations; if so, this supports the assessment by virtue of which the *kiddushin* is invalidated.

It must be added that subsequently the husband married to another woman, and has rendered the woman who turned to us an *agunah*. We must not allow Jewish women to become prisoners to tyrants – there is no greater injustice than this.

From all the above it emerges that this poor woman must be permitted to extricate herself from her tragic situation. Permitting her to do so may also serve as a lesson to other men who refuse to give their wives a *get*, with the intention of abusing and taking revenge on them and in an attempt to obtain financial and other advantages that are not due to them, or in order to force the wives to accede to their demands. This is a typical example of the lawlessness that prevails, where women are abandoned to their fate and nobody does a thing. No-one causes greater harm to our holy Torah and its laws than a person who does such things, as well as anyone who holds his hand and encourages him, or who does not gird his loins and act to protect the woman and eradicate the phenomenon in order that the world conduct itself according to the Divine will.

We might excuse the Rabbi who in his innocence, and due to the manipulative wickedness of the husband and his deceit and trickery, was totally misled. Nevertheless, it is not too late for the Rabbi and his Beit Din to join our opinion in order to support the position of the family, the holy *halakhah* and the Divine will.

May the Good Lord save us from error and enlighten us with His holy law.

The conclusion of all the above is that the plaintiff is permitted to any Jewish man.

We hereby append our signatures on 16 Elul, 5781 (24 August, 2021)