

JEWISH DIVORCE and the role of BEIT DIN

By Rabbi Jonathan Reiss

One of the major roles of a *beit din* [rabbinical court] today is to supervise *gittin* for divorcing couples. It is vital that a Jewish couple arrange for a *get*¹ upon their divorce. Without a *get*, a couple remains married according to *halachah* even if they have obtained a civil divorce. Until the husband has given his wife a *get*, neither party may remarry. Should the wife bear a child from another man, that child will be a *mamzer*, and prohibited from marrying

within the Jewish community.

Because of the importance of obtaining a valid *get*, parties should ensure that the *get* proceeding is supervised by an experienced rabbi or *beit din* whose *gittin* are respected throughout the Orthodox community.² At the Beth Din of America, which is sponsored by the Orthodox Union and affiliated with the Rabbinical Council of America, we supervise hundreds of *gittin* each year. Because of the expansive resources and networking abilities of the Beth Din, we are also able to coordinate with other *batei din* and rabbis across the country and throughout the world to help resolve difficult cases and to arrange for *gittin* to be delivered by proxy in cases where the spouses are far apart geographically.

Another role of *beit din* is to resolve disputes and adjudicate cases.³ According to *halachah*, when Jewish parties have a dispute, they are obligated to submit the dispute to *beit din*, rather than to the secular court system. Therefore, if a husband and wife are getting divorced, and are unable to set-

tle their differences without litigation,⁴ they are, as a general rule, obligated by *halachah* to submit to a qualified *beit din*.⁵

Additionally, one of the functions of a *beit din* proceeding is to bring peace and harmony into the world.⁶ In the context of a divorce case, this function includes taking measures to ensure that a *get* is given when a marriage is over,⁷ and that possible *mamzerut* situations are averted. The *halachah* requires that special sensitivity and attention be extended to a woman unable to marry because she is an *agunah*.⁸ Accordingly, the Beth Din of America expends much of its resources resolving numerous *agunah* or “potential *agunah*” situations.⁹

To summarize, the role of a *beit din* in Jewish divorce cases is multifold: (a) to supervise the *get* process; (b) to decide (or help mediate, if possible) financial and custodial issues when such issues cannot be resolved by the parties; and (c) to help “unchain” a woman in an *agunah* situation, or for that matter, a man in an analogous situation,¹⁰ unable to remarry because her or his

Rabbi Jonathan Reiss is the director of the Beth Din of America, and a graduate of Yale Law School. The author wishes to thank the following individuals of the Beth Din of America for reviewing this article: Av Beth Din Rabbi Gedalia Dov Schwartz; Segan Av Beth Din Rabbi Mordechai Willig; and Chaver Beth Din Rabbi Michael Brojde. In particular, the author wishes to thank Rabbi Willig for his significant contributions to this piece.

ברביעי בשבת בשלשה ימים לירח אב שנת חמשה אלפים ושיש מאות ושישים ודלשע
לבריאת עולם למניין שאנו מניין כאן בפניסק מותא דיתבא על זהר פניקה ועל זהר
סטרומן ועל מי מעינות אנה המוכנה המוכנה
העומר היום בפניסק מותא דיתבא על זהר פניקה ועל זהר סטרומן ועל מי מעינות
צבתי ברעות נפשי בדלא אדנסא ושבקית ופטריית ותרוכית יתוכי ליכי אנה
אנתתי דמתקריא המוכנה העומדת היום
בפניסק מותא דיתבא על זהר פניקה ועל זהר סטרומן ועל מי מעינות דהוידת
אנתתי מן קדמות דנא וכדן פטריית ושבקית ותרוכית יתוכי ליכי דיתידהוויימן
רשאה ושלטאה בנפשיכי למתקן להתנסבא לכל זכר דיתיצביימן ואתש
לא ימחא ביריבי מן יזמא דנן וכל עלם והרי את מותרת לכל אדם
ודן די יהוי ליכי מנא ספר הרובין ואזרת שבוקין ונע פטון
משה יצחק בן אשר עד
אשר בן צבי עד

This particular get was written 91 years ago in Pinsk. The x-incisions in the center indicate that the get was given and accepted. The names of the divorcing parties have been blurred in this reproduction.

spouse cannot or will not cooperate in the *get* process.

An important way in which the Beth Din of America facilitates *gittin* is to encourage the use of pre-nuptial agreements which (a) require the parties to submit to the Beth Din of America in the event of divorce, and (b) concretize the support obligation incumbent upon the husband while the marriage is still in existence. The Beth Din of America has arranged for *gittin* in many cases where the couple had previously signed a pre-nuptial agreement to submit to the Beth Din in the event of marital separation. Indeed, the pre-nuptial agreement has proven to be a most potent device to prevent *agunah* situations. The Beth Din strongly encourages marrying couples to enter into legally binding and halachically endorsed pre-nuptial agreements, submitting to the jurisdiction of the Beth Din of America in the event of divorce.

We should note that, as an additional protection to the parties and the integrity of the process, the Beth Din of America, as a matter of policy, does not allow *toanim* [rabbinic advocates] to participate in proceedings before the Beth Din.¹¹ We also discourage the use of *zabla*¹² except in limited cases whereby parties choose their *borerim* from a roster of *dayanim* who are members of the Beth Din and have been found to be trustworthy and scrupulous individuals.

In America today, many divorcing couples unfortunately choose to adjudicate their marital disputes in secular court rather than in *beit din*. This phenomenon can be explained in part based on the following concerns:

1. Parties fear that a decision of *beit din* will not be enforceable.

However, decisions of a *beit din* are routinely upheld by courts, provided that the parties have entered into a binding arbitration agreement and the *beit din* has complied with the procedural requirements of arbitration law (such as allowing each party to be represented by counsel, providing the parties with a fair opportunity to present their cases, not exceeding the scope of

the jurisdiction, etc.).¹³ The Beth Din of America, for example, requires parties to enter into a legally binding arbitration agreement [*sh'tar birurim*] in accordance with New York law CPLR §75 and also presents the parties with a brochure of its Rules and Procedures prior to each hearing so that the parties are fully aware of their procedural rights. A copy of the Beth Din's Rules and Procedures is available at our web site at www.bethdin.org.

2. Parties sometimes justify their failure to go to a *beit din* on the grounds that a *beit din* lacks the ability of a secular court to handle a divorce case, especially a complicated one.

Parties are not wrong to search for a "proper" *beit din* (see *Sanhedrin* 32b) which should, at a minimum, be competent, fair, thorough and professional. However, the fact is that competent *batei din* do exist. Perhaps the more relevant concern is that parties want to make sure that the *beit din* which hears their case is in touch with their values or the dynamics of their community. The best way to ensure that such a *beit din* hears the divorce case is for couples to stipulate in their pre-nuptial agreement that in the event of a dispute, upon divorce, they will submit to a particular *beit din* which both parties deem acceptable.

Situations sometimes arise whereupon one spouse is prepared to submit to a competent *beit din* to handle the divorce, but the other is not. Often, it is the woman who refuses to submit to a *beit din* for all aspects of the divorce (other than the *get*), based on the fear that *beit din* is "prejudiced" in favor of men. However, as a matter of Jewish law, a *beit din* is not permitted to be prejudiced in favor of either party. Certainly, competent *batei din* are careful not to violate this basic tenet of Jewish legal procedure. In addition, if one spouse refuses to come

to *beit din* when the other spouse is prepared to come to *beit din*, that spouse is considered "recalcitrant" as a matter of Jewish law, and may thus be subject to a *seruv* [public contempt order] for refusal to appear before *beit din*.

Nonetheless, it is our view that a refusal by a woman (who has been summoned to *beit din* by her husband) to have *beit din* handle all aspects of her divorce case (other than the *get*) does not exonerate her husband from his moral obligation to give her a *get* in a situation where the marriage is clearly over. This is for a number of reasons. First, many such women today are under the mistaken impression that there is no obligation to go to *beit din* when it comes to divorce matters (other than the *get*) and therefore it is hard to categorize them as "willfully" recalcitrant. Secondly, even if one party acts wrongly to the other, it is *never* correct for either the husband to withhold a *get* or for the wife to refuse a *get* when a marriage is clearly over. Thirdly, there are certain cases where the *beit din* may conclude that the husband himself is not observant and ordinarily would not come to *beit din*, but is only coming to *beit din* in his divorce case because he thinks that by doing so he will be able to "get a better deal" or be able to embarrass his wife with a *seruv* because he knows that she will not submit to *beit din*. In such cases, there is no obligation upon *beit din* to accommodate the husband's newfound "piety" to the detriment of the woman. Of course, when appropriate, the Beth Din of America will issue a *seruv* against any party who refuses to submit to *beit din*, including a divorcing spouse, but this in no way derogates against the Beth Din's insistence that a *get* be delivered at the conclusion of the marriage. A *get* should never be used as a "weapon."

Regrettably, there are certain people who try to abuse the institution of *beit din* to their personal advantage. For example, there are cases in which a non-observant man and wife agree to be divorced through the civil courts,

and the man only “dons his *kippah*” and demands that the wife come to *beit din* for a rehearing after he is unsatisfied with the civil court verdict. It is improper to issue a *seruv* against the woman in such a case for refusal to come to *beit din*, and certainly wrong for the man to refuse to give her a *get*. It is a requirement of *batei din* to preserve the dignity of *beit din* and not allow the institution of *beit din* to be abused by such unscrupulous individuals.¹⁴ Fortunately, most individuals within our community, respectful of our Torah value system, would never take measures to prevent their spouse from remarrying once a marriage has ended. It is the role of *beit din* to reinforce Torah values and to sanctify the name of Heaven in the process. **1A**

Notes

1. A *get* is a Jewish divorce document delivered by a man to his wife in order to effectuate their divorce according to Jewish law. See *Devarim* 24:1-4; *Shulchan Aruch, Even Haezer* 119-154.
2. See *Kiddushin* 6a: “*Kol Sheyyno Yodea*,” and the commentary of Rashi thereto.
3. See *Shmot* 18:13-27.
4. As a general rule, the Beth Din of America encourages divorcing spouses to resolve their differences through mediation (and employs the services of an experienced divorce mediator). Through the mediation process, which is strongly encouraged by Jewish law, the parties can avoid much of the acrimony that often results from litigation.
5. As a general rule, in order for a person to be permitted to go to secular court, he/she must obtain a *heter arkaot* [written permission to go to secular court] from a respected *beit din* or other rabbinic authority. Examples of cases where such a *heter* may be issued are: (a) where the other party refuses to submit to *beit din*, or (b) if the case is deemed by a competent halachic authority to be a type of case which *beit din* is incapable of handling (see *Choshen Mishpat* 26, *Kol Kitvei HaRav Henkin* 2:174-177). Some authorities are of the opinion that there is no need for a *heter arkaot* when the defendant is a secular Jew who would clearly not submit to *beit din*. In any individual case, a competent rabbi should be consulted.
6. See *Beit Yosef, Choshen Mishpat* 1; *Avot*

- 1:18; *Sefer Meirat Eynaim, Choshen Mishpat* 12:8.
7. This article does not address marital counseling issues in cases where a marriage can still be saved. When appropriate, the Beth Din of America refers parties to qualified marital counselors.
8. See, e.g., *Igrot Moshe Y”D* 1:249, *Minchot Yitzchak* 1:1, 1:98, *Tzitz Eliezer* 5:24, *Teshuvot Chatam Sofer*, 1:145, *She’alat Ya’abetz* 1:32.
9. An *agunah*, broadly defined, is a woman who is no longer in a functional marriage and who cannot remarry because her husband cannot or will not give her a *get* and is also not known to be dead. As a general rule, a marriage is no longer functional and a *get* should therefore be given in any case where a husband and wife no longer desire to live together as husband and wife or if a *beit din* concludes that there is no chance for *shalom bayit* [reconciliation] between them. See *Igrot Moshe, Y”D* 4:15, *Kol Kitvei HaRav Henkin* 1:115 a-b.
10. See *Taz, E”H* 119:12, *Maharsham* 6:140.
11. See *Pitchei Teshuvah, Choshen Mishpat* 17:15.
12. *Zabla* is a procedure whereby each litigant selects one of the arbitrators in the panel and then the two arbitrators [*borerim*] select the third and final arbitrator.
13. One area where courts exercise a very strict standard for review of *beit din* decisions is in the area of child custody. However, not every case involves child custody determinations. Additionally, many divorcing couples do submit to *beit din* for custody issues as well, based on their readiness to comply with the decision of the *beit din*. In fact, the reality is that, provided that a *beit din* demonstrates that its decision is based on the “best

interests of the children,” courts are likely to enforce a decision of the *beit din* even in child custody matters. The Beth Din of America has decided a number of cases involving child custody issues and regularly employs child therapists and professional experts to assist in the Beth Din’s determination. No child custody matter resolved by the Beth Din of America has been overturned in secular court.
14. See *Teshuvot VeHanhagot* 1:795.

To contact the Beth Din of America
Call Rabbi Jonathan Reiss,
(212) 807-9042
E-mail: menahel@bethdin.org
Web site: www.bethdin.org

