
Andrew R. Hillman

"An Original Translation with Commentary of the Jewish Divorce

Procedure: Shulchan Aruch, Even Haezer, Chapters Seder

Haget and 154"

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AN ORIGINAL TRANSLATION WITH COMMENTARY
OF THE JEWISH DIVORCE PROCEDURE:
SHULCHAN ARUCH, EVEN HAEZER, CHAPTERS SEDER HAGET AND 154

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Thesis submitted in partial fulfillment of
the requirements for the Degree of Master
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DIGEST

Much has already been written concerning the Jewish divorce procedure, its laws, customs, and psychology. Yet, to my knowledge, no one has to date undertaken the translation into English of the process of Jewish divorce as it appears in Joseph Caro's Shulchan Aruch. This, then, is my original translation of two chapters of the Shulchan Aruch, dealing with that topic plus comments. The thesis in its present form is unified and inclusive, and can stand by itself as an authoritative explication of these two sections. Its main purpose, however, is its inclusion in an English translation of the entire Shulchan Aruch, to be completed by Dr. Alexander Guttman and his students in the future.

The two chapters translated are Seder HaGet and 154. The first itemizes the exact procedure of the writing of the get (the bill of divorce itself), along with precise instructions on its transmission to the wife. In 101 distinct paragraphs such concerns as the pre-requisites for the participants involved, the proper oaths which should be said, the exact form and style of the get, the method of transmission, and necessary precautions are all listed. The second chapter, 154, deals with the concept of "forced divorce" within Judaism. Legally, only the husband can divorce his wife--divorce without his assent is invalid and impossible. Yet in certain cases, the Jewish court is allowed to physically beat him until he submits and agrees to divorce his wife. Such action may be initiated by the wife if certain conditions of health, marital or conjugal support, or potency are missing; or the court may initiate divorce if the union cannot produce children. The exact details of health, support, and barrenness are listed in 24 different laws

in Caro's compilation.

Actually two sets of comments are included in the thesis. First, within the course of the translation itself the original "notes" by Moses Isserles were also rendered into English. Secondly, at the conclusion of the work are my personal comments and interpretations, based primarily on the Aruch HaShulchan, the authoritative source of modern interpretation and practice. Besides this source, clarification or explanations of my own were inserted for a reader not trained in Judaica. Finally, for the reader's edification, two legal documents authorizing agents to act for the husband were likewise supplementarily included.

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INTRODUCTION

I had always considered one's Rabbinic Thesis as being the rabbi's first small, though significant, contribution to the advancement of Judaica in the specialty of his choice. In my studies at the Hebrew Union College-Jewish Institute of Religion, Jewish law, the halachah, had continually intrigued me. Coming from a classical Reform education in which law was not emphasized, the entire concept of halachah was foreign and presented an interesting challenge; hence my desire to write in that field. Upon consultation with Dr. Alexander Guttmann, whose expertise in this area is unparalleled, the following thesis in the laws and customs of the Jewish divorce procedure was suggested. I accepted this specific challenge for two reasons--the first for personal motivations, the second out of religious responsibility.

It has been a long term goal of Dr. Guttmann to have the entire Shulchan Aruch, the 16th century authoritative code of Jewish law by Joseph Caro, translated into English for the use of both Jew and Gentile, clergy and laymen alike. Only a very few sections of this work in Hebrew have been translated, and, as he continues to inspire students to work in this field, the task may be completed in the not-too-distant future. The following is my humble, minor contribution.

Secondly, the complete significance of divorce according to Jewish law is yet to be felt. The present conditions in the State of Israel increase the importance of comprehension of it. The debate concerning the Law of Return, the statute of the State of Israel that any Jew may become a citizen, has necessitated a definition of who is a Jew. Inte-

gral to that discussion is the Jewish divorce procedure, for if a couple has divorced but not according to Jewish law, the legal Jewish status of their subsequent children, grandchildren, etc., is in doubt. Ever since the possibility of secular, non-halachic, divorce, the status of every individual Jew vis-à-vis his own legal Jewishness is suspect. Many who call themselves Jews today may well not be Jews according to the law; hence their ability to become citizens in Israel may be denied. Within Reform Judaism, the problem is most trenchant, since divorce is seldom conducted in a religious context or by religious authority. The significance of a legal Jewish divorce, therefore, takes on an added import to Reform rabbis and laymen. I hope my contribution in English will help clarify the procedure, so that any further doubts may be alleviated.

The thesis itself consists of an original translation of the Shulchan Aruch, volume Even HaEzer, chapter Seder HaGet (the Divorce Procedure). In addition there is a translation of Even HaEzer, chapter 154 in which the concept of "Forced Divorce" is discussed. According to Jewish law, a divorce is granted, as a rule, only if the husband initiates it out of his free will--the wife had originally no right to initiate divorce. However, the Jewish court is in specific cases authorized to force the husband to agree to divorce his wife. This interesting and little known fact is my pleasure to present to the non-Hebrew reading world. Finally, two translations of documents related to the divorce procedure are included.

The text reads easily, yet a few comments, explanations, and cross references were necessary. They appear in footnote form at the end of the work.

I wish to thank first Dr. Alexander Guttmann whose sensitivity and grasp of the material I shall forever cherish; my parents of whose love and religiosity the subject of divorce is not indicative; my roommate, Mr. Allen Bennett, whose patience and understanding allowed the completion of the task; and last but far from least, the late Rabbi David Sobel whose inspiration shall never die and to whom this thesis is lovingly dedicated.

GLOSSARY

In order to keep the flow of the translation as close as possible to the Hebrew original, there are a few words which I have merely transliterated, not translated. As they appear in my translation, they are underlined. In addition, any parentheses which appear in the original text are kept in parentheses (); any additional comments or explanations of my own which I chose to include in the text of my translation rather than in footnote form are enclosed in brackets []. The transliterated words are explained here:

Get - גט This refers to the "Bill of Divorce" itself--the Aramaic document. The same Hebrew word is also used to denote the entire divorce procedure, but when it occurred as such, I translated it directly as "the divorce procedure."

Kosher - כשר This refers to something "valid according to Jewish law." For example, two kosher witnesses are two witnesses who have all the necessary requirements to testify according to Jewish law.

Note - Within the Shulchan Aruch, there are italicized comments interspersed in Caro's text. They are written by Moses Isserles expounding from 16th century Cracow, Poland. Joseph Caro's codification is binding on orthodox Sephardic Jewry; Isserles's "notes" are the authoritative supplements and divergences for Ashkenazic Jews. Isserles's comments appear after each paragraph under the title Hagah - הגהה - "notes" and are so included here.

INTRODUCTION TO CHAPTER SEDER HAGET

The beginning and end of this chapter of the Shulchan Aruch caution the reader of the difficulty and complexity of the Jewish laws of divorce. Only an "expert" should concern himself with them. Only he who is well versed in them should even consider arranging a divorce. A divine plea is even uttered to save him from mistakes. I am not as presumptuous as to call myself such an expert or to characterize this work as definitive. I merely hope that it may provide an informative introduction to the Jewish divorce procedure.

THE PROCEDURE OF THE DIVORCE - SEDER HAGET

In it are the laws concerning the witnesses, the husband, the scribe, the wife, and all its particulars. It contains 101 paragraphs.

The annotator said: You must know that all that is written in this "procedure" comes from the Seder ["Procedure"] of Rabbi Yitzhak Margoliut, may his memory be a blessing.¹

Note - In the days of the Talmudic sages they used to appoint a wise man, an expert to officiate at the gittin [issuing of divorce bills]. Thus, it was found in the words of the ancients that they were accustomed to give a get only in the presence of the great men of the generation.

(Rabbi Yitzhak ben Sheshet, chpt. 389.) Therefore, only an expert in them should strive to give it. Anyone who is not well-skilled in divorce and betrothal should not busy himself with them.

If a man transgressed and gave a get or performed halitzah² without permission, see Yoreh Deah, 242:14.³

A get that was arranged by ignorant commoners must be declared invalid, (as I wrote above 141:30, 142:9).

1. There are those who refrain from arranging a get on Friday.⁴

2. He shall invite the scribe and two kosher witnesses who are not relatives either to one another, the husband, or the wife.

Note - See above, 141:25. In principle they should take witnesses who are

not related even to a fourth degree⁵ (in the name of Jacob Levy), or [even] by marriage; or men concerning whom rumors circulate that they are suspected of lewdness (this we understand from chpt. Zeh Borer), or the rest of things that make one unfit.

Also, one does not take a witness who has a (physical) defect.⁶

Also, they are careful to see that the witnesses and the scribe should not be relatives of the rabbi arranging the get.⁷ But at times of urgency, they do not care whether the scribe is worthy [i.e., pious].

Some say the rabbi should advise the witnesses to reflect on the iniquities that they have committed [meditate confession of sins] even if they are regarded as totally righteous, lest they have committed a transgression by which they are made unfit. (Seder of Rabbi Mordecai Jaffe, and Rabbi Yitzhak of Mintz.)

One takes witnesses who understand the (text of the bills of) divorce, and if they don't know how to read, they teach them and explain to them and to the scribe and to the husband what a get is, and what "lishmo" [for his sake] and "lishmah" [for her sake] mean.⁸ (He found this written) (See below, number 12, for more about the laws of the scribe)

3. One must be careful to see that the scribe is not one of the witnesses.

4. If the scribe or wise man arranging the divorce, receive a large payment, more than is the value of the work they missed, [because of spending time on the divorce], then some say it is necessary that the witnesses not be related to them.⁸

Rabbi Obediah in his commentary to the Mishnah in chpt. 4 of Berachot mentioned a challenge to the Rabbis who arranged divorces and received

more than was the value of the work they missed.

Note - The practice is not in accordance with him [Rabbi Obediah]. His reason is not valid, either, for he compares this practice to what they say about one who receives payment for making a legal decision whose decision is void, therefore this is not a proof, for arranging a divorce is not adjudicating; it is merely instruction. See above, chpt. 130 for the reasons that the witnesses receive a payment. The husband must reach an agreement [about fees] with the scribe,¹⁰ rabbi, and witnesses before they begin to write. (He found this written in the name of Rabbi Nissim, may his memory be for a blessing.)

5. It is necessary that they know who he and his wife are, unless it is a time of danger.¹¹

6. If there is another man with the husband's name in the city, and both wife's names are the same, he cannot be divorced unless it is in the presence of this other man [lit. "his friend"].¹²

7. If the husband divorcing is dangerously ill, it is necessary to watch carefully to see that he be sane when the get is written and when it is given. (See above, chpt. 121.)

8. If he wants to get divorced with conditions, he must not mention any conditions. Rather, he only tells the scribe to write a get and the witnesses to sign it. He doesn't mention any conditions until the get is given [to her]. (See above, chpt. 146.)¹³

9. Everyone is kosher to write a get, except for the deaf, insane, a minor,¹⁴ a slave, a non-Jew, a Jewish apostate, or a Jew who publicly profanes Shabbat.

10. The husband himself, where it is possible, should not write the get.¹⁵

11. Likewise, the husband must not say to the scribe, "Write thus", or "Do not write."¹⁶

12. The scribe should not be a relative either of the wife or the husband, whenever possible.

13. The scribe brings the parchment, the ink, the pen, (and all the rest of the writing implements. The rabbi then asks the scribe in the presence of the witnesses if everything is his, and when he says "yes," afterward, he gives them) as a gift to the husband, and the husband lifts them up to acquire them.¹⁷

Note - Some say that before the scribe gives these things to him, the husband cancels any protests, (Tur in the name of Rabbenu Asher,) and they examine him, as will be clarified in numbers 14 and 10, and afterward receives those things mentioned above from the scribe. This is the practice.¹⁸

14. The wise man [Rabbi] asks the husband who is divorcing her, "Are you giving this get by your free will, without any compulsion at all? Have you made any prohibiting statement, or vowed or sworn an oath that forced you to give it? Tell us and we will annul it for you." The husband who is

divorcing responds, "I did not vow, nor have I sworn. I have no duress, but rather it is by my will that I am giving this get with a full heart, without any pressure or condition." If he says that he swore or "shook hands" [made an agreement] to give it, they must annul it for him beforehand so that it will not be similar to compulsion, but he may give, instead, a pledge if he wants, [because] this is not similar to compulsion. (See below in this chpt., numbers 23 and 24 for related things.)¹⁹

15. The husband then hands over the parchment (and the rest of the writing implements), the pen, and the ink to the scribe in the presence of the witnesses, and says to him in their presence, "Write a get for me for the sake of my divorcing my wife, _____ the daughter of _____, and for the sake of "k'ritut" [another word for divorce--literally, "cutting off", or "separation."]²⁰ I give you my permission to write from one to one hundred gets for me, until²¹ there is one that is kosher, without any question of its validity, whether in its writing or signing, according to the wise Rabbi _____.²²

Note - Or according to everybody to whom it is shown. And the scribe shall say, "Yes, I will do it." (All of this is in Sedarim.) But this is all proper only ex post facto. Therefore the practice is that a priori the scribe transfers the ownership of much parchment and ink since he might have to write many gets as he ordered him to do, which then would be kosher ex post facto. But if he first wrote an unkosher get, the practice is for the scribe to make him the husband acquire everything anew, and for the husband to command him again to write, and to annul protests--in the way he did it the first time. See below, number 54. When the husband gives

the implements to the scribe, he gives them to him in principle by himself, not through an agent. (He found it written in Tikun Yashan.)

16. [The husband continues,] "And you, _____ and _____, be witnesses and sign this get (that _____ the son of _____, the scribe wrote in my name,) for the sake of divorcing my wife, _____ the daughter of _____, and for the sake of "keritut" [divorce] I give you permission to sign from one to one hundred gets, until there is one that is kosher according to the opinion of the [wise] Rabbi _____, (or to whomever it is shown), without any questions of its validity whether in writing or signing."

Note - He can say these words in any language he wants, (Jacob Weil, chpt. 190). The witnesses say, "Thus we will do it." (In Sedarim.)

17. If it is necessary to write two gets because of doubt of the names, for example, Gershon and Gershom,²³ or anything similar, it is necessary that the husband divorcing should say to the scribe that if the wise Rabbi _____ wants to arrange many gets because of the doubt in order that all of them be given to the wife, he gives his permission to write them. Similarly, he says to the witnesses that he gives them permission to sign them.

18. The scribe does not write and the witnesses do not sign until they hear from the husband himself that he commanded the scribe to write and the witnesses to sign. It cannot be by an agent's saying it, even if he told three agents that they should tell _____ to write and _____ to sign. But they should neither write nor sign until they have heard it from him himself.

19. The husband then pays the scribe's fee, and if the wife pays, it is kosher.²⁴

20. The husband then says in the presence of the witnesses, "Behold, I am annulling before you any protests direct or indirect, which I have made concerning this get; and all matters which if established would bring about the invalidation of this get, they are now cancelled. Likewise, I give witness to myself, that I have not transmitted anything concerning the get which would make it unfit. Behold, I declare unfit any witness or witnesses who would testify that I transmitted or said anything that would annul this get, or that would impair its force." (See above, 154:2.)

21. It is necessary that it be the same witnesses, before whom the husband told the scribe to write a get for his wife, that he commands to sign. It is required that they stand at the time of the writing of the line of the name of the man and woman and the date.²⁵ They must hear that he is to write it for his and for her sake [lishmo and lishmah].

22. It is necessary that [the witnesses] know that this was the get written for him and for her. Therefore, if they want to go out after the name of the man, woman, and date is written, it is necessary to make some kind of mark on the get so that they would recognize it or so that they could remember it at a glance.²⁶

23. It is preferable that the husband be present with the scribe and witnesses, until the get is written, signed, and given, so that there will not be any protests. (Also, he must not talk about the matters of the get

until after it is given, so that he will not mention things which could cause the invalidation of the get.)²⁷ (In Seder.)

24. If he wants to send the get to the wife through an agent,²⁸ it is necessary that the agent stand there at the time of the writing of the line in which are the names of the man, woman, and date, and that he hear that he is beginning to write for her sake. It is also necessary for him to stand there at the time of the signing by the two witnesses, and that he hear that they are signing it for her sake.

Note - Some say that the agent must also be there for the commanding of the scribe and witnesses by the husband. This is the practice. It is good to tell the agent before anything else that he is prohibited to marry the divorcée, so that afterward, he cannot say, "If I had known, I wouldn't have been the agent." (I found this written in the name of Jacob Levy) [known as either--Maharil or Jacob Moeller]. Also, the Rabbi who is making the arrangements says to the agent, that he should make a distinguishing mark on the get so that if it should be removed from his presence he would recognize it. However, he should be careful that it not be removed at all to the extent possible.

25. It is necessary that before the writing, he tell him that he will be the agent. (Also, before he tells the scribe to write or before he does anything, he should appoint the agent. See above, chpt. 97 on how he says it.) The Rabbi should tell him so that he may hear how the bill was written and signed in her name in order that he will be able to testify accordingly.

26. When sending a get through an agent, it is good that the husband be made to swear an oath of the Torah that he will not raise a protest or cancel the get.

Note - If he is an apostate to idolatry who does not care [for the Jewish law], they make him swear concerning his portion in the world to come, and they also write this in the authorization ["power of attorney"].

(See above, 141:59.) Then they are accustomed to have the husband who authorizes the agent perform an act of validation. (See above, 141:26.)

27. It is necessary to examine to see that the agent and sender are adults, for a minor cannot be an agent, and a minor cannot authorize an agent.²⁹

Note - It is also necessary to make him an agent in the presence of kosher witnesses. (See above, 141:11, 141:24 what the practice is concerning witnesses to the appointment of agents.)

28. It is necessary that the agent not be deaf, insane, a minor, a slave, or a gentile, or blind, or unfit due to a transgression of the Torah. (See above, 141:33.)

29. It is good to be cautious not to divorce through an agent when the husband and wife are both in the [same] city. (See above, 141:55.)

30. If the husband is in a hurry to go, and cannot wait until the get is written and signed, he says to the scribe, "Write a get for my wife," etc., as above, and he says to the witnesses, "You, _____ and _____, witness and sign the get mentioned," etc., as above, and, "Behold, I appoint _____ the

son of _____ an agent to convey this get to my wife, _____ the daughter of _____, wherever he may find her. His hand shall be as mine, his mouth as my mouth, (his word as my word), his doing as my doing, his giving as my giving. Furthermore, I give him permission to appoint an agent, who in turn may appoint an agent, up to 100 agents, even without duress, until the get arrives in her hand or the hand of her agent. As soon as the mentioned get reaches her hand or the hand of her agent from the hand of _____ agent or from the hand of his agent or from the hand of his agent's agent as stated, she will then be divorced from me and permitted to all men." (For the rest of the laws of agency, and authorization, see above, chpt.141.)

31. It has already been clarified that one does not mention any condition before the writing of the get, and since this is the case, anyone who ordered a divorce in this manner cannot divorce her because of the condition.³⁰

32. If he only wants to get divorced after a certain time, and he is in a hurry to go [somewhere], and it is impossible to write it before he goes, he says to the agent that he should give the get to his wife, and that she is only divorced from him after such and such a time.³¹

33. There is no need for the agent to stand before the divorcer, but even if he is not in his presence, he can appoint him, and the witnesses write that he appointed _____ an agent.

Note - All this is when the husband is in a hurry to go and cannot transmit the get to the agent, and it is a time of distress. But without these [conditions] one cannot authorize an agent like this, but rather he puts

it in the hand of the agent [himself]. See below, number 96ff.

34. I already wrote who are unfit to be agents. [No. 29]

35. And I already clarified that it is necessary for the agent to stand there at the time of the writing of the get document and the signing by the two witnesses, and that he must hear that it was written and signed for her sake.

36. When the scribe comes to write the get, before he begins to write, he has to ask the divorcer what his name and his father's names are, or if he or his father has two names--for example, because of sickness,³² or if he or his father has a nickname, or any other designation (or if they are priests or Levites).

37. Similarly, he has to ask about the wife and her father, just as the man.

Note - For how one is to write their names, see above, chpt. 128 and 129 in the laws of local names. This he should ask in the presence of the witnesses.³³

38. It is necessary that the scribe and witnesses stand in one place.³⁴

Note - Some say that before the scribe cuts the parchment, he says in the presence of the witnesses that he wants to write for her sake, the manner of which will be clarified below, number 55. Such is the custom in these countries.³⁵

39. He cuts the parchment according to the size of the get so that he won't have to cut anything after the writing of the get.³⁶

40. If the scribe made a mistake after he wrote a little, he begins again with another [get] on the same parchment, first cutting out the little that he wrote.³⁷

41. It is necessary that the parchment be longer than it is wide; its length is defined as the direction in which it is read from beginning to end.³⁸ (He should leave a space at the bottom for holding it or more [than that], but if he did not leave it there is no need to worry.)

42. He rules in 13 lines, and the last line he divides into two short lines, on which the witnesses can sign, one under the other. (The rulings which he makes on it, and all the writing preparations are for his sake, for her sake, and for the sake of divorce.) (Thus is it written in Sedarim.)

43. Some say that he should write on the inner side [lit: "flesh" side] not outer side [lit: "hair" side].

44. He should not rule with a lead pencil nor should he rule from the inside, but rather from the outside.³⁹

Note - He rules two lines on the sides of the get, one on the right and one on the left, in order to straighten the writing. (In Seder HaGet.) The writing should be inside the lines not on the lines themselves.⁴⁰

45. There is one who says that you cannot write a get with a quill from a wing.⁴¹

46. The writing cannot be bent or confused, lest one letter appear like another and the meaning thereby changed.

47. They are accustomed to be strict to make the letters so that they are surrounded by parchment, and if there are letters touching, he can scratch out the ink that is between them to separate them. (See above, 125:6.)⁴²

48. It is necessary to check that the letters do not enter one another. For example, the top of a *ב* that is in a bottom line must not enter the open space of a *ז* or *ו* in a line above it, or any similar case.⁴³

49. The letters should not go over the lines, either to the right or left, into the margins. One must be strict [with this] even for one letter.

50. If a drop of ink falls into a letter so that it is not recognizable, he cannot remove the ink to repair the letter, for this is "chiseling out the letters" [or carving a relief]. (See above, No. 125:8.)⁴⁴

51. If he wants to write an open "mem" but his hand⁴⁵ slips creating a final "mem," he may not scratch out the statement to open it, for this is "chiseling out the letters". (See above No. 125:9.)

52. There may not be any smudging on it and he may not write over an erasure.⁴⁶

53. It is necessary to be careful in the form of the get, to write it correctly.

54. If an error is found in the get, and it is necessary to write another, if the husband is before us he has to repeat and command the scribe as in the beginning to write a get for his wife, and the witnesses to sign it.

55. When the scribe comes to write the get, he says before the witnesses:

[Note - "Listen to me, oh you witnesses, _____ the son of _____, and _____ the son of _____, (Notes of Mordecai)]

"Behold, I am writing this get for the sake of _____ the son of _____, for the purpose of his divorcing his wife, _____ the daughter of _____, that by it he divorces her, for his sake, and for her sake, and for the sake of "kritut" [separation]. He then writes the get immediately. (He does not write it with interruptions. The scribe makes an identification mark on the bill before it leaves his hand.)⁴⁷

56. It is necessary that the get dry before the witnesses sign it.

57. After the get dries the witnesses sign it one under the other.

Note - They should read it before they sign, so that they will know what they are signing. (In Seder of Rabbenu Nissim.) They must first check for the sign they made, [to make sure it is the same get,] as was clarified in number 22 above.

58. The witnesses have to sign one in the presence of the other.

59. Every witness before he signs has to say, "I am signing this get for _____ the son of _____, by which he is divorcing his wife, _____ the daughter of _____, for his sake, her sake, and for the sake of divorce." He then signs immediately. (The one witness watches as the other signs.) (Sedarim.)

60. They begin to sign at the beginning of the line--they do not leave a portion of the margin to the right of the signature.

61. They should not leave as much as two lines of space between the signing and the last line [of the get proper]. (They sign with the pen and ink of the husband.) (Sedarim.)

62. It is necessary that each witness write his name and his father's name in full. Thus he signs: _____ the son of _____, witness.

Note - They do not have to sign with their other designations, but if they are priests or Levites, they sign: "_____, the son of _____, the priest," or "the Levite, witness." But he does not write "the son of our teacher, the rabbi, Rabbi _____," or "the son of the 'chaver' _____." (In Sedarim.)
Such is the custom.⁴⁸

63. The penmanship of the witnesses must be simple and recognizable, so that the letters do not touch, as is the case with the get itself.

64. The scribe does not sign the get.

65. The signatures must be dried.

66. The Rabbi and the witnesses read the get as well as the witnesses' signatures.

Note - They examine it carefully to make sure that he did not omit a word, that there is nothing missing or extra and that all the regulations of the get [are satisfied]. It is advisable to read it along with another get, for then if there is a mistake in it, it will be sensed immediately. (In the Seder of Rabbi Jacob Weil.) It is also [advisable] to send it to the other notables of the city to examine it to check that it is written properly, and they must be careful not to smudge it in passing it around.

Afterward, the husband gives back the parchment that the scribe has left, along with the ink and all the writing implements, to the scribe as a gift, so that he will be able to write gets for others. (In Sedarim.) The custom is to assemble ten [men] for the giving of the get, to publicize the matter. (Rabbi Yitzhak of Mintz.) Relatives can be included in the group [of ten].

They take two kosher witnesses to witness its transmission.¹⁹ It is the custom that the two witnesses who signed also be the witnesses to its transmission. It is also a custom that the Rabbi who arranged the divorce stand in between the two witnesses to its transmission, one to his right and one to his left, and the scribe is in front of him. Also the husband and wife are in front of him.

Everyone is standing and not sitting. (In Tikun Yashan, and in Or Zaruah, chpt. "Zeh Borer.")

Some say that one must be careful not to give the get in the house of the Rabbi who arranges it, but I have not seen such caution in this. (Ibid. in Tikun, based on tradition.)

After they have read it, the Rabbi asks the scribe, "Is this the get which you wrote? (Did he give you all the writing implements, the parchment, and the ink?) Did you write it upon the order of the husband, for his sake, and for the sake of his divorcing his wife, _____ the daughter of _____?" He answers, "Yet." ("Did he say these things to you before witnesses?")

[The Rabbi] asks one of the witnesses, "Did you hear that the husband ordered the scribe to write for his sake, and for the sake of the divorce of his wife, _____ the daughter of _____?"

Note - For the case where the witness was present by the scribe long enough to have witnessed the writing of part of the bill, it is as written above in No. 21. Also if they have seen the husband give him the parchment, etc.

67. [The advisor (Am Bet Din) then continues asking the witnesses:]

"Do you recognize this as the get?"

68. "Did you sign upon the order of the husband? (in that he commanded you to sign it for his sake, her sake, etc.)"

69. "Did you sign for his sake, and for the sake of his divorcing his wife, _____ the daughter of _____?"

70. "Do you recognize your signature?"

71. "Did you sign in the presence of the other witness?"

72. "Do you recognize his signature, (did you hear the husband order him

to sign?)"

73. He answers, "Yes," to every question. Then the second witness [answers], according to the same procedure. (Seder of Mordecai Jaffe.)

Note - He also asks the scribe and the witnesses whether when they began to write they expressly said that they were doing so for his sake, and for her sake, and for the sake of divorce.

He asks if everyone heard what his fellow said. They answer, "Yes," and explain to him exactly what they had said. (In Sedarim.)

The Rabbi must caution the husband and scribe and witnesses not to say, "Yes, yes," or "No, no," in their response, but rather just one "yes" or "no." (In the Seder of Mordecai Jaffe.)

74. After this, he gives the get to the husband, and asks him again if he is giving this get with his knowledge and by his consent as mentioned above.

Note -- Paragraph No. 14. There are some procedures of giving gets in which it is written that this cancellation of protests is made before the advisor reads the get and asks the scribe and witnesses as has been clarified--before he reads the get. Such is the custom in these countries. But there is no disagreement that when the advisor reads the get, he must read it exactly and not in a manner whereby it ~~is rendered into~~ ^{sounds like} another language.

75. He also annuls any protests a second time and declares any witnesses as unfit, as above.

Note - Number 20. He asks the witnesses if they were there when the husband cancelled all protests before the get was given, as was clarified in number 20 above.

76. If the husband went out from the presence of the Rabbi who was arranging the divorce [at any time] between the writing and the giving, then the Rabbi must make him swear an oath that he did not annul the bill in any respect, and that he did not make any protest, and that he did not say anything which would result in the annulment of the get.⁵⁰

77. He gathers a minyan⁵¹ together, in order to give the get among ten men.

78. The Rabbi asks all those present before the get is given if there is anyone who knows of any reason for the disqualification of the get, and if he offers any challenge, he should do so before it is given, (and anyone who knows of such a matter must express it,) for after it is given, a ban is placed not to cause any slander about the get. (See this chpt. above, number 22 which is applicable here.)

79. The Rabbi says: "Listen all of you who are qualified to testify."
[lit. "Kosher witnesses", i.e., witnesses to the giving of the bill.]

80. It is preferable that the witnesses who signed the get be there.

81. He commands the wife to take off the ring on her hand, and afterwards to bring her hands forward, open them, and bring them close together, in order to receive the get. Her hands must not be slanted so that the get might fall.⁵²

Note- The custom is to cover the wife's face until the Rabbi speaks to her as well as when she receives the get, out of modesty. He asks her if she is receiving the get by her will. And she says, "Yes."

Some are strict and say if she swore or vowed, then they should annul it [the vow] for her. The Rabbi arranging the get says to her, "Know that by this get you will be divorced from your husband." (In Sedarim.)

Then the advisor asks about the ketubah, and she should return it to the husband or forgo it, so that afterwards they will not quarrel because of the ketubah, lest the husband say that on that condition he did not divorce her. He found the reason in Seder of Rabbi Yitzhak of Mintz.⁵³

82. He must be cautious that her friend does not assist her, nor anyone else, nor should she get her cloak, or anything else in her hand when she receives [the get]. (In Sedarim.)

83. She must be careful not to bring her hands together until he addresses her. (Her hands must not be within three handbreadths from the ground.) (In Sedarim.)

84. The husband puts the get in her hand and says when he puts it in her hand, "This is your get (and receive your get). Behold, you are divorced from me by it (from now [on]) and permitted to all men."

Note - Before he gives it to her, the Rabbi says to the witnesses of the transmission, that they will view the transmission of the get. And he makes known to the husband at the start the explanation of the words he is about to say. (In Sedarim.)

Some are accustomed to fold the get like a letter when it is transmitted to her, and such is the custom. But some wrote that it must not be folded, just to give it to her as is, with the writing on the outside, so that everyone can see it is a get. (From Seder of Rabbi Yitzhak of Mintz.)

85. After he has put the get in her hand, and removed his hand entirely, then she closes her hands and grasps the get and raises up her two hands. Afterward, the Rabbi takes the get from her hand and reads it a second time in the presence of the witnesses. (Some say he asks the scribe and witnesses all the questions again that he asked at first.) (All this is in Sederim.)

Then the [Rabbi] places a ban on anyone who slanders this get.

86. He then cuts it lengthwise and crosswise.⁵⁴

Note - The custom from that point on is for the Rabbi who arranged the divorce, to keep it himself in a safe place. He does not put it in the wife's hand, a practice which should not be changed. Any get that is not given is not torn lengthwise or crosswise, so that they will not make a mistake that it was given.

87. The Rabbi cautions the woman that she cannot be betrothed for 90 days (including neither that day nor the day on which she becomes engaged.)⁵⁵

88. Concerning the giving of the get, some say that it must be during the day and not at night. (See above, end of chpt. 123.)⁵⁶

89. Thus, if the congregation had prayed Ar'vit, [the daily, evening pray-

er service] even though it was still daytime, one does not give a get because it is already considered nighttime. This is if it is not a time of distress, for if it is, then even if it is completely night, one can give a write [a get].

It is necessary that the get be given on the day it is written, unless it is being sent to another city in which case it is impossible to give it to her on the day it is written.

90. It is necessary that the husband not be alone with her between the writing and the giving. If he is alone with her, it is an "old" get,⁵⁷ and he cannot divorce by it. (See above, chpt. 149.)

91. An agent who brings a get, should give it to her in the presence of two witnesses. If the agent is a relative or unfit, he should give it to her before three [witnesses].

He says to her when he gives it, "Behold, this is your get which your husband, _____, (the son of _____,) sent to you," and, "Behold, you are divorced from him by it and permitted to all men," and, "This get was written and signed in my presence."

Note - Similarly, for a get from betrothal [i.e., she was divorced while betrothed], the agent says to her, "Behold, this is your get which your fiancé [lit. "betrothed one"] sent to you." (In Seder of Rabbi Yitzhak of Mintz.) Also, the name of the fiancé must be written in the authorization, but when the rabbi asks the agent the questions, [the rabbi] mentions the name of the fiancé, for example, he asks if this is the get that _____, the fiancé, sent. The Bet Din [Jewish law court] handling the divorce reads it before giving it.

If there are any conditions in the get, the agent says when it is given that the conditions are such and such. See above, chpt. 142 for the procedure of the giving from the hand of the agent to the hand of the woman, (and see above, 140:2).

There are some procedures and so it is the practice for those who are sitting there to ask the agent what he wants, and he answers, "I am the agent for _____, the son of _____, to divorce his wife _____." They ask him if the husband set a time for the divorce or if he made any other conditions. He then answers. Afterward, they ask the wife if she is willing to receive the get. After that they inquire about the authorization and read it to see if it is in order and established as proper.

Afterward, they ask the agent if the husband was healthy when he made him an agent, or if he heard that he died, or cancelled the agency.

He answers everything for them.

They also ask if the husband visited her or if he sent an agent to cancel the get. She likewise answers.

After this, they ask the agent if he himself cancelled the agency, or if he made another agent, or if he is being forced to do this, or if it is because of a vow or oath, or if he lodged any protest against the agency. He must answer them ["no" for negative questions, and "yes," for positive questions].

Afterward, they ask him if he recognizes the woman as the wife of the divorcer.

If he does not recognize her, there have to be witnesses who do recognize her.

Then the Rabbi who arranged the divorce reads it with the witnesses to the transmission.

He asks the agent if he saw the husband give the parchment and ink to the scribe to write, and if he heard that he ordered him to write for his sake and his wife's sake for the sake of divorce; and likewise if he ordered the witnesses to sign for his sake and her sake for the sake of divorce, and if he recognizes this as that get.

They then ask him concerning the writing and signing as was clarified above, numbers 24 and 25--if he heard whether the scribe explicitly said that he was writing it for his sake and her sake and for sake of divorce or if the witnesses said so when they signed, if they were both present when they signed it, and if the get was dry when it was given to the agent. The agent stands when he transmits it to the wife and does not lean at all. (Seder of Rabbi Yitzhak of Mintz in the name of Maharil.)

Afterward, the wife receives the get from the agent in the manner she would have received it from her husband, the manner explained above. He puts it in her hand in the manner of a husband giving his wife a get, except that his words are changed, and he says to her, "Behold, this is your get which your husband sent to you," etc.

Afterward, the Rabbi takes the get from the woman and reads it again and asks the agent all the questions he asked him at first.

Afterward, they cut the get lengthwise and crosswise and place a ban on anyone who slanders the get, and caution the wife that she cannot remarry until after 90 days as was clarified above, number 87. (In Sedarim.)

It seems to me that they were very stringent with a few of their questions which are not really necessary. This is the custom, but the ex post facto ruling, was already clarified in chpt. 141 and 142 which things are necessary.

92. If the woman being divorced is a na'arah 12-12 1/2 , be it [a divorce] from engagement or marriage, she is divorced by receiving the get by

herself. But if her father received it while she was engaged, since she still has not reached majority, behold she is divorced. But if she has reached majority, even though she is only engaged, or if she is married even though she is still a minor, she is not divorced by her father's receiving the [get].⁵⁸

93. If she is less than 12 and married, she cannot be divorced by her father's receiving [the get].

94. If she is less than 12 and engaged, according to everyone's opinion she is divorced through her father, but there is controversy if she can be divorced by herself. It is [therefore] proper to be stringent in that she can only be divorced through her father.

95. A girl of less than 12 is only divorced when: [1] She knows the difference between her get and something else. That is, if one gives her a pebble, she will throw it away, but if one gives her a nut, she will pick it up, [the Talmudic test for mental discernment],⁵⁹ or [2] if she has reached the age of "p'utot", which is usually six or seven years old, everyone according to her intelligence.⁶⁰

But less than this, she is not divorced by her father, according to Rashi, may his memory be for a blessing, even through her father, and according to Rabbenu Tam, not by herself, but by her father. Rabbenu Asher agreed to this.

96. Concerning a minor of less than 12, divorced through her father, one must be strict to write two gets--to give her one in the form of gets,

but in the other is written: "Your daughter, _____, who was the wife, etc.

Note - If the get is given to a minor with her father's knowledge, only one get is needed, similar [in form] to other gets. See chpt. 141 and chpt. 37.

97. If the [husband] gives the get to an agent, to give it to his wife, he appoints him in the presence of two witnesses. Then the Rabbi calls him before the witnesses and afterward asks the scribe, "Is this the get you wrote," etc., as above. It is preferable that the witnesses who signed the get be there.

Note - Thus [the husband] says, "Behold, I, _____, the son of _____, known as _____, appoint you, _____ the son of _____, to be my agent, to bring a get to my wife, _____ the daughter of _____, called _____, you, or your agent, or your agent's agent up to 100 agents. May your hand be as my hand," etc., as was clarified above in Number 30.

Afterward [the husband] orders the scribe to write and the witnesses to sign. He cancels any protest or oaths before the writing, as if the wife herself were there with him (all this is in Sedarim) as clarified above.

98. Afterward, the Rabbi returns the get to the husband, and the husband gives the get to the agent, and says, "(You _____ the son of _____, called _____), give this get to my wife, _____ (the daughter of _____).

Wherever you find her, your hand will be as my hand, your mouth as my mouth, (your word as my word,) your doing as my doing, your giving as my giving. I give you permission to make an agent, and the agent [to make] an agent,

up to 100 agents, even without duress, until this get reaches her hand or her agent's hand. As soon as she or her agent receives this get from you, or your agent, or your agent's agent, as mentioned above, she will be divorced from me and permitted to all men."

Note - The agent receives the get like the wife herself.

Afterward the Rabbi reads the get again and asks all the questions, and places a ban on anyone who slanders the get, as number 85 above. He then folds it like a letter and gives it to the agent.⁶¹

Afterward, they write the authorization and not before, because in the authorization they write, "In our presence, he transmitted," etc., as was clarified above, chpt. 141:30.

For the laws of a second agent, see above, chpt. 141:40, and chpt. 142:9. The procedure of authorization is found in Seder Gitin, but the language is not crucial, as I wrote above, 141:30.

When the first agent makes a second agent, it seems to me that one must ask all the questions they would ask him if he gave it by himself to the wife, so that the second agent does not testify afterwards merely, "I am an agent of the court." Therefore, the first Bet Din has to investigate the particulars well and in the manner clarified above, number 98.

99. If he is giving it to her on conditions, he says to her when he gives it, "Behold, this is your get, and you are divorced from him with it and permitted to every man, on the condition that if I should not have come back from this day up to 12 months, this get should [be binding] from now. But if I should come within the time mentioned, and appear before _____, and _____, then this get is not in force. She should be believed about me to say that I did not come and that I did not conciliate her."

100. If the man divorcing is near death, he says to her when it is given, "Behold, this is your get, and behold you are divorced from him by it from now and permitted to every man, 'on the condition, that if I live until and including _____, then it is no divorce. But if I should die before that date, may this get be in effect from now. [Again,] but if I live until and including _____, then it is no divorce.' "

Note - See above, chpt. 145:5. After this, she may not be alone with him unless someone else is with them, even a slave, or a maid, but not her maid, or her small son. (Tur, chpt. 178.)

101. One must be extremely cautious not to try to arrange any divorces if he is not an expert in the laws of divorce, for there are many details and a man can easily err concerning them and cause bastardy. May the Rock of Israel save us from mistakes. Amen.

Note - The form of the get to which they are accustomed in these countries and in this city in particular was clarified at the beginning of this chapter. The following is the wording:

On the third day of the week, on the third day of the month of Sivan, in the year 5340, since the creation of the world as we count it here in Kausmir, also called Kausimirz, a city which is situated on the Vistula and Volga rivers and on the waters of the springs, I _____, called _____, the son of _____, who stand today in Kausmir called Kausimirz, which is on the Vistula and Volga rivers, and the waters of the springs, expressed my desire of my own free will with no compulsion, and I let you go, freed you and divorced you, my wife, _____, who is called _____, the daughter

of _____, called _____ who stands today in Kausmir called Kausimirz, which is on the Vistula and Volga Rivers and on the waters of the springs, who has formerly been my wife. I let you go, freed you, and divorced you, in order that you may have permission and the authority over yourself to go and be married to any man whom you desire. I will offer no protest against you, from this day forth, forever. Behold, you are permitted to every man.

This document from me to you shall be a document of expulsion, a letter of release, and a bill of divorce, according to the laws of Moses and Israel.

_____, the son of _____, witness

_____, the son of _____, witness

INTRODUCTION TO CHAPTER 154 - FORCED DIVORCE

The woman's role in Judaism as of late has been under great scrutiny and discussion. As outlined in Seder HaGet, the wife's role in divorce is minimal to say the least. In marriage she is acquired; in divorce she is released, having little if any say in the latter. Yet there are certain circumstances in which the wife can initiate the divorce. Those situations are discussed in chapter 154 of Even HaEzer, the translation of which I offer here. In short, in the outlined cases, the bet din, the Jewish court, can force the husband to divorce his wife by beating him. It sounds barbaric and archaic, yet the procedure is still practiced. The Jewish Post and Opinion of Friday, June 1, 1973 carried the following story:

New York - A Hassidic divorcee . . . has a divorce and five members of the sect will be tried on charges involved in kidnapping and beating the husband who obtained a civil divorce but refused to give his wife the get.

Under Jewish law, the wife, Mrs. Illona Lebovics, would not have been able to remarry. Only a male can secure a divorce under Jewish law.

The rules that governed Jewish life in the shtetl came to Brooklyn recently when Samuel Lebovics was accosted by the five men as he was walking the Brooklyn streets. . . . They handcuffed their prize, blindfolded him, and got into a minibus. . . . According to the indictment, he was beaten and then kept overnight in a house and released only when he came before a rabbinical court at the home of Rabbi Jacob Liebowitz, where two other rabbis awaited him and carried out the granting of the get. . . .

SHULCHAN ARUCH, EVEN HAEZER, CHPT. 154

Whom the (Bet Din) [Jewish law court] force to divorce by giving a get whether it is the man or the woman, the order of the writing of the get, and giving it.

1. These [men] they force to divorce [their wives] and give [them] the ketubah:¹ A man who developed halitosis [lit. developed odor of the mouth or nose], or one who changed his occupation to being a gatherer of dog excreta, or a tanner, or a copper miner.² But if she wants to she can remain with her husband. (If she knew about them before she got married, they do not force him to divorce her, for she thought it over and accepted it. Tur in the name of Rabbi Meir ha Levi.)

If the man is smitten by boils, they force him to divorce and give the ketubah, and even though she wants to remain with him (or even though she stipulated with him [i.e., she said no matter what happens we will stay together] before she got married) they do not listen to her, but rather force him to divorce her against their will, because she will aggravate his condition.³ If she says, "I will remain with him with witnesses so that he will not have intercourse with me," they listen to her [and allow it].⁴

Note - There are those that say they use gentiles to force an apostate to divorce, (Bet Yosef, chpt. 134, in the name of Orchot Chayim, and in Mordecai, chpt. HaMegaresh), but he must be idle during the writing of the get. Then there are those who disagree and say that they do not force an apostate to divorce, or any of the other religious transgressors (Re-

sponsa of R. Meir of Rothenburg), unless he is sinning against her⁵--for example, he feeds her something prohibited (Jacob Weil, chpt. 23) or is transgressing a ban in that he obligated himself to her not to anger her, or if he makes vows and does not fulfill such because his children die because of the sin of the vows. (Notes on Maimonides at the end of Ishut.) If a man visits prostitutes, and his wife complains against him, if there are witnesses to the matter in that they saw him with adulterers, or if he confessed, there are those who say they force him to divorce her. However, just because they bring him children whom he doesn't know [claiming that they are his] this you may disregard for perhaps they lie about him (Chidushe Aggudah in Y'vamot).⁶

2. If a woman had a husband who had halitosis, or was a gatherer of dog excreta, etc., and he died, and she "falls" before his brother [i.e., the Yibbum-Chalitsah situation arises--] ⁷ and he has the same defect as her husband had, she can then say: "I was able to accept your brother but am not able to accept you." He then performs chalitzah and gives her the ketubah.⁸

3. If a man says, "I will not feed or support [my wife,]" they force him to feed. If the Bet Din cannot force him to feed her, for example, if he has not got the funds,⁹ and he does not want to work and to earn money to feed her, if she wants, they force him to divorce her immediately and give her the ketubah. Such is also the law for him who does not want to have intercourse.¹⁰

Note - Thus, if a man is accustomed to anger and to forcing his wife out of his house continually, they force him to divorce her, for because of

this he would not support her at certain times, and would be separated from her in the matter of intercourse more than her conjugal rights allow. He is like one who refuses food or intercourse. (Responsa of Rabbi Solomon ben Adret, chpt. 693, and see above chpts. 70 and 77.)

If a man hits his wife, this is a crime on his hands just as if he hit a fellow man. If he is accustomed to this [beating her], it is up to the Bet Din to chastize him and to put him under a ban, and to flog him with all kinds of punishments and coercions, and to make him swear that he will not do it again. If he does not obey the Bet Din, some say that they force him to divorce her, warning him first once or twice that it is not the manner of the sons of Israel to beat their wives, but rather it is a gentile custom. All this is the case if he initiates it [i.e., the quarrel .]

But if she cursed him without cause, or if she degrades his father or mother, and he rebukes her with words but she does not pay attention to him, some say he is then permitted to hit her, but some say it is even forbidden to hit an evil woman. However, the first opinion [that he can hit her] is correct.

If it is not known who starts it, the husband is not trusted to say she starts it, for all women are presumed to be kosher. Therefore, they [the Bet Din] appoint observers to see who causes the trouble. If she curses him without reason, she is divorced without the ketubah, but it seems to me only if she is accustomed to doing this and only after the warning as was explained above, chpt. 15.

But if she leaves his house and borrows money and eats, if she left because he constantly hit her, he is obligated to pay her [the ketubah]. (All these words in the notes of Isserles are found in Mordecai, chpt.

Na'arah in the name of Rabbi Meir, and in Benjamin Zaeu, chpt. 88), and as was clarified above, chpt. 9.¹¹

4. A man who develops a defect after marriage, even if his hand or leg is cut off or his eye is blinded, and his wife does not want to live with him, they do not force him to divorce her and give her the ketubah, but rather if she wants to, she can stay, but if she does not want to, she is treated as a rebellious wife.

Note - Some say that this is the case if it involves only one hand, eye, or leg. But if it involves two hands, eyes, or legs, they do force him to divorce her. (Tur and Rabbi Asher ben Yechiel.)¹²

5. Concerning a man who goes insane day by day, and his wife says, "My father was pressured into marrying me to him;¹³ I used to think I could accept him, but now I cannot because he is deranged, and I am afraid he might kill me out of anger," they do not force him to divorce her for they only force in instances about which the Sages ruled.¹⁴

Note - Concerning him who is an epileptic, there are some who say that this is not a defect and because of this they do not force him to divorce her. But in any case, they do not force her to be with him, since she came with a claim. (Mordecai, chpt. Hamadir, in the name of Rabbi Eliezer ben Yoel Halevi.)

But there are some who say that this is a defect in the man and they do force him to divorce her. (Rabbenu Asher ben Yechiel, chpt. 72.)¹⁵

6. A woman who demands a get with a claim that she was not suitable to

have children with him, they do not listen to her. But if she claimed that she wanted to have children in order that she would have a son who could support her (and she did not yet have a son), and she says that he is the cause because he is impotent, if she lived with him for ten years but did not become pregnant, they listen to her as long as she is not demanding the ketubah, for then we would suspect she is demanding a get to collect her ketubah, neither can we ascribe the claims for a get to any other reason, even if he has children from another wife, [they listen to her], for he may have lost his virility afterward. Thus [if she is not demanding her ketubah], they force him to divorce her and give 100 or 200 dinars [the basic amount stated in the ketubah], but not the tosefet [the additional amount stated in her ketubah].¹⁶ He should give back her dowry that she brought to him.¹⁷ He then may pronounce a ban [curse] concerning those things which she claimed against him which she could not know for certain. Afterward, he gives her the ketubah.¹⁸

If he says, "I will marry another woman in addition to her, so that I will examine myself [to find out whether I am really impotent]" he may do this. And if the second gives birth, the first is divorced without the ketubah. And if the second does not give birth, he divorces both of them and gives them their ketubah.

Or he may marry a third wife if he is able to support them. But there is an opinion that if the second wife also says that he is impotent, he divorces the two of them and gives the ketubah. But in any case, if it is known that he is barren, and she came with the complaint [that she wants children], he divorces her immediately.¹⁹

Note - The same is the law if she lived with him ten years but did not

give birth, if she came to the Bet Din with the complaint [that she wanted children for support], they force him to divorce her immediately and give her the ketubah. In this case his statement, "I will examine myself by marrying another," is of no use, for in any case, the first wife has not lost her ketubah, for her sterility was not established by three men. The requirement that she must claim that he is impotent stands if it is known that he already had children, because then we assume that it is her fault, unless she lodged a strong claim that he is now impotent or if she has been married three times already without children, so that [her status of being barren] was confirmed. Such is the opinion of the Tur and conclusion of the Tosefot along with Jacob ben Asher.

7. If she claims that he does not have the strength of men to come upon her [i.e., he is impotent] and she asks for a get and he denied it, [i.e., his impotence], some say that she is believed²⁰ (even if she has not lived with him 10 years. Tur).²¹ They then force him to divorce her immediately but he does not give her the ketubah. If he divorces her on his own without being forced, he does give her the ketubah. (Some say that even though he can have intercourse with another woman, he does have to give her the ketubah, since he was not able to come upon her, since she can say, "I gave myself to you; now what else can I do?") (Bet Yosef in the name of Orchot Chayim.) This refers to when she does not claim the ketubah [that she is believed], but if she does claim the ketubah she is not believed, and he is not forced to divorce.²²

Note - Some say that nowadays, when women are so arrogant, she is not believed. (Mordecai, chpt. Asarah Yochsin.) But in any case, when there

are plausible reasons and assessments indicating that she tells the truth, she is believed. (Yosef Kolon, 72.) If his inability to have intercourse with her may be ascribed to the fact that her vagina was narrow and she was a virgin, or he was not able to come upon her because of the tenderness of his years or his weakness, they ascribe [lit. "make dependent"] it to this and do not force him to divorce. (Responsa of Rabbi Yitzhak ben Avraham, end of Ishut.)

Some say that even in a case where they do not force him, in any case they do not force her to be reconciled with him, and they do not deal with her as a rebellious wife, but rather they let the matter go until they become reconciled or until he lives [with her] ten years and she does not give birth. (Yosef Kolon, 135, and Bet Yosef, in the name of Rabbi Shlomo ben Adret.)

The same is the law if he betrothed a woman who is prohibited from marrying him or another, they force him to divorce her. (Responsa of Asher ben Yechiel, 43.) If she complains that her husband does not sleep with her and does not come upon her, the law concerning her is as with a woman who complains that he does not have the strength of men.²³

8. If it is known that a man wants to go to another country, they make him swear that he will not go, or else they force him to divorce her with a time limit [i.e., the divorce should be valid if he does not return within a specified time].

9. If it was known that he was not permitted to stay in that place where he married her, because of mortal danger, they force him to divorce her, (for she does not have to follow after him).

10. If a man married a woman, and she lived with him ten years and did not bear children, he divorces her and gives her the ketubah, or he can marry a woman capable of bearing children. If he does not want to, they coerce him until he divorces her. If he says, "I will not have intercourse with her," no matter if she said it or he said it, they do not listen to him, but rather he divorces her and marries a woman capable of bearing children.²⁵

Note - Some say that this is if there was not any birth at all, but if there was one viable child produced, even though the commandment to "Be fruitful and multiply" was not yet totally fulfilled,²⁶ they do not force him to divorce. (Rabbi Yitzhak ben Sheshet, chpt. 15, and see above, chpt. 1.)

Nowadays they are not accustomed to coerce at all; the man is trusted to say of himself that he cannot impregnate, and they do not force him to marry another woman. (Nemuke Yosef, chpt. HaBa al Yevimto.)²⁷

11. If he left on business within the ten year period, or if the husband or wife were sick, even though they still had intercourse together, or if they were imprisoned in jail, this time does not count toward the ten year period.²⁸

12. If she miscarried, one counts from the day she miscarried. Or if she miscarried and then miscarried again, and again, for a total of 3 times, she has the presumption of miscarrying.²⁹ He then divorces her and gives her the ketubah, and in any case she is permitted to marry another.

13. If he says she miscarried within ten years, so that he can continue to live with her, and she says, "I did not miscarry," she is trusted.

14. If he says she miscarried twice, and she says three times, she is believed.³⁰

15. In all this, she swears an "oath of exemption" that she did not miscarry or that she miscarried three times, for in this complaint he is obligated to give her the ketubah.³¹

16. If he lived with his wife ten years and she did not give birth, and he divorced her, she is permitted to marry a second. If she lived with the second ten years and did not give birth, she is treated legally as with the first [divorced with a ketubah].

17. A divorcée twice over cannot marry a third. If she marries a third,³² she is divorced without the ketubah unless he has another wife or has already fulfilled the commandment to "Be fruitful and multiply," but if he knew it [that she is barren] about her, then she has a ketubah.

18. If she lived with the third for ten years and did not give birth, if she did not collect a ketubah from the first two, she cannot collect it [from the third].³³ But if she did collect it, she does not have to return it.

19. If the third divorces her without the ketubah, and she marries a fourth and [finally] gives birth, she may not collect the ketubah from

the third, for she may have become healed [now when married to the fourth man].³⁴

20. Anyone who marries a woman, and the marriage is a transgression, even if it is only against a rabbinical prohibition ["secondary," i.e., more distant relatives], they force him to divorce her.³⁵

21. All those about whom they tell to divorce them, they force them [to do so] even with whips. But some say that everyone concerning whom the Talmud does not state explicitly that he be forced to divorce his wife but only that he divorce her, they do not beat with whips. Rather the Sages say to him, "You are obligated to divorce her, and if you do not, you may be called a transgressor."³⁶

Note - Since there is disagreement of the rabbis over this, it is proper to be stringent and not beat him with whips so that the get will not be a get given due to force. (Tur in the name of Rabbenu Asher ben Yechiel.) But if his [marriage to] his wife is a transgression, everyone agrees that they beat him with whips.

In any case where they do not beat with whips, they likewise do not excommunicate him, either. (Mordecai Rish, chpt. HaMedir.) In any case, they can decree concerning every Israelite that he must not do any favor for him or to do business with him, (Sh'ade Dorah, in the name of Rabbenu Tam, and in Yosef Kolon) not to circumcize his sons or bury him until he divorces his wife. (Benjamin Zaev, chpt. 8.) Any stringency like this which the court wants to apply in such a case, they may do so just as long as they do not excommunicate him.³⁷ But concerning anyone

who does not fulfill his marital duties, he may be excommunicated or placed under a ban until he fulfills his marital duties, or divorces her. For this is only forcing him to fulfill his marital duties and [this applies to] everything similar. (Rabbi Yitzhak ben Sheshet, chpt. 127.)

Thus, anyone who divorced his wife with a kosher get, and some slander resulted from it, it is permissible to force him in order to give another get. In any case where there is controversy whether they should force or not, although they do not force him to divorce, in any case they force him to give the ketubah immediately, along with the dowry that she gave to him. (Mordecai Rish, HaMedir.)³⁸

22. It is necessary to place a ban upon anyone who is present at the giving of a get lest they spread slander about the validity of the get. (They recall that Rabbenu Tam decreed in a council with his students against someone who spreads slander about the get once issued.)³⁹

23. If the husband swore to give a get, it is desirable to annul the oath before [giving the get], so that it will not resemble compulsion. However, he may give a pledge (instead of swearing) if he so desires.

Note - See above, 134:4. But concerning a get from an apostate, it is not necessary to ask if he swore or vowed, since he must divorce her according to the law. But they do ask him if he is divorcing her of his own will, as well as ask his wife.

24. Anyone who accepts upon himself by the "nazirite of Simson" a certain type of vow [and is thereby required] to divorce his wife, is per-

mitted to divorce his wife. There is no "forcing" in this divorce. However, it is preferable to divorce her with two gets and to give them to her one after the other. [The one because he vowed to do so, the other out of his free will].

INTRODUCTION TO OTHER GET DOCUMENTS

Given the problems of time and distance it is not always possible for the husband or wife to be present at the various divorce procedures. As outlined in Seder Ha Get, an agent can act for the husband, wife, or even for another agent. Today, the get is often sent to a shaliach, an agent, in the city in which the wife is to be found. The concept of agency required documents attesting to the authorization of the agent. Two such documents are translated here. The first is authorization for an agent by the husband; the second is from one agent to a second. Both are taken from Mivchar Sh'tarot, A Selection of Significant Documents Used in Jewish Life, compiled by Dr. Alexander Guttmann, Hebrew Union College-Jewish Institute of Religion, Cincinnati, 1971.

DOCUMENT AUTHORIZING AN AGENT BY THE HUSBAND

Permission (Power of Attorney) From the Husband to his Agent

Before us, the undersigned witnesses on this the _____ day of _____ the week, which is the _____ of the month of _____ in the year _____ since the creation of the world according to the way we count it, here in _____ which is on the river _____ and the river _____ and on the waters of the springs of _____, the husband, _____ the son of _____, gave a bill of divorce to _____ the son of _____, to deliver it to his wife, _____ the daughter of _____ who is called _____, and to give it into her hand.

Thus the husband, _____ the son of _____ said to his agent _____ the son of _____ in our presence: "Deliver this bill of divorce to my wife, _____ the daughter of _____, who is called _____, and give it into her hand. May your hand be as my hand, your doing it just as my doing it, your mouth as my mouth, and your word as my word. I give you permission to make an agent [to go] in your place, even in another city, in writing that need not be done in his presence. [And I also give permission for] the agent to make an agent, even up to 100 agents, even without being forced, wherever you or your agent, or your agent's agent, even up to 100 agents, even without being forced, may eventually find her. As soon as this bill of divorce reaches her hand from your hand, or from the hand of your agent, or from the hand of your agent's agent, even up to 100 agents even without being forced, she will then be divorced by it from me and permitted to every man."

The bill of divorce for which _____ the son of _____ was made

an agent to bring it, according to everything which is written above,
 was written and signed in _____ which is on the river _____ and on
 the river _____, and on the waters of the springs of _____, on the
 _____ day of the week, which is the _____ day of the month of
 _____ in the year _____ since the creation of the world. The wit-
 nesses who signed it were _____ the son of _____, and _____
 the son of _____. Before us, the husband, _____, the son of _____,
 cancelled any protest that he may have lodged against this bill of di-
 vorce, and also in our presence, the husband _____ the son of _____,
 took upon himself a ban and an oath of the Torah that he would not cancel
 the divorce, or his agent, or the agency.

To what we saw and was done in our presence we then wrote down and
 signed, and everything is valid and established. (I am accustomed to
 carefully examine to see that the words "everything is valid and estab-
 lished" extend to the end of the line.)

_____ the son of _____ witness

_____ the son of _____ witness

In a session of three judges we are as one [to the effect] that these
 two witnesses, _____ son of _____, and _____ son of _____, have
 testified before us concerning everything mentioned above and also that
 they have signed before us. We [hereby] validate and establish it as is
 proper.

Signed _____ the son of _____

_____ the son of _____

_____ the son of _____

DOCUMENT AUTHORIZING SECOND AGENT FROM THE FIRST

In a Bet Din of three judges we are as one [to the effect] that on this the _____ day of the week, which is the _____ day of the month of _____, in the year _____ since the creation of the world according to the way we count it, here in _____ which is on the river _____ and on the river _____ and on the waters of the springs _____, _____ the son of _____ appeared before us, and in his hand was a bill of divorce that _____ the son of _____ had sent with which to divorce his wife, _____ the daughter of _____ who is called _____. And he brought before us the power of attorney, established and ordained by an ordinance of the Sages, that the husband, _____ the son of _____, made him an agent in the presence of witnesses to bring this bill of divorce to his wife, _____ the daughter of _____ who is called _____. He gave him permission to appoint an agent in his place, even in another city, in writing that need not be done in his presence, and for the agent to appoint an agent, even up to 100 agents, and even without being forced.

Because of that authorization by our authority and in our presence, he has appointed _____ the son of _____, the aid to the Bet Din who lives in the city of _____, to be an agent in his place.

Thus did _____ the son of _____, the agent, mentioned above, say in our presence, the undersigned Bet Din: "Behold, by your authority and in your presence, I appoint _____ the son of _____, the aid to the Bet Din who lives in the city of _____, to be an agent of delivery in my place, to deliver this bill of divorce to the woman _____ the

daughter of _____ who is known as _____, the wife of _____ the son of _____, and to put it in her hand, May his hand be as my hand, his doing it just as my doing it, his mouth like my mouth, his word as my word. I give him permission to make an agent in his place, and the agent [permission to make] an agent, even up to 99 agents, and even without being forced, to give this bill of divorce to the woman, _____ the daughter of _____ who is called _____, the wife of _____ the son of _____, wherever he, or his agent, or his agent's agent, even up to 99 agents, even without being forced may find her. As soon as this bill of divorce touches her hand from his hand, or the hand of his agent, or from the hand of his agent's agent, even up to 99 agents, even without being forced, she will be divorced by it from her husband, _____ the son of _____, and permitted to every man. This bill of divorce was written and signed in my presence."

This bill of divorce for which _____ the son of _____, the aid to the Bet Din who lives in the city of _____, was made an agent of delivery according to everything that is written above, was written and signed in _____ which is on the river _____ and on the river _____, and on the waters of the springs of _____, on this the _____ day of the week, which is the _____ day of the month of _____, in the year _____ since the creation of the world. The witnesses who signed it were _____ the son of _____, and _____ the son of _____. In our presence, _____ the son of _____ cancelled any protests that he may have lodged against this agency, and also took upon himself a ban and oaths of the Torah that he would not cancel the agent or the agency.

To what we saw and what was done in our presence we have written and

signed, everything is valid and established.

Signed _____ the son of _____

" _____ the son of _____

" _____ the son of _____

COMMENTS ON CHAPTER SEDER HAGET

1. The Aruch HaShulchan, which was my major source of modern interpretation, written about 100 years ago by Yechiel Michal Epstein, comments that the divorce procedure written in Ashkenaz, Central and Eastern Europe, is confusing and that it is therefore preferable to use the procedure of the Shulchan Aruch. (Aruch HaShulchan, referred to from now on as A.H., Seder HaGet, 1.)
2. Chalitzah refers to the Jewish ceremony denying levirate marriage. In it the widow refuses to marry her brother-in-law who was obligated to marry her when his brother died. The procedure is almost as complex as divorce and so is included in the caution.
3. The reference in Yoreh Deah says that anyone not ordained a rabbi who arranges divorces or chalitzot has no legal authority to do so. All those he has arranged are suspect. But if the prospective divorcée or widow would be an agunah, (a wife the death of whose husband is in doubt, preventing her from remarrying), then such arrangements are not suspect; there is no need to worry about what he has already done. (A.H., Seder HaGet, 2.)
4. The Aruch HaShulchan adds the evening of Shabbat and holidays to the times from which they refrain from arranging a get. The reason is two-fold. First, the concerns for the holiday or Shabbat would be too exacting; secondly, it is forbidden to judge on Shabbat or holidays, and, though the get is not a law, still a bet din, a Jewish court, would have to meet. However, during a time of stress or an unfortunate situation, i.e., an agunah, this avoidance is not observed. See also paragraph 89 in the translation (A.H. Seder HaGet 3.)

5. If they are related to a fifth degree, (5 generations or five times removed) the scribe and witnesses are still kosher. (A.H., Seder HaGet, 5.)
- 6.- The physical defect is described as blind in both eyes for he must be able to read the get, see its transmission, and recognize the man and woman involved. (A.H., Seder HaGet, 6-7.)
7. If the rabbi is a relative of one of the divorcing parties, he appoints another and tells him what to do (A.H., Seder HaGet, 8-9.)
8. If it is a time of great distress and the prospective witnesses cannot write their names, they may trace their signatures. (A.H., Seder HaGet, 10.)
9. The witnesses must not be related for they may give an unfair testimony due to the money they receive. They are allowed to receive money because the burden of going, standing, signing, and watching the transmission of the get is above and beyond what the normal witness has to do.
10. The husband must reach an agreement about fees lest quarrels about payment result later, invalidating the get, and there be enmity between the husband and the court. (A.H., Seder HaGet, 15.)
11. If it is a time of danger, then they do not demand recognition beforehand. The divorce is still valid, but they do not allow the woman to remarry until testimony of recognition is brought forth. (A.H., Seder HaGet, 17.)
12. Some other distinguishing feature must be found between the men with identical names, as well as divorcing in the presence of the "friend." (A.H., Seder HaGet, 18.)
13. One must try to avoid divorces with conditions, for the laws are numerous and complex. Only a Priest (a Cohen) can divorce on con-

ditions, since he is a special case and may want to remarry his wife after he is recovered from his long illness, and priests are prohibited from marrying divorcées. (A.H., Seder HaGet, 20.)

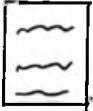

14. Anyone less than 13 years and one day old is considered a minor.
The test for maturity if the age is not known is to examine a strand of pubic hair to see if each strand has a separate follicle. (A.H., Seder HaGet, 11.)
15. Similarly, the scribe may not witness his own get. (A.H. Seder HaGet, 13.)
16. The husband's commands may be incorrect, invalidating the get; he should therefore leave the wording to the scribe.
17. The distance the husband must lift them up to symbolically show acquisition is three handsbreadths. (A.H., Seder HaGet, 22.)
18. Originally, the cancellation of protests came prior to the transmission, not the writing, but it was changed to remove any intermediary complications. (A.H., Seder haGet, 23.)
19. The most important thing to check is if in the heat of argument the husband swore he would divorce his wife. If this is the case, the husband's oath must be annulled. (A.H., Seder HaGet, 26.)
20. A better Formula is: "Write a get for my sake, _____, the son of _____, by which to divorce my wife, _____, the daughter of _____, and write it for my sake, her sake, and for the sake of divorce, etc." (A.H., Seder HaGet, 28.)
21. The permission to write 1 - 100 gets is from Yitchak HaKatan, one of the Tosafot, the disciples of Rashi. (A.H., Seder HaGet, 29.)
22. This oath may be said in any language he wants. (A.H., Seder HaGet, 27.)
23. Elijah and Elishah are similar names. In Hebrew the differences

between the names are very slight.

24. The wife can even pay the witnesses' and rabbi's fees. This may help alleviate an agunah situation. (A.H., Seder HaGet, 13.)
25. The witnesses must stand next to the scribe. (A.H., Seder HaGet, 33.)
The custom is changed now, however. Today, the witnesses just stand for the writing of the first line of the get, which is the date, as well as for the making the lines of the get. See also paragraph 42 in the translation. (A.H., Seder HaGet, 34.)
26. All these precise instructions and preparations cause me to ponder over the foul play that may have necessitated their institution.
27. See also paragraph 76 in the translation.
28. The most common type of agency today is to send the get through the mails to the proper agent in another city.
29. See note 14 for the test for maturity.
30. See paragraph 8 in the translation.
31. See also paragraph 99 in the translation.
32. There is an old superstition that an ill person will become cured if he changes his name--the disease inhabits the name.
33. Nowadays, the rabbi, not the scribe, asks the divorcing husband the questions, and then tells the scribe how to write the get. Since it is a qualified rabbi, the process does not have to be witnessed.
(A.H., Seder HaGet, 35.)
34. "One place" is defined as being in the same city. (A.H., Seder HaGet, 36.)
35. Now, before the scribe begins to rule in the parchment, he says,
"Listen to me, oh you witnesses, _____ the son of _____, and
_____ the son of _____. All the preparations that I am car-

rying out for the get, behold, I am doing them for the sake of the husband, who is divorcing, _____, the son of _____, by which to divorce his wife, _____ the daughter of _____. I am doing this for his sake, her sake, and for the sake of divorce." (A.H., Seder HaGet, 36.)





36. The scribe must finish cutting before he begins writing. This is to prevent him from cutting something out of the get after it is written, either by accident or intentionally.
37. The scribe cannot fix any mistake on his own. The husband must tell him to fix it. (A.H., Seder HaGet, 38.) This safeguard too smacks of foul play.

38. Thus the shape is  not . The parchment or

paper used can have no holes or spaces in it. (A.H., Seder HaGet, 16.) There is also a discussion that the writing should be longer than it is wide. This is needless, for if one is going to be picayune with the writing, there will never be a kosher get. (A.H., Seder HaGet, 39.)

39. The ruling is not done with a lead pencil, lest there be writing on top of writing. The lines are impressed on the reverse side, with some instrument but not a pencil. The ruling is done from the outside in, not the inside out, lest there be a break in some of the letters. (A.H., Seder HaGet, 40.)
40. If such advice is not followed, the get is still not invalid, yet one should be careful and neat. (A.H., Seder HaGet, 40.)
41. Today, a bird's wing is used for a quill, instead of a reed. The reason the practice was changed is related to paragraph 46 in the

translation, since the writing from a reed is not as straight as from a quill. The only prohibition is against using a metal quill, lest the letters be "chiselled out." See paragraphs 50 and 51 in the translation. (A.H., Seder HaGet, 40.)

42. Scratching out the ink that is between letters is not the same as scratching it out from inside the body of one letter. The latter is prohibited. See paragraph 50 in the translation.
43. For example  or 
44. See the Babylonian Talmud, Gittin 20a.
45. The only difference between the two Hebrew letters is  versus .
46. Writing over an erasure is simply a bad precedent to set. It makes forgery too easy. The tone of the discussion in the Aruch HaShulchan seems to denigrate the power of the argument of "chiselling out the letters," however. (A.H., Seder HaGet, 42.)
47. See paragraph 22 in the translation.
48. Chaver--here a title of a learned man (in Jewish tradition), though not a rabbi.
49. The entire procedure that follows is a double-check of all the previous formulae. The fact that it is repeated in the presence of the husband and wife together, an already difficult situation, only makes it all the more painful to all involved. Knowing that they would have to face such tension and humiliation might dissuade a couple from divorce.
50. See paragraph 23 in the translation.
51. Minyan--this is a group of ten Jewish adult males (over 13) necessary

for a prayer service and some other rituals.

52. The sentiments of note 49 are most evident here.
53. Upon marriage, the wife keeps the ketubah, the marriage contract.
The intent here is to solve any quarrels concerning the ketubah while the witnesses are present, lest any protests be lodged later.
54. He slashes an X in it.
55. The caution is so that if she becomes pregnant, there would be no confusion as to whose child it is--the former husband's or the new husband's.
56. The custom to give it during the day stems from the discussion mentioned in note 4, that a bet din, a Jewish law court, would have to meet, hence the tendency to give it during the daytime. (A.H., Seder HaGet, 4.) The custom is established and should not be changed; the only exception is during a time of emergency. (A.H., Seder HaGet, 44.)
57. Old Get - If there are any relations between the husband and wife after the get is written but before it is given (it is as if it were written a long time before); it is an old get and is invalid.
58. This only appears complicated. A girl is divorced by receiving the get by herself no matter what the circumstances. She can only be divorced when her father receives the get if she is a minor and only betrothed. See paragraph 94 in the translation.
59. See the Babylonian Talmud, Gittin 64b.
60. See the Babylonian Talmud, Baba Metziah, 96b.
61. See the "note" by Isserles to paragraph 84 of the translation.

COMMENTS TO CHAPTER 154 - FORCED DIVORCE

1. Ketubah - A ketubah is the Jewish marriage contract in which a specific amount is promised to be paid the wife if divorce or death of the husband occur.
2. The Aruch HaShulchan lists the following categories: 1) if the husband is leprous; 2) if he has a polyp of the mouth or nose which causes halitosis (a medical refinement of the reference in the Shulchan Aruch); 3) if he has Weiner's disease (a type of skin decay); 4) if he has an unbearable body stench; 5) or if his occupation causes him to have a bad odor, for example, a gatherer of dog excreta, a tanner, or a copper miner. Dog excreta was used in the preparation of hides or in clothes before washing. It is interesting that these are the only such occupations to which she can legally object. If he cleans outhouses, she may not ask for a divorce. The chemicals used in tanning produce an odor, as does copper mining; hence their inclusion here. (A.H., Even HaEzer, 154:1-6.)
3. The only time a court demands a divorce is in the case of leprosy and the like. Even if she can still tolerate living with him and does not file for divorce, he still must divorce her. They can still live together with witnesses, but not as husband and wife. (A.H., Even HaEzer, 154:1-6.) The fact that she can remain with him seems to be a lenient compromise of the Jewish court.
4. The general rule within the bet din is that if there is any difference of opinion to force the divorce or not, the stricter opinion is followed--i.e., not to force a divorce, lest the divorce be

a get me'useh "an enforced get," a divorce to which the parties have not totally consented.

5. The discussion here is how to deal with a Jew who aposticized himself. Some say non-Jews should force him to divorce his wife who is still Jewish. They may hit him harder than Jews. Others say forget about him, unless he is also sinning against his wife. The Aruch HaShulchan resolves the conflict that gentiles may beat a total apostate, for the second opinion refers not to an apostate but to a bad Jew; hence, Jews may beat him and force a divorce. (A.H., Even HaEzer, 154:15-16.)
6. There must be witnesses to a man's "cheating" on his wife, or he must confess in order for his wife's plea for divorce to be accepted. The last sentence means that testimony by a woman who brings to the man illegitimate children claiming him as the father, is not trustworthy, for she can easily be lying.
7. The situation concerns levirate marriage. See comment 2 to Seder HaGet. If A, the husband, is married to X, then his brother, B, is bound to marry X or reject her by the Chalitzah ceremony if A dies. What if A and B have the same malady? Does she have to marry him? No.
8. The Aruch HaShulchan comments that it is a remarkable thing that she can say, "I cannot stand him," when she could stand her husband with the same problem, and be able to disregard the Torah's command to marry. (A.H., Even HaEzer, 154:7.)
9. The Tur does not mention the case that he may have no money. Evidently the situation arose sometime between the two compilations.
10. Today, in general, if there is any doubt in the court's mind, they do not force him to divorce her. On the other hand, they do not

force her to remain with him, and they do not call her a "rebellious wife." (A.H., Even HaEzer, 154:8-10.) Concerning support, the procedure today is to warn the husband first. The court does not force a divorce immediately, but rather only if he continues to refuse support. If, upon divorce, the husband does not have the funds to pay the promised amount, it remains as his debt.

The complaint that he feeds her less than he feeds himself is not grounds for divorce, but only chastizement. (A.H., Even HaEzer, 154:20-21.)

11. The general principle is to try to placate the arguing couple with warnings. If arguing persists, then a mutually agreeable divorce is arranged. It is a law that the husband must remove his mother or sister from his house or neighborhood if they vex his wife. (A.H., Even HaEzer, 154:17-19.)
12. The Tur is explicit that one leg or eye, before or after marriage, is not sufficient grounds for divorce. The Shulchan Aruch left out the discussion of two legs, eyes, etc; hence Isserles's comment. The assumption is that a Sephardic Jewish wife must remain with her husband no matter what his handicap.
13. The Tur states her father's poverty as the reason for his pressure.
14. Today, the ruling is the lenient compromise expressed above: they still do not force a divorce, but do not force her to remain with him or deal with her as a "rebellious wife." (A.H., Even HaEzer, 154:11-12.)
15. The resolution to the conflict in Isserles's comment is that epilepsy is a defect and the divorce is forced if it is dangerous for him or her to remain together. (A.H., Even HaEzer, 154:11-12.)

16. A woman married to a man who is known to be impotent cannot prompt a divorce, for women are not commanded "to be fruitful and multiply" --only men. But if it is clear to the court that she is not asking the court for a divorce so as to gain the money of her ketubah but only to have children to care for her in her old age, she may prompt a divorce which the court will then force. (A.H., Even HaEzer, 154:40, 48.)
17. He may keep all the wedding presents given by his friends and relatives, and she all those given by hers. (A.H., Even HaEzer, 154:52-53.)
18. The ten year period is derived from the story of Abraham who lived many years outside of Israel without children, but upon being barren for ten years in Israel, he married Hagar in addition to Sarah. Being within the boundaries of Israel today makes no difference. If there is no child after ten years, a divorce is required, for the command "to be fruitful and multiply" is an important mitzvah, and the husband must be given the opportunity to fulfill it, Even if the wife can bear children, she may not be able to bear children with him. (A.H., Even HaEzer, 154:22-29.)
Today the court does not actively look for such barren couples, but if such information comes their way, they may take action. (A.H., Even HaEzer, 154:49.)
19. The husband does not have to pay the ketubah of the first and second wives if he is examining himself with a third, for he is not obligated to pay until he is impotent three times--applying the Jewish concept of chazakah. (A.H., Even HaEzer, 154:55-57.) Yet there is

- another opinion that he does not have to pay the ketubot (plural of ketubah) of any of the three if he still denies his impotency. The Tur states that there is really no need for his marrying a third. Two examinations are enough. (Tur, Even HaEzer, 154:15.)
20. The Tur explains that she is believed because she would not otherwise degrade herself before him. (Tur, Even HaEzer, 154:7.) Another explanation is that she can feel he is impotent. (A.H., Even HaEzer, 154:42.)
21. The procedure in cases before the ten year period has elapsed is to convince the couple to keep trying until ten years are up. Then the divorce is required. If, however, within the ten year period, he admits he is impotent, the court forces a divorce even if the wife is not claiming anything, for the husband might be able to fulfill the required mitzvah with another. (A.H., Even HaEzer, 154:49.) This, however, is a minority opinion; the procedure if he admits to impotency and she does not want a divorce is to let the couple remain together.
22. Whether he actually cannot have intercourse with her or if she simply is uncomfortable with him makes no difference. As long as she simply wants children for her old age, she is divorced and receives her ketubah. Even if she already has children to support her, the divorce is forced and she gets the ketubah, because it is difficult for women to be without intercourse--she needs to be married more than a man does. (A.H., Even HaEzer, 154:40.)
23. Thus, the general rule is after 10 years without children, the bet din must force a divorce, whether out of the husband's necessity to fulfill the commandment "to be fruitful and multiply," or her need

- for children to support her in her old age.
24. The purpose is to avoid an agunah situation, where doubt of his life or death prevents her from remarrying. If he stipulated before marriage that she must go with him, then obviously no divorce is forced. (A.H., Even HaEzer, 154:14.) The Tur is slightly more explicit. If he must flee the country, then the bet din forces a divorce; but if he can stay, even if he is liable for punishment in another city, they do not force the divorce. (Tur, Even HaEzer, 154:9.)
 25. The mitzvah "to be fruitful and multiply" is important to break up their otherwise happy marriage.
 26. The definition of fulfilling "be fruitful and multiply" is given in the Mishnah as one male and one female.
 27. This is opposed to present practice. See comment 21 in this section and A.H., Even HaEzer, 154:49. Given the greatness of the command "to be fruitful and multiply," few men will admit impotence, so barrenness is assumed to be "her fault." After divorce, she can still get the ketubah, since her being at fault was in doubt. (A.H., Even HaEzer, 154:28-29.) (Tur, Even HaEzer, 154:15.)
 28. Or if a child was born and died, one counts the ten year period from the day he died. (A.H., Even HaEzer, 154:30.)
 29. The three miscarriages have to be in a row, continuous, without any births in between to force a divorce. (A.H., Even HaEzer, 154:30.)
 30. Why else would she degrade herself as being a miscarrier unless it were the truth?
 31. The tendency today is not to declare her barren. (A.H., Even HaEzer, 154:31.)
 32. This is typical of much of Jewish law: Asur aval patur--prohibited

but exempt from punishment. An act is prohibited, but if it is done, no particular penalty may result.

33. Upon the third instance she is ruled barren according to the concept of chazakah. See comments 19 and 31 in this section.
34. Arguments should be avoided between the third and fourth husbands. The third can too easily argue that he would not have divorced her. (A.H., Even HaEzer, 154:39.)
35. That is, if there is valid kiddushin in that particular marriage.
36. The Tur attributes this quote to Rabbenu Chananel. (Tur, Even HaEzer, 154:21.)
37. Though not excommunication, the decrees mentioned are quite severe.
38. He does not have to pay the Tosefet--the additional money written in the ketubah--or return the gifts if there is any controversy.
39. The wise student should at first be silent concerning the get, lest he slander it. But after a while, he should investigate to ascertain that it is kosher. (A.H., Even HaEzer, 154:64.)

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