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Prenuptial Agreements in Talmudic, Medieval, and Modern Jewish Thought

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ONE OF THE QUESTIONS frequently posed in contested divorces is how to assess the value of a *ketubah*, the marriage contract that serves as an indispensable part of every Jewish wedding. People generally understand that the *ketubah* describes the Jewish law obligations of a husband toward his wife during marriage, as well as his financial obligations upon death or divorce. For example, the standard form *ketubah* states that the husband obligates himself to pay his wife 200 *zuz* as well as 200 *zekukim* of silver upon death or divorce. However, many people view the *ketubah* more as a quaint symbol of the marriage ritual rather than as a legally enforceable document. What happens, however, when one party seeks to enforce their *ketubah* rights?

This chapter will explore three different issues related to enforcing *ketubot*.[1] The first is the value—in dollars—of the payments mentioned in the *ketubah*. The second is whether the *ketubah* is still an enforceable agreement in cases of divorce according to Jewish law, in light of Rabbeinu Gershom's ban on coerced divorce. Finally, this chapter discusses whether a *ketubah* creates a contract legally enforceable in American law.

THE DOLLAR VALUE OF THE *KETUBAH*

Zuzim, Zekukim, and Dollars

The *ketubah* recounts the following recitation of obligations by the husband:

> Be thou my wife in accordance with the laws of Moses and Israel, and I will work, honor, support, and maintain you in accordance with the practices of Jewish husbands who work, honor, support, and maintain their wives in faithfulness. And I will give you 200 *zuz* as dowry for your chastity which is due to you under the law of the Torah as well as food, clothing, needs, and cohabitation according to the way of the world.[2]

The Talmud makes clear mention of the fact that the standard amount of money in a *ketubah* was 200 *zuz* for a first marriage.[3]

The amount of 200 *zuz* is equivalent to 50 *shekalim* in the Jewish monetary system.[4] Each *shekel* is generally valued at approximately 20 grams of silver,[5] so that 200 *zuz*, strictly speaking, should equal the value of about 1000 grams of silver, or one kilogram (2.2 pounds) of silver.[6] Other halakhic (Jewish law) authorities posit an even lower amount as many Sephardic authorities rule that the *ketubah* can be paid in diluted silver (called *kesef ha-medinah*, commercial grade silver) which might only contain as little as 120 grams of silver in 200 *zuz*.[7] Thus, if the *ketubah* is valued by the silver content of 200 *zuz*, it is a paltry amount.[8]

The standard Ashkenazi *ketubah* also recounts as follows:

> The dowry that she brought from her father's home in silver, gold, ornaments, clothing, household furnishing, and her clothes amounting in all to the value of 100 *zekukim* of pure silver, the groom has taken upon himself. The groom has also consented to match the above sum by adding the sum of 100 *zekukim* of pure silver making a total in all of 200 *zekukim* of pure silver.

Based on this recounting of the pre-agreed upon value of the assets of the wife, Ashkenazi halakhic authorities concluded that it would be more appropriate to value the *ketubah* in accordance with his understanding of the value of the "200 *zekukim* of pure silver" that are added in every standard *ketubah* in addition to the base amount of 200 *zuz* that is the husband's obligation, as this amount also needs to be returned to the wife upon divorce.[9]

However, *zekukim* is not a talmudic term, and there is quite a bit of disagreement as to what it means and what coin it refers to. Rabbi Moses Feinstein places the value of 200 *zekukim* of silver at 100 pounds of silver (approximately 45.5 kilograms).[10] A similar such view can be found in the rulings of Rabbi Abraham Isaiah Karelitz[11] who posits that the value is closer to 127 pounds of silver (approximately 57 kilograms).[12] Both of these views assume that the term *zekukim* is a reference to a large medieval coin of considerable value. Each *zakuk* weighs half a pound or more.

There are at least two other viewpoints concerning the valuation of the 200 *zekukim* of silver described in the *ketubah*: the first is that of Rabbi Ḥayyim Na'eh,[13] who ruled that the value of 200 *zekukim* is 8.5 pounds of silver (approximately 3.85 kilograms).[14] Yet others have posited that the term *zekukim* reflects some other coin, and 200 *zekukim* are valued at between 10 and 14 pounds of silver.[15] Many Sephardic decisors posit that the 200 *zekukim* can be paid with diluted silver, thus drastically reducing the amount that needs to be paid.[16]

Once we value the *ketubah* based on no more than 200 *zekukim* of silver and follow the view of Rabbi Feinstein or Rabbi Karelitz concerning the amount (rather than focusing on the base amount of 200 *zuz*), most decisors generally follow the view of the author of the *Beit Shmu'el*[17] that we do not separately add the value of the base *ketubah* obligation of 200 *zuz* to our calculation but rather consider everything included in the 200 *zekukim* of silver, since the face value of 200 *zuz*, as noted earlier, represents such a paltry amount in comparison to 200 *zekukim* that it is considered to be subsumed within that amount (although it may be appropriate to add the 200 *zuz* separately if the view of Rabbi Ḥayyim Na'eh is adopted).[18]

One final view is worth noting. The Mishnah and the Jerusalem Talmud[19] indicate that the base amount of "200 *zuz*" is meant to correspond to a year's worth of support for a single person.[20] Commentators Rabbi Samson of Sens and Rabbi Obadiah Bertinoro state explicitly, "One who has 200 *zuz* cannot take charity, as this amount [200 *zuz*] is the cost of food and clothes for a year."[21] Based on this understanding of the function of 200 *zuz* as a year's support, it has been the practice of a number of rabbinic tribunals to assess the 200 *zuz* in the *ketubah* in accordance with the amount of contemporary currency that would reasonably correspond to one year's support even if this amount is far in excess of the formal value of the silver coinage described in the *ketubah* document itself.[22] By this measure, all Jewish law weights and measures change, as it is their food-and-goods purchasing power (in dollars) that the talmudic rabbis focused on, and not their silver content.[23] The silver coins used in the *ketubah* represented certain values corresponding to

different purchasing power, but did not necessarily establish a fixed value for all time based on the worth of the silver alone. Therefore, some decisors have concluded that, irrespective of the current value of silver, the value of the *ketubah* should be equivalent to one year's support.[24]

A Sample Calculation in Dollars

A troy ounce of 99.9 percent silver was worth approximately $4.60 on August 6, 2002, in the New York City silver spot market, and this can be used to calculate the value of a *ketubah*, according to the various views.[25] The net cost on that day for actual delivery of one ounce of pure silver was about $5.60 per ounce.[26]

1. The current value of the *ketubah* (*zuzim* plus *zekukim*) according to Rabbi Karelitz (*Ḥazon Ish*) would be approximately $10,263.
2. The current value of the *ketubah* (*zuzim* plus *zekukim*) according to Rabbi Feinstein would be approximately $8,192.
3. The current value of the *ketubah* (*zuzim* plus *zekukim*) according to Rabbi Ḥayyim Na'eh would be approximately $693.
4. The value of 200 *zuz* alone[27] would be approximately $180.[28]
5. The value of the *ketubah* as one year's support would be between $15,000 and $55,000.[29]

Each of these amounts (except for the last) would be reduced by 87.5 percent according to those Sephardic authorities who allow for diluted silver *(kesef ha-medinah),* which is only one-eighth silver (although nearly no Ashkenazic decisors accept this view).[30]

How to Rule on This Dispute

Given the diversity of views found in the normative halakhah, whose view should be followed? Three different answers to that question exist.

One view is that matters of ambiguity in a document are decided against the one who is seeking enforcement. Thus Rabbi Ovadia Yosef and Rabbi Joseph Kapach adopt the view that the woman receives the lowest amount plausible, as she bears the burden of proof, which she cannot meet.[31] (A similar such view is suggested by Rabbi Ḥayyim Zimbalist of the Israeli Rabbinical Court of Appeals in a letter to a member of the Beth Din of America.)[32]

Another possible answer is accepted by Rabbi Mordechai Eliyahu, who posits that normative Jewish law accepts the view of Rabbi Feinstein and

Rabbi Karelitz (*Ḥazon Ish*), and that a *ketubah* is worth about 120 pounds of silver.[33] Indeed, a strong claim could be made that *minhag* Ashkenaz (the custom of European-based Jewry) is to follow this view, and it is only Sephardic decisors (such as Rabbis Yosef and Kapach, above) who reject this view.[34] For that reason, all Ashkenazi *ketubot* make clear reference to the 200 *zekukim* standard, rather than the Sephardic practice of varying the amount depending on the woman and man.

Another possible answer is that matters of interpretation have a local context, particularly in words such as *zekukim* that are ill defined, and that local custom should be followed on these matters; in America, this is a strong argument to follow the view of Rabbi Feinstein in evaluating the *ketubah*, inasmuch as Rabbi Feinstein was the preeminent decisor for American Jewry.[35]

This view is additionally supported by the basic talmudic principle that the purpose of the *ketubah* was to mandate payments in cases of divorce high enough so that a man would not hastily divorce his wife. Payments of $25, $100, or even $1,000 hardly accomplish this talmudic mandate. Consistent with this notion, it is noteworthy that Rabbi Feinstein dismissed the European practice of evaluating the *ketubah* at 75 rubles because this sum would be laughably small nowadays.[36]

All of this, however, assumes that the *ketubah* is of worth in resolving financial disputes related to divorce. As explained below, that is subject to dispute.

IS A *KETUBAH* ENFORCEABLE AS A MATTER OF JEWISH LAW?

Talmudic Rules

The intrinsic nature of marriage and divorce in Jewish law is different from that of any other mainstream legal or religious system in that entry into marriage and exit from marriage through divorce are private contractual rights rather than public rights. Thus, in the Jewish view, one does not need a governmental "license" to marry or divorce. Private marriages are fundamentally proper, and governmental or even hierarchical (within the faith) regulation of marriage or divorce is the exception rather than the rule.[37]

This view of entry into and exit from marriage as contractual doctrines is basic and obvious to those familiar with the rudiments of talmudic Jewish law. While the Talmud imposes some limitations on the private right to marry (such as castigating one who marries through a sexual act alone, without any public ceremony)[38] and the *Shulḥan `Arukh* imposes other require-

ments (such as insisting that there be an engagement period),[39] basic Jewish law treats entry into marriage as one of private contract requiring the consent of both parties.[40]

Exit from marriage was also purely contractual (except in cases of fault), but according to Torah law, was a unilateral contract that did not require the wife's consent. Thus, according to unmodified Torah law, exit from marriage was drastically different from entry into marriage. Divorce did not require the consent of both parties. The marriage could end (absent fault) when the husband alone wished to end it. Marriage was imbalanced in other ways as well; a man could be married to more than one wife, any of whom he could divorce at will, whereas a woman could be married to only one man at a time, and she had no clearly defined right of exit, perhaps other than for fault.

From ancient times, and according to some authorities, in some marriages even according to Torah law, the husband's unrestricted right to divorce was curtailed through contractarian means, the *ketubah*.[41] The *ketubah* was a premarital contract agreed to by the husband and wife that contained terms regulating the conduct of each party in the marriage and discussing the financial terms should the marriage dissolve through divorce or death.[42] While the *ketubah* does not explicitly restrict the unilateral right of the husband to divorce his wife for any reason, it does impose a significant financial obligation on the husband should he do so without cause—he must pay her a considerable amount of money. Indeed, the Talmud readily states that the *ketubah* was instituted so that "it will not be easy [cheap] for him to divorce her."[43] In addition, and more significantly, the Talmud mandates that the couple may not commence a marital (sexual) relationship unless both the husband and wife have agreed on the provisions of the *ketubah* and one has been executed.[44]

Thus, while the right to divorce remained unilateral with the husband, with no right of consent by the wife, it was now restricted by a clear financial obligation imposed on the husband to compensate his wife if he exercised his right to engage in unilateral divorce (absent judicially declared fault on her part).[45] There are even views among the *rishonim* (medieval Jewish law authorities) that if the husband cannot pay the financial obligation, he is prohibited from divorcing her except in cases of fault.[46] Indeed, the wife, as a precondition to entry into the marriage, could insist on a *ketubah* payment higher than the minimum promulgated by the rabbis.[47] Of course, divorce could be by mutual consent, subject to whatever agreement the parties wished.

Thus in talmudic times, the economic rules for divorce were as follows:

1. The husband had a unilateral right to divorce and had to pay a pre-agreed upon amount to his wife (agreed to in the *ketubah*, but never less than 200 *zuz*) upon divorce, except in cases of fault.
2. There was divorce by mutual consent with payment to be determined by the parties.

Consequently, in a case where the husband wanted to divorce his wife, he could do so against her will and pay her the *ketubah*. She could not, absent default, sue for divorce as a general rule,[48] although she could perhaps restrict his rights through a *ketubah* provision.[49]

The Impact of the Ban of Excommunication of Rabbeinu Gershom Concerning Coerced Divorce and Polygamy

In the eleventh century Rabbeinu Gershom, through his bans on polygamy and forced divorce, changed the basic Jewish law in divorce. The decree of Rabbeinu Gershom[50] was enacted for a variety of reasons, and in order to equalize the rights of the husband and wife to divorce, it was necessary to restrict the rights of the husband and prohibit unilateral no-fault divorce by him.[51] Divorce was limited to cases of provable fault or mutual consent. In addition, Rabbi Jacob ben Meir Tam posited, and the normative Jewish law accepted, that fault was narrowed to exclude cases of soft fault such as unprovable repugnancy, and in only a few cases could the husband be actually forced to divorce his wife or the reverse.[52]

Equally significant, the decrees of Rabbeinu Gershom prohibited polygamy, thus placing considerable pressure on the man in a marriage that was ending to actually divorce his wife, since not only would she not be allowed to remarry, but neither would he.[53] According to *ḥerem de-Rabbeinu Gershom*, Jewish law now permitted divorce only through mutual consent or fault on either part.

Since the promulgation of the ban in the name of Rabbeinu Gershom against divorcing a woman without her consent or without a showing of hard fault, the basic issue of the value of the *ketubah* itself has come into question.[54] As the talmudic rabbis instituted the *ketubah* payments so as to deter the husband from rashly divorcing a wife, the basic value and purpose of the *ketubah* in cases of divorce is limited to cases where the husband can divorce his wife without her consent, and yet has to pay the *ketubah*. However, in cases where the husband cannot divorce his wife without her

consent, there is no need or purpose to a *ketubah*. For example, Maimonides and *Shulḥan `Arukh* both agree that when a man rapes a woman and thus has to marry her if she wishes to marry him, and may not divorce her, there is no *ketubah* payment.[55] *Shulḥan `Arukh* states in such a case:

> A man who rapes a woman who is a virgin is obligated to marry her, so long as she and/or her father wish to marry him, even if she is crippled or blind, and he is not permitted to divorce her forever, except with her consent, and thus he does not have to write her a *ketubah*. If he sins, and divorces her, a rabbinical court forces him to remarry her.[56]

The logic seems clear. Since he cannot divorce her under any circumstances without her consent, the presence or absence of a *ketubah* seems to make no difference to her economic status or marital security. When they want to both get divorced, they will agree on financial terms independent of the *ketubah*, and until then, the *ketubah* sets no payment schedule. Should she insist that she only will consent to be divorced if he gives her $1,000,000 in buffalo nickels, they either reach an agreement or stay married. The *ketubah* serves no economic purpose in divorce.[57]

This case stands in clear contrast to the standard marriage in talmudic times. In such a marriage, prior to being wed the husband and wife negotiated over the amount the husband would have to pay the wife if he divorced her against her will or he died. She could not prevent the husband from divorcing her, except by setting the payment level high enough that the husband was economically deterred from divorce by dint of its cost.

All this changed in light of the two decrees of Rabbeinu Gershom. Rabbeinu Gershom decreed that a man may not divorce his wife without her consent, except in cases of serious fault on her part, and a man may not marry a second wife under any circumstances. The net effect of these two decrees was to impose a form of parity of rights in a marriage. Neither the husband nor the wife could ever compel divorce, except in cases of fault, and in cases of fault both could.[58]

What then is the purpose of the *ketubah* in cases of divorce after the ban on polygamy and unilateral no-fault divorce? Rabbi Moses Isserles (*Rama*) provides an important answer. He states in the beginning of his discussion of the laws of *ketubah*:

> See *Shulḥan `Arukh*, Even ha-`Ezer 177:3[59] where it states that in a situation where one only may divorce with the consent of the woman, one does not need a *ketubah*. Thus, nowadays, in our countries, where we

> do not divorce against the will of the wife because of the ban of Rabbeinu Gershom, as explained in Even ha-`Ezer 119, it is possible to be lenient and not write a *ketubah* at all; but this is not the custom and one should not change it.[60]

Almost all of the classical commentators disagree with this gloss of Rabbi Isserles and rule that one still needs a *ketubah* even after the ban of Rabbeinu Gershom, although such is not required in cases of rape. Rabbi Moses ben Isaac Lema of Krakow in his *Ḥelqat Meḥoqeq* (1770), Rabbi Samuel ben Uri Shraga Feibusch in his *Beit Shmu'el* (1794), and Rabbi Elijah of Vilna in his glosses (1819) on the *Shulḥan `Arukh* all state that one should not rely on this view, as one could distinguish between a rabbinic ban and a Torah prohibition to divorce.[61] Rabbi Judah Rosens in his *Mishneh la-Melekh* commentary on Maimonides posits that since there was a rabbinical decree mandating a *ketubah*, latter rabbinic authorities are incapable of repealing that obligation, and thus Rabbi Isserles ought not be relied on, even as the *ketubah* serves no clear purpose anymore, as we are powerless to change the talmudic decree mandating a *ketubah* even as it no longer serves its purpose in cases of divorce.[62]

Rabbi Shlomo Reisner in his *Avnei Mishpat* (1902)[63] argues that Rabbi Isserles's central analogy is incorrect, in that the *ketubah* serves a purpose in the case of widowhood; the talmudic sages did not decree a *ketubah* even in the case of widowhood in the case of a rape victim who marries the rapist, as the mandatory payment of 50 *shekalim* directed by the Torah as his punishment was equal (not by coincidence, either, it is claimed[64]), to the value of the *ketubah*. So too the *ketubah* establishes rights in the marriage itself that can be enforced, and death benefits, and effects rights in cases of *ḥalitsah* (levirate separation) as well.[65]

Indeed, the custom and practice is not to follow the possibility suggested by Rabbi Isserles,[66] without other lenient factors present as well.[67] Thus every Jewish wedding still starts with a *ketubah*, as Rabbi Isserles himself notes to be the custom.

However, no one argues with the basic economic assertion of Rabbi Isserles: the purpose of the *ketubah* written to impose a cost on the husband for divorce—so that he should not divorce his wife rashly—has become moot; this basic purpose has been overtaken by the ban of Rabbeinu Gershom, which simply prohibited what the talmudic sages sought to discourage. The *ketubah* neither establishes nor effects nor modifies any economic rights in cases of divorce without fault in places where *ḥerem de-Rabbeinu Gershom* is accepted.[68] In situations where *ḥerem de-Rabbeinu*

Gershom is not applicable due to misconduct, fault is always found, and thus no *ketubah* payment is mandated by Jewish law. The only practical case where the *ketubah* is relevant is where the husband's fault generates the grounds for divorce, and the wife seeks a divorce grounded in her husband's fault and seeks payment of the *ketubah*.[69] Although it might have some value in cases of widowhood as well as a matter of theory, normally it does not.[70]

Consider the observation of Rabbi Moses Feinstein on this matter. He states:

> The value of the *ketubah* is not known to rabbis and decisors of Jewish law, or rabbinical court judges; indeed we have not examined this matter intensely as for all matter of divorce it has no practical ramifications, since it is impossible for the man to divorce against the will of the woman, [the economics of] divorce are dependent on who desires to be divorced, and who thus provides a large sum of money as they wish to give or receive a divorce.[71]

Elsewhere Rabbi Feinstein writes:

> I will write briefly the value of the *ketubah* in America nowadays, for use in those circumstances where it is needed. One should know that in divorce there is no place for evaluating the *ketubah*, since the ban of Rabbeinu Gershom prohibited a man from divorcing his wife without her consent. Thus, divorce is dependent on who wants to give or receive the *get* and who will give or receive money as an inducement. But it is relevant to a widow, or a *yevamah* [levirate widow] who wishes to have *ḥalitsah* [levirate separation] done, and who wishes to have her *ketubah* paid from the assets of the brother who is doing *ḥalitsah* [her deceased husband].[72] Only infrequently, in farfetched cases, is it relevant to divorce, such as when she agrees to be divorced, only if she is paid the amount owed by her *ketubah*.[73]

A simple example from commercial law helps explain the point of Rabbi Feinstein in divorce law. Suppose someone owns a painting that another likes. The fair market value of this painting is $100. For how much must this owner of the painting sell the painting to the one who wishes to buy it? The answer is that Jewish law does not provide a price. The seller need sell it only at a price at which he or she is comfortable selling it, and the buyer need buy it only at a price at which the buyer is comfortable buying it (so long as they are both aware of the fact that the fair market value is $100). The same is

true for a divorce, Rabbi Feinstein posits, after the ban of Rabbeinu Gershom absent a finding of fault—neither party needs to consent to divorce unless he or she agrees to a financial arrangement or agrees to go to a rabbinical adjudication about this matter, and the rabbinical court then resolves the matter in accordance with the rules of compromise or equity.[74] If they cannot work out a deal, or agree on a compromise or a process of compromise, divorce cannot be compelled.

THE ENFORCEABILITY OF THE *KETUBAH* IN AMERICAN LAW

The enforceability in American law of the *ketubah* payment is a matter that has rarely been litigated, and there is not a single case where a court has enforced the *ketubah* obligation to mandate a payment. Consider, for example, in 1974 a widow tried to collect the amount of the *ketubah* given by her late husband and claimed that the *ketubah* superseded her prior waiver of any future claims pursuant to a prenuptial agreement between herself and her husband. The *ketubah* had been signed after the prenuptial agreement, and thus, if it were a valid contract, would have superseded it. In denying her motion, the New York Supreme Court concluded that "even for the observant and Orthodox, the *ketubah* has become more a matter of form and a ceremonial document than a legal obligation."[75]

Although in a subsequent case the New York Court of Appeals enforced a provision of the *ketubah* pursuant to which the parties agreed to arbitrate future marital disputes before a *beit din*, the court did not revisit the issue of the enforceability of the financial obligations included in the *ketubah*.[76] While it is true that in dicta, an Arizona court suggested that financial obligations described in a *ketubah* could perhaps be enforceable if described with sufficient specificity,[77] the practice has never been to seek to conform the text of the *ketubah* to the contract requirements of American law.[78] The description of the financial obligations—in *zuzim* and *zekukim*, which require determinations of Jewish law to ascertain the proper value—are not considered sufficiently specific to be enforceable.[79] So too the absence of an English text (where either the husband or wife are not fluent in Aramaic and Hebrew) and the absence of signatures of the husband and wife would seem to make the *ketubah* void as a contract in American law.[80]

When might a *ketubah* be enforceable in the United States? When it is executed in a country (such as Israel) where it is recognized as legally enforceable. This is because American conflict of law rules might determine that the rules governing the validity of the *ketubah* are found in the location of the wedding, where the *ketubah* was a legally enforceable document.[81]

To the best of our knowledge, no American court has ever enforced the financial component of a *ketubah* written in America in cases of divorce or in cases of death.

CONCLUSION

The *ketubah* serves many valuable purposes, such as requiring the husband to affirm and memorialize his Jewish law obligations to support and honor his wife. Even though these obligations would be applicable even in the absence of the *ketubah*, the existence of a formal document memorializing these obligations serves as an important pastoral reminder of their vital role in a successful Jewish marriage. This chapter has focused, however, on the purpose and value of the *ketubah* in cases of divorce, which is where the Talmud most clearly saw the need for a *ketubah*. Not surprisingly, it is in cases of divorce where matters are most contested.[82] This chapter summarizes the value, worth, and enforceability of the *ketubah* in cases of divorce.

There are multiple views regarding how to assess the value of the 200 *zuz* and 200 *zekukim* described in the standard form *ketubah* as payable by the husband (or his estate) upon divorce or death. The breadth of the dispute—from a few hundred dollars to many thousands—is quite astonishing. What is the normative practice is also in dispute, and is hard to determine.

Additionally, as Rabbi Feinstein points out, since women today cannot be divorced against their will due to the famous eleventh-century enactment of Rabbeinu Gershom, a divorce today requires the husband to placate his wife with an amount that she would deem sufficient. Therefore, a woman can effectively "negotiate" for an amount greater than the value of the *ketubah* if her husband wishes to divorce her. Thus the calculation of the amount of the *ketubah* only becomes relevant in very limited cases, such as when both parties expressly stipulate that they want the payment amount from the husband to the wife upon divorce to be determined solely based on a rabbinical court's evaluation of the *ketubah*.

Hence, most couples never expect that the *ketubah* will actually be used for collection purposes and in fact the majority of Jewish women who have become divorced (or widowed) do not seek to collect their *ketubah* but rather use other channels to settle their claims. It is, therefore, virtually impossible to ascertain an established custom or practice with respect to the valuation of the *ketubah* in America.[83] Given these questions, it is not surprising that there is no clear halakhic answer relating to the value of the *ketubah*.

These three observations—that the *ketubah*'s value is low (and in dispute), its significance as a matter of Jewish divorce law limited, and its

enforceability in American law nearly impossible—also provide a posture to understand some of the cases of recalcitrant husbands (*`iggun*) in the Jewish community. Essentially, modern American law permits unilateral no-fault divorce. One spouse may seek divorce without the consent of the other, force a financial resolution of the marriage, and compel a divorce against the wishes of the other spouse. Jewish law did not permit unilateral no-fault divorce after the ban of Rabbeinu Gershom was accepted about a millennium ago, as it viewed the "right" of the husband to discard his wife without her consent to be religiously improper and thus banned it, just as the reverse is prohibited as well. What then happens as a matter of Jewish law in cases of Jewish divorce where there is no discernible fault? Either the parties sign a prenuptial agreement prior to marriage governing such cases, or they settle matters themselves after they realize that divorce is proper, or they agree to go to a *beit din* for compromise, or they do not get divorced.[84] Solving the problems of *agunot* in a manner that repeals the ban against forced divorce is contrary to Jewish law.[85] Of course, there are many occasions where the community can and should impose social sanctions and other noncoercive pressure on a person who will not give or receive a *get* when the marriage is functionally over, so that he will agree to give a *get*.[86]

The ideal resolution to all disputes, but particularly divorce, is for the parties to mediate their differences amicably and come to a mutually agreeable settlement or compromise with respect to all issues.[87]

NOTES

1. *Ketubot* is the plural of *ketubah*.

2. In cases where the woman was previously married or has converted to Judaism, the amounts written in the *ketubah* are generally 100 *zuz* for the base amount and 100 *zekukim* for the additional amount.

3. See, for example, Babylonian Talmud (hereafter BT) Ketubot 10b; Maimonides (1135–1204), Laws of Marriage (Ishut) 10:7; Rabbi Joseph Karo (1488–1575), *Shulḥan `Arukh*, Even ha-`Ezer 66:6.

4. A *pidyon ha-ben* (ceremonial redemption of the firstborn) requires five *sela`im* or *shekalim*, and in each *sela` Ishekel* there are four *dinarim*; a *dinar* and a *zuz* are the same amount. See "Dinar," *Encyclopedia Talmudit*, 7:398–406.

5. "Dinar," *Encyclopedia Talmudit*, 7:398–406.

6. Rabbi Abraham Isaiah Karelitz (1878–1953), *Ḥazon Ish*, Even ha-`Ezer 66:21, notes that much silver sells in the modern marketplace as only 84 percent silver, with the rest being additives, and thus one has to add 16 percent additional weight to sterling silver to make it "pure." In addition, Hazon Ish notes that one needs to factor the costs of delivery and taxes into the husband's payment obligations. In modern

America, silver sells in a number of different purity grades; pre-1965 coins are 90 percent silver and thus sell at a discount to the spot silver market for pure silver. Other silver coins are only 40 percent silver and thus sell at a deeper discount. For a discussion of the modern silver market, see www.certifiedmint/silver.htm.

7. See Rabbi Binyamin Adler, *Sefer ha-Nisu'in ke-Hilkhatam* (Jerusalem, 1983), 11:80–83.

8. Rabbi Karelitz himself posits that 200 *zuz* is worth only 570 grams of silver, or a little more than a pound.

9. Indeed, this is the standard and unchangeable text of the *ketubah* for Ashkenazim, increasing its universality and thus its enforceability. See "Nusaḥ ha-Ketubah," *Otsar ha-Posqim*, Even ha-`Ezer, 19:57–103.

10. Rabbi Moses Feinstein (1895–1986), *Igrot Mosheh*, Even ha-`Ezer 4:91–92.

11. *Ḥazon Ish*, Even ha-`Ezer 66:21.

12. Based on the comments of Rabbi Elijah of Vilna (Gra) to Shulḥan `Arukh, Yoreh De`ah 305:3.

13. Rabbi Avraham Ḥayyim Na'eh, *Shi`urei Torah* 50:44.

14. This amount is also consistent with, although perhaps not identical to, the view of Rabbi Samuel ben David Moses ha-Levi (c. 1625–1681), author of the *Naḥalat Shiv`ah*. See Adler, *Ha-Nisu'in ke-Hilkhatam* 11:97. (*Naḥalat Shiv`ah* 12:49 is sometimes quoted as holding that 200 *zekukim* is worth 2.5 times the value of 200 *zuz*, but probably held that 200 *zekukim* is closer to 3.75 times the value of 200 *zuz*.

15. See Rabbi Aryeh Kaplan, *Made in Heaven: A Jewish Wedding Guide* (New York, 1983), 113.

16. The Israeli work *Ha-nisu'in ke-Hilkhatam* 11:97 (n. 200) avers that such is the practice of the Israeli rabbinical courts.

17. Rabbi Samuel ben Uri Shraga Feibsuch (seventeenth century), *Beit Shmu'el* commentary to *Shulḥan `Arukh*, Even ha-`Ezer 66:15.

18. See Rabbi Joshua Falk Kohen (c. 1555–1614), *Derishah* portion of *Beit Yisra'el* commentary to *Arba`ah Turim*, Even ha-`Ezer 66:3. See generally Adler, *Ha-Nisu'in ke-Hilkhatam* 11:98.

19. M. Peah 8:7 (in the standard Mishnah, it is 8:8).

20. For an elaboration on this, with a full discussion of the many sources supporting this view, see Rabbi Ḥayim P. Benish, *SeferMidot ve-Shi`urei Torah* (Bene-Berak, 1986), 398–405. He explicitly states that in talmudic times 200 *zuz* was a year's support.

On a more theoretical level, there is a claim to be made that 200 *zuz* is not the amount needed for one year's support, but rather is the amount of principal needed to generate yearly income equal to a year's support. Thus a person with no skills and no job is considered poor if he or she has less than 200 *zuz* and may take charity, whereas a person with 200 *zuz* is never poor, even if he or she has no skills; *Shulḥan `Arukh*, Yoreh De`ah 253:1–2. This approach also explains why a widow is entitled to either perpetual support out of her husband's estate or her *ketubah* payments—the two serve the same purpose and are equal to the same amount; *Shulḥan `Arukh*, Even ha-`Ezer 93:3. However, these writers have found not a single halakhic authority who accepts this valuation of 200 *zuz* for the purposes of appraising the *ketubah*.

21. Commentary of Rabbi Samson of Sens (*Rash mi-Shants*, c. 1150–c. 1230) and commentary of Rabbi Obadiah Bertinoro (*Bartenura*, c. 1450–c. 1516) to M. Peah 8:8.

22. This view is clearly contemplated by Rabbi Falk in his glosses to the *Shulḥan `Arukh* entitled *Sefer Me'irat `Enayim* (known by its Hebrew acronym, Sema`), Ḥoshen Mishpat 88:2, and is perhaps accepted as correct by Rabbi Shabtai ben Meir ha-Kohen (1621–1662), *Siftei Kohen* (*Shakh*), Yoreh De`ah 305:1. (See also Falk's Derishah, Ḥoshen Mishpat 88, where he elaborates on the above *Sema`*.) See Aryeh Leib ben Joseph ha-Kohen Heller (c. 1745–1813), *Avnei Milu'im* 27:1, who avers that Rashi and Ritba accept this view. (But see *Ḥazon Ish*, Even ha-`Ezer 148, who posits that the Ritba rejects this view.) See also Rabbi Isaac ben Sheshet Perfet (1326–1408), *Responsa of Rivash* 153, who also poses this question but rejects the conclusion of the *Sema`*.

23. Indeed, there are significant halakhic authorities who suggest that this is the rule for most amounts found in the Talmud, such as the *perutah* or the *dinar*, which should be linked to the price of food for a day, or week or month or year. See *Sema`*, Ḥoshen Mishpat 88:2, who states that "according to this, nowadays, when one can purchase with a *perutah* only a very small amount, according to Jewish law we should say that a woman cannot marry with a *perutah*." A *perutah* in talmudic times was one-thirteenth of the amount a person needed to support himself for a day; see Benish, *Midot ve-Shi`urei Torah*, 401.

24. The mean cost of living in Switzerland is 1.67 percent of the mean cost of living in the United States ($167,000 in Switzerland purchases that which $100,000 purchases in America). The cost of living in Atlanta, Georgia, is less than half the cost of living in Manhattan.

25. One kilogram equals 32.15076 troy ounces. One gram equals 0.03215 troy ounces.

26. See *Ḥazon Ish* for an explanation. In order to actually purchase and take delivery of a 100-ounce silver bar one needs to add between 65 and 85 cents per ounce delivery fee plus sales tax of 6 percent. (Verified by operator at Certified Mint and noted as correct at http://certifiedmint.com. For this chapter, we assume an average of 75 cents.)

27. Representing the base amount of the *ketubah*, which is equivalent to 50 *shekalim*, which would be ten times the amount of the value of *pidyon ha-ben*.

28. See also *Piske-din shel bate ha-din ha-rabaniyim be-yisrael* (*PDR*, rulings of Israeli rabbinical courts), 11:362. According to these values, the current monetary value of the 5 *shekalim* that need to be given for *pidyon ha-ben*, which is variously evaluated at either 96 grams, 100 grams (or 101 grams of pure silver), would be between $14.20 (96 grams of silver) and $14.94 (101 grams of silver; 100 grams of silver would currently be $14.79). Since the 5 *shekalim* for *pidyon ha-ben* are equivalent to 3,840 *perutot*, it follows that the technical value of a *perutah* is currently less than half a penny.

29. And would vary depending on location; see note 24. If the possibility of 200 *zuz* being equal to perpetual support were seriously considered, the amount would be even more; but see the end of note 20.

30. See Adler, *Ha-Nisu'in ke-Hilkhatam* 11:77–83.

31. See the Israeli rabbinical court in *PDR* 11:362 (5740) in a *pesaq din* (ruling) cosigned by Rabbi Ovadia Yosef and Rabbi Joseph Kapach. See, for example, Yevamot 89a.

32. Letter of Rabbi Ḥayyim Gedalia Zimbalist dated Rosh Ḥodesh Menaḥem Av 5759 (July 14, 1999).

33. See the dissent by Rabbi Mordechai Eliyahu in Israeli rabbinical court in *PDR* 11:362 (5740).

34. Indeed no Ashkenazi decisor with the stature of these two authorities has argued with them.

35. This is explicitly noted as a significant factor by Rabbi Samuel de Medina (1506–1589), *Responsa of Maharashdam*, Even ha-`Ezer 187. Indeed, there is an open question as to whether one says that the one who is seeking to enforce a contract has the weaker hand in cases such as this where the woman had no hand in the crafting of the document; see for example, Rabbi Isaac Elḥanan Spektor (1817–1896), *Naḥal Yitsḥak* 61:4, who notes that there are cases where a document is constructed against the one who wrote it, and not against the one who is seeking to use it.

36. See Rabbi Moses Feinstein, *Igrot Mosheh*, Yoreh De`ah 1:189–191, where Rabbi Feinstein clearly endorses the view that the *ketubah* has to be an amount large enough to deter divorce no matter what the price of silver really is. Indeed a plausible argument can be advanced that Rabbi Feinstein fundamentally accepts the view that 200 *zuz* is a reference to a year's support, and that Rabbi Feinstein wrote his responsum *(teshuvah)* because the rapid increase in silver prices at the time the responsum was written (c. 1980) had created the anomalous situation where the value of the 200 *zekukim* of silver in the *ketubah* exceeded the cost of supporting a single woman for a year (silver peaked in 1980 at $25 an ounce for pure silver; thus 100 pounds of pure silver delivered to the door would have been worth more than $40,000, more than one year's support for a single person in 1980). According to this position, Rabbi Feinstein's view is that one pays the greater of either (1) the value of 100 pounds of silver or (2) the cost of supporting the woman for one year.

37. This view stands in sharp contrast to the historical Anglo-American common law view, which treats a private contract to marry or divorce as the classical example of an illegal and void contract; the Catholic view, which treats marriage and annulment (divorce) as sacraments requiring ecclesiastical cooperation or blessing; or the European view, which treats marriage and divorce as an area of public law. This should not be misunderstood as denying the sacramental parts of marriage (of which there are many); however, the contractual view predominates in the beginning-of-marriage and end-of-marriage rites. This is ably demonstrated by Rabbi J. David Bleich, "Jewish Divorce: Judicial Misconceptions and Possible Means of Civil Enforcement," *Connecticut Law Review* 16 (1984): 201.

38. Even though such an activity validly marries the couple; *Rav mangid a-ma'n de-mekadesh be-vi'ah*, BT Yevamot 52a; *Shulḥan `Arukh*, Even ha-`Ezer 26:4.

39. Shulḥan `Arukh, Even ha-`Ezer 26:4.

40. Marriages entered into without consent, with consent predicated on fraud or duress, or grounded in other classical defects that modern law might find more applicable to commercial agreements are under certain circumstances void in the Jewish tradition. For more on this, see Michael J. Broyde, *Marriage, Divorce, and the Abandoned Wife in Jewish Law: A Conceptual Approach to the Agunah Problems in America* (Hoboken, N.J., 2001), Appendix B, "Error in the Creation of Jewish Marriages."

41. There is a dispute as to whether this requirement is biblical or rabbinic for a first marriage; all agree it is rabbinic for second marriages; see *Shulḥan `Arukh*, Even ha-`Ezer 65.

42. For reasons beyond the scope of this chapter, this agreement is not signed by either the husband or wife, but merely by witnesses. This is so because the Jewish tradition mandated generally that all contracts need not be signed by the parties but merely by witnesses, so long as the parties give their assent to the conditions found within them.

43. BT Yevamot 89a; Ketubot 11a.

44. There is considerable evidence that the presence of a mandatory prenuptial agreement provided considerable leverage for women to add provisions to their prenuptial agreements regulating other aspects of their marriage. Indeed, 2,000-year-old prenuptial agreements found in the archives *(genizot)* condition the marriage on the husband's waiver of his right to marry another at some future date, contractually limiting the husband's biblical right to be polygamous. See Rabbi Abraham Ḥayyim Freimann, *Seder kidushin ve-nisu'in aḥare ḥatimat ha-talmud: Meḥqar histori-dogmati be-dine yisra'el* (Jerusalem, 1944); and Mordechai Akiva Friedman, "Polygyny in Jewish Tradition and Practices: New Sources from the Cairo Geniza," *Proceedings of the American Academy of Jewish Research* 49 (1982): 55.

45. The wife, however, needs to be aware of the divorce, even as she does not consent. See Maimonides, Laws of Divorce (Gerushin) 1:1–3.

46. See *Shulḥan `Arukh*, Even ha-`Ezer 119:6; and Rabbi Moses ben Isaac Lema (c. 1605–1658), *Ḥelqat Meḥoqeq* 119:5 for a presentation of the different views on this matter.

47. As noted above, the Ashkenazic custom did just that and added the term 200 *zekukim* to the *ketubah*.

48. Unless she had not yet had a child with him, which was a form of fault on his part; *Ta`anat ba`inah ḥutra le-yadah,* see Yevamot 65b, *Shulḥan `Arukh*, Even ha-`Ezer 154:6–7; and Rabbi Yeḥiel Mikhel Epstein (1829–1908), *Arukh ha-Shulḥan*, Even ha-`Ezer 154:52–53.

49. BT Yevamot 65a; but see view of Rav Ammi.

50. See "Ḥerem de-Rabbeinu Gershom," *Encyclopedia Talmudit*, 17:378.

51. See Rabbi Asher ben Yeḥiel (Rosh, 1250–1327), *Responsa of Rosh* 43:8, who indicates that one of the consequences of this model is that women (and men) will not be able to leave a marriage when they wish. See also his responsum 42:1, which indicates that the basic purpose of the ban of Rabbeinu Gershom is to create a balance of rights between the husband and the wife.

52. This insight is generally ascribed to Rabbeinu Tam (1100–1171) in his view of *ma'is `alai*; see Tosafot, Ketubot 63b, s.v. *aval*. This view fits logically with the view of Rabbeinu Gershom, who had to prohibit polygamy and coerced divorce, as well as divorce for easy fault, as Maimonides's concept of repugnancy as a form of fault is the functional equivalent of no fault, identical in result to the *geonim*'s annulment procedure.

But see Rabbi Meir ben Barukh (Maharam, 1215–1293) of Rothenberg, *Teshuvot Maharam me-Rutenberg* 4:250, who indicates that Rabbeinu Gershom also subscribed to the general view of the *geonim* who held, unlike Rabbeinu Tam, that a woman could

compel divorce with an assertion of repugnancy *(ma'is `alai)*. Rabbi Professor Elimelech Westreich makes the same assumption in his recent work *Temurot be-ma`amad ha-ishah ba-mishpat ha-`ivri* (Exchanges on the [Jewish] Woman's Status in Israeli Law) (Jerusalem, 2002), 71–73, in which he points out that the views of the *geonim* in general and those ascribed to Rabbeinu Gershom are often interchangeable. Westreich poses the question of how these two positions—prohibiting coerced divorce and effectively permitting unilateral no-fault divorce through an assertion of repugnancy *(ma'is `alai)*—could be held at one time and place, especially given the responsum of the Rosh (42:1) indicating that according to Rabbeinu Gershom's model, a man could compel divorce in the same circumstances in which it could be compelled by a woman (so that not only a woman could compel a divorce through an assertion of *ma'is `alai*, but a man could as well). Westreich offers two answers:

1. Only one type of repugnancy *(ma'is `alai)* was considered grounds for divorce according to the *geonim* but not another type (which was even softer fault) *(ba`ina leih u-metsa`arna leih)*, so there still would be cases where divorce could not effectively be coerced even according to the *geonim*, thus generating the need for the separate *taqqanah* against coercion with respect to these cases.
2. The claim of repugnancy *(ma'is `alai)* did not really lead to no-fault divorce, as it needed to be substantiated through strong circumstantial evidence; in cases where a husband wanted a divorce but did not have very strong circumstantial evidence supporting his claim of repugnancy *(ma'is `alai)*, there would still be a need for the decree against coerced divorce.

Both of these solutions are obviously difficult, in that they advance an explanation of the view of the *geonim* that is at tension with the common explanation. We suggest that the simpler explanation is that the nascent views of Rabbeinu Gershom are incompatible with the established views of the *geonim* and this became clear over time. (Perhaps there is room for another approach also: that, contrary to the position of the Rosh, the *geonim* were prepared to allow a woman to demand divorce based on virtually any grounds, but not a man, who needed a reason. The basis for this argument would be that (1) Gittin 89a–b clearly circumscribes the circumstances in which a man is entitled to a divorce but does not explicitly limit the circumstances where a woman may seek a divorce; (2) women were seen as more vulnerable and thus in need of more protection than men. For an example of this, see Rabbi Feinstein, *Igrot Mosheh*, Even ha-`Ezer 1:80; and Rabbi Ḥayyim Ozer Grodzinsky (1863–1940), *Aḥi`ezer* 1:27, both of whom argue that *kiddushei ta`ut* may be used more quickly by women than by men, as they are otherwise without any option in some cases.

53. Absent the prohibition on polygamy, the decree restricting the right to divorce would not work as well, as the husband who could not divorce would simply marry another woman and abandon his first wife. This prevented such conduct.

54. In which case, the value of the *ketubah* need not be paid as a penalty for misconduct imposed on the woman. What exactly is hard fault remains a matter of dispute, but it generally includes adultery, spouse beating, insanity, and impotence/frigidity; see *Shulḥan `Arukh*, Even ha-`Ezer 154.

55. Maimonides, Ishut 10:10.

56. *Shulḥan `Arukh*, Even ha-`Ezer 177:3.

57. Consider a very simple question in such cases: How much must husband pay wife to induce her consent? The answer to that question depends on the situation of the parties—the *ketubah* neither helps nor hinders the negotiations.

58. This is a bit of a simplification, since in cases of fault a woman would have to go to a *beit din* (rabbinical court) to seek the right to compel the husband to divorce her, whereas the husband could, on a finding of fault by a *beit din*, divorce her against her will directly. This difference is one of mechanism, however, and not of rule.

59. The case of rape discussed in the text; see note 56.

60. Even ha-`Ezer 66:3.

61. *Ḥelqat Meḥoqeq* 66:18; *Beit Shmu'el* 66:11; *Bi'ur Ha-Gra* 66:17.

62. Maimonides, Ishut 10:10.

63. Even ha-`Ezer 66:10.

64. See Rabbi Yitsḥak Ayzik (Isaac) Shor (d. 1776), *Toldot Adam*, Even ha-`Ezer 66:3. See also Rabbi Refael Yosef ben Rabi (d. 1795), *Derekh ha-Melekh* on Maimonides, Ishut 10:10. Rabbi Ḥayyim ben Barukh Lubetski, *Tasafot Ḥayyim* (Vilna, 1911) 2:10, notes another difference, which is that a man who violates *ḥerem de-Rabbeinu Gershom* is not forced to remarry his ex-wife, whereas when the rapist divorces his victim against her will, he is forced to remarry her.

65. In Jewish law, a rabbinical court can compel support of one spouse by another even absent divorce.

66. See, for example, Rabbi Mosheh Shternbukh, *Teshuvot ve-Hanhagot*, 2d ed. (Jerusalem, 1992), no. 760. But see *Arukh ha-Shulḥan*, Even ha-`Ezer 177:1 in the parentheses and the last line; Rabbi Jacob Alfandari (c. 1620–1695), *Mutsal Me-Eish* 21; Rabbi David Horowitz, *She'elot u-Teshuvot Qinyan Torah ba-Halakhah* (Strasburg, 1976–), 14.

67. One of the common questions encountered is whether a couple may continue to live together when the *ketubah* is misplaced and cannot temporarily be found. Sometimes, even at the end of the wedding itself, the newly married couple cannot find the *ketubah*. A number of different factors, combined, could provide grounds for the couple to be alone together even in these circumstances until a replacement *ketubah* can be written. Besides the view of Rabbi Isserles that nowadays a *ketubah* is not needed, these other factors include the following:

1. Many halakhic authorities rule that the *ketubah* is in force after the *qinyan* (legal transfer) effectuated before the wedding ceremony, even if no written document is actually present, as the *ketubah* is merely a proof of a *ketubah*, but the actual witnesses are also sufficient (*Otsar ha-Posqim* 66:1[7]).
2. Once it is known that there was a *ketubah*, and witnesses will attest to the fact that there was a *ketubah* and they signed it, it is as if the wife has the *ketubah*. See Even ha-`Ezer 66:1 and *Otsar ha-Posqim* 66:3(22[2]). (In the United States our practice is to read the *ketubah* out loud; thus there are many witnesses to its existence.)
3. In Israel, the rabbinical courts require that a photocopy of the *ketubah* be kept on file in the court system. In America, an actual photograph of the *ketubah* is

not unusual. (See Shternbukh, *Teshuvot ve-Hanhagot* 1:760.) (While a photocopy or photograph likely does not allow for the enforcement of the *ketubah*, it does provide evidence of the factors previously described.)

4. The husband can remit to his wife for safekeeping the monetary value of the *ketubah* in lieu of the right to collect (*Shulḥan `Arukh*, Even ha-`Ezer 66:2).
5. Permitting the couple to be alone together (such as for *yiḥud*) is permitted according to many authorities in all circumstances; *Rama*, Even ha-`Ezer 66:1.
6. Some *rishonim* are of the view that a *ketubah* is imposed as a condition of marriage by the talmudic rabbis *(tenai beit din)*, and thus even absent a *ketubah*, it is present (*Arba`ah Turim*, Even ha-`Ezer 66, and Rabbi Ḥayyim ben Joseph Toledano (d. 1848), *Ḥoq u-Mishpat* 229 [p. 67]).

These matters require a case-by-case analysis by an expert in Jewish law. For a worthwhile review of these issues, see Rabbi Joseph E. Fried, *Ohel Yosef* (New York, 1902), Even ha-`Ezer 22, and *Otsar ha-Posqim* 66:2–3.

68. Such as Israel, America, Canada, Europe (both east and west). Places where it was not accepted include Egypt, Iran, Iraq, Morocco.

69. Since the central purpose of the *ketubah* was not to allow the husband to easily divorce his wife, Rabbi Isserles might not have considered these matters truly significant insofar as the main purpose of the *ketubah* was to protect the woman from divorce in cases where she desired to stay within the marriage.

70. This is so because widows are entitled according to Jewish law to either perpetual support from the estate or their *ketubah* payment as they prefer; see *Shulḥan `Arukh*, Even ha-`Ezer 93:3 and Rabbi Ya`akov Yesha`yahu Bloi, *Pitḥei Ḥoshen*, vol. 8 (Jerusalem, 1982), 11:1–3. Since the former is much more valuable than the latter, no reasonable person would exercise her *ketubah* rights in case of widowhood, and thus the proper evaluation of the *ketubah* is practically irrelevant.

71. *Igrot Mosheh*, Even ha-`Ezer 4:91 (this responsum was written in 5740/1980).

72. The formulation used in this responsum is different from *Igrot Mosheh*, Even ha-`Ezer 4:91, where, with regard to the rights of the widow, Rabbi Feinstein posits that:

> Even widows, even when they are not the mothers of the surviving children, in most cases there is a will, and there is also secular law [i.e., spousal offset] which many people wish to actually use [to resolve this dispute].

73. *Igrot Mosheh*, Even ha-`Ezer 4:92. This responsum was written in 1982.

74. There are provisions in Jewish law to resolve a matter based on equitable principles and compromise, and such is what a rabbinical court does in these cases, unless secular law provides a basis for directing the answer and is applicable in this case. (A number of halakhic authorities seem amenable to the practice of looking to secular law on these matters; see Rabbi Judah Loeb Graubart (1861–1937), *Ḥavalim ba-Ne`imim*, 2d ed. (Toronto, 1968), Even ha-`Ezer 55, which rules, in the alternative, that secular law provides a woman with financial rights against her husband (or his estate). Rabbi Moses ben Joseph di Trani (1505–1585), *Mabit*

1:309, is another such responsum. For a similar type of claim, see Rabbi Yitsḥak Isaac Liebes, *Responsa beit avi* (New York, 1979), 4:169. Similar reasoning is advanced as plausible in Rabbi Moses Feinstein's ruling (*Igrot Mosheh*, Even ha-`Ezer 1:137) that the wife's waiver of past-due support payments mandated by secular law, in return for the husband's issuing a *get*, is a form of permissible coercion that does not invalidate the *get* (create a *get me`useh* situation). This waiver of a financial claim is valid coercion only in a case where the woman's claim to the money is halakhically valid, as the wife is entitled to these payments, or an amount roughly equal to them, through *dina de-malkhuta dina* (the principle that the law of the land is the law). Indeed, Rabbi Feinstein implies that this is the more likely result in his analysis found in *Igrot Mosheh*, Even ha-`Ezer 1:137 and Even ha-`Ezer 4:106; see also R. Tsvi Hirsch Eisenstadt (1813–1869), *Pitḥei Teshuvah*, Even ha-`Ezer 134:9–10.

75. *In re Estate of White,* 356 N.Y.S.2d 208, at 210 (NY Sup. Ct., 1974).

76. *Avitzur v. Avitzur,* 459 N.Y.S.2d 572 (1983).

77. *Victor v. Victor,* 866 P.2d at 902 (1993).

78. See, for example, *Hurwitz v. Hurwitz,* 216 AD 362 (NY Appellate Division, 1928).

79. Whether or not the language of a *ketubah* forms a basis for compelling a *get* (Jewish writ of divorce) according to secular law doctrine is a question beyond the scope of this chapter. See, for example, *In re Marriage of Goldman,* 554 N.E.2d 1016 (1990), in which an Illinois court came to the remarkable conclusion that the words "in accordance with the law of Moses and Israel" appearing in the *ketubah* created a contractual obligation to give a *get*. But see *Aflalo v. Aflalo*, 295 N.J. Super. 527 (1996) (rejecting a similar argument) and *Morris v. Morris* 42 D.L.R3d 550 1973 (Manitoba, CA, Ct of Appeals). For more on this, see Rabbi Irving A. Breitowitz, *Between Civil and Religious Law: The Plight of the Agunah in American Society* (Westport, Conn., 1993), 50–55.

80. Some rabbis have devised a legitimate solution to translate the *ketubah* document into English so that the parties can be held accountable for understanding its meaning by inserting certain very concrete obligations and undertakings that could be held to be enforceable with respect to the parties. This approach is similar to the practice discussed above of couples entering into separate enforceable prenuptial documentation setting forth their specific expectations and commitments in the event of a divorce or marital separation.

81. This principle was first noted in *Montefiore v. Guedalla* 2 Ch 26 Court of Appeals, England (1903), where a British court enforced the *ketubah* of a Sefardi (Moroccan) Jew who had moved to England, since the law of Morocco would have enforced this *ketubah*. These same conflict of law principles could well enforce an Israeli *ketubah* in America. It has been followed in many American cases where the parties were married in another jurisdiction; see *Miller v. Miller* 128 NYS 787 (Sup. Ct., 1911) and *Shilman v. Shilman* 174 NYS 385 (Sup. Ct., 1918).

82. Happily married couples rarely seek adjudication in a rabbinical court of their financial obligations to each other, although a rabbinical court is, in fact, jurisdictionally authorized to resolve such disputes; see *Shulḥan `Arukh*, Even ha-`Ezer 70:1–4. (In contrast, American law does not authorize a court to resolve disputes

between a husband and wife except when divorce is expected; see *McGuire v. McGuire*, 59 N.W.2d 336 [Neb. 1953] and Leslie Harris and Lee Teitelbaum, *Family Law*, 2d ed. [Gaithersburg, 2000], 45–60.)

83. Rabbi Zalman Neḥemya Goldberg, taking note of this problem, has recommended that a dollar amount be inserted in the *ketubah*—just as Israeli *ketubot* often include an explicit amount in Israeli *shekalim* or even dollars—so that in the event the wife does register a claim pursuant to the *ketubah*, there will be no confusion concerning the proper amount to be paid. However, given the infrequency of cases in which parties intend to invoke the *ketubah* for financial purposes, a movement to accept such a proposal here in America is unlikely at present.

84. Couples nowadays often enter into a separate prenuptial agreement promulgated by the Orthodox Caucus and the Rabbinical Council of America in conjunction with the Beth Din of America. The prenuptial agreement is an English-language document, drafted in accordance with both Jewish and secular law specifications, that provides for a specific dollar amount to be payable by a husband to a wife for support in the event of a marital separation until the couple is no longer married according to Jewish law. Unlike what has become the practice with respect to the *ketubah*, the parties who enter into this document clearly comprehend that the financial terms of this document are meant to be enforceable.

The question of whether couples may explicitly reference secular law as the basis for dispute resolution in their prenuptial agreement is the subject of an exchange between Rabbi Zalman Neḥemya Goldberg (approves) and Rabbi Tzvi Gartner (questions) in *Yeshurun* 11 (5762): 698–703. The Beth Din of America views such prenuptial agreements as proper, and a copy of such an agreement can be found at www.orthodoxcaucus.org/prenuptial.html with explanation. For a further elaboration of this, see Broyde, *Marriage, Divorce.*

85. For more on this, see Broyde, *Marriage, Divorce.*

86. Rabbeinu Tam as found in the *Sefer ha-Yashar* (*ḥelek ha-teshuvot* 24) first noted that when a man refuses to give his wife a *get*, even when he is halakhically entitled to do so, it is within the power of a rabbinical court to sanction him in cases where his conduct is improper ethically. Such sanction is that community members ought to avoid him. Rabbeinu Tam states:

> Decree by force of oath on every Jewish man and woman under your jurisdiction that they not be allowed to speak to him, to host him in their homes, to feed him or give him to drink, to accompany him or to visit him when he is ill. In the event that he still refuses to divorce his wife, you may add further restrictions upon him.

This approach is endorsed by many halakhic authorities (see Rabbi Ovadia Yosef, *Yabi`a Omer*, 7:23 (Even ha-`Ezer) (cosigned by Rabbis Yosef, Waldenberg, and Kolitz) and remains used to this very day, through such mechanisms as the Rabbinical Council of America resolution directing that such individuals be excluded from the synagogue.

87. With respect to this point, see Rabbi Bloi, *Pitḥei Ḥoshen* 8:7(12).