

LETTERS TO THE EDITOR

Yashar Prenuptial

THE *Yashar Prenuptial Agreement*, described in “A Prenuptial Agreement by and for the Haredi Community” (*Hakirah* 27), includes a number of features worthy of wider adoption. However, its paragraph 37, as written, is problematic. This paragraph (summarized as point 11 in the “Highlights” section of the article) reads as follows: ‘The parties agree not to resort to *Heter Meah Rabonim*, *Heter Nisuin* or *Bitul Kedushin* [annulment of the marriage] if the wife is willing and able to accept a *get* [a Jewish divorce].’ Even a person who is not learned in the fine points of the Laws of Marriage and Divorce can see at once that this clause has an internal inconsistency.

If the three Hebrew terms listed all refer to remedies that only a husband could ever employ, then there is no need for the wife to waive the option of using them; having her do so is a pointless exercise. On the other hand, if one or more of them could be used by the wife in some set of circumstances, then why would she ever voluntarily commit herself not to do so in the situation where she is willing and able to accept a *get*, but her husband is not willing and able to give one?

Whether *bitul kedushin b'ilas mekach ta'us machmas mum ba-baal* is,

under any circumstances, ‘a thing,’ as the current popular idiom puts it, is far too broad a topic to discuss in a letter. But whether it is or whether it is not, in neither case does having the *kallah* waive it, in advance and unconditionally, promote the goal of preventing *iggun*. I personally would advise a *kallah* against signing the *Yashar Prenuptial Agreement* unless either the subject of Clause 37 is amended to refer to the husband alone, or its final condition is amended to refer to the cooperation of both parties in giving and receiving a *get*.

David Hoffman
Jerusalem

ON P. 96, HESHEY ZELCER reports that R. Elazar Muskin stated that R. Shmuel Fuerst ‘now supports signing the RCA prenuptial.’ Alas, this is a false report. What Rabbi Muskin actually stated is that Rabbi Fuerst supports signing a prenuptial, but in no way has Rabbi Muskin ever claimed that Rabbi Fuerst endorses the particular prenuptial popularized by the RCA.

On pp. 97-98, Zelcer cites *Iggerot Moshe, Even ha-Ezer* IV, no. 107 as a precedent for his *Yashar Prenuptial Agreement*. Alas, Zelcer fails to take into account the two variant versions of this *Iggerot Moshe* responsum, and the halakhic ramifications that may emerge from this

discrepancy. See Section R of my online essay for elucidation.

On p. 98, Zelcer claims that the *Yashar Prenuptial Agreement* stipulates that ‘within its first session, Beit Din will set an interim payment amount that the husband must pay the wife for the continuation of the household, and for the children to continue to attend *yeshivot*.’ Alas, this is a complete fabrication. Nowhere in the *Yashar Prenuptial Agreement* is such a financial penalty on the husband ever stipulated.

Shalom C. Spira
Montreal

Heshey Zelcer responds:

I thank David Hoffman and Shalom Spira for their thoughtful and articulate comments.

Regarding David Hoffman’s critique of paragraph 37 of the *Yashar Agreement* (actually paragraph 36 in the current version), it was inserted at the insistence of a *rav* who helped formulate the *Yashar Prenuptial Agreement* and who gave his approbation. I do not and cannot speak for the *rav* but I assume his intent was to avoid using extreme halakhic solutions, and instead commit the couple to negotiate the dissolution of their marriage—as quickly and painlessly as possible—with the context of a Beth Din they had both chosen. Without a prenuptial agreement it can take months for the parties to agree upon a venue.

David Hoffman is correct that by signing the *Yashar Prenuptial Agreement* the *kallah* gives up her ability to utilize *Bitul Kedushin* to dissolve their marriage. *Bitul Kedushin*, however, also has its dark side. When granted by a Beth Din based on subjective criteria, it could leave the woman vulnerable—even many years later—to charges by a vengeful ex-husband that she was not really a *penuah*, a single woman, when she remarried.

Regarding Shalom Spira’s comment concerning Rabbi Shmuel Fuerst’s view of the *RCA Prenuptial Agreement*: While the quoted article may be ambiguous as to which prenuptial agreement Rabbi Shmuel Fuerst is referring, there is nothing ambiguous about Rabbi Fuerst’s position regarding the *RCA Prenuptial Agreement*. On December 15, 2019, Rabbi Fuerst spoke at K’hal Ner L-Meiah in Flatbush at the invitation of its Rav, Rabbi Baruch Goldstein. In front of approximately one hundred people, Rabbi Fuerst declared clearly and forcefully that he supports the *RCA Prenuptial Agreement*. He was less enthusiastic about the *Yashar Prenuptial Agreement* as he felt it was not as forceful as the *RCA Prenuptial Agreement* in compelling the husband to provide substantial financial support for his family.¹

¹ Rabbi Shmuel Fuerst’s complete lecture can be heard at <https://www.torahanytime.com/#/lectures?v=90435> (beginning 03:45).

Rabbi Moshe Feinstein's *teshuva* (*Even ha-Ezer* IV, no. 107) cited in my article—as an example of ‘A *bareidi* precedent in the US for a prenuptial agreement’—is a faithful translation of the *teshuva* as printed in *Iggerot Moshe*.

I am puzzled why R. Spira refers to financial support undertaken by the husband as a ‘penalty’. As for his charge of ‘complete fabrication’ of a non-existent statement in the *Yashar Prenuptial*

Agreement, see paragraph 16 of the *Yashar Prenuptial Agreement* which states: ‘At the initial session, Beth Din shall outline the issues between the Parties and make a determination of the interim payments necessary to ensure that the lifestyle of the un-emancipated children of the household (if any) can be maintained, and that they can continue to attend yeshiva.’

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