

# A Complete Solution to the Agunah Problem: is it a Utopian Project?

Addenda and Corrigenda to the Broyde<sup>1</sup> tripartite agreement: a solution without any innovation.<sup>2</sup>

## A. Introduction.

The starting point of the present paper is the paper published by Michael Broyde, professor of Law at Emory University and a Dayan in the Beit Din of America in Jewish Law Association Studies XX: The Manchester Conference Volume and available at the following website address: <http://www.scribd.com/doc/33122968/Broyde-Tripartite-Agunah-Proposal>

The principle championed in this project was to combine different approaches allowing releasing a woman from an undesirable marriage with a recalcitrant and not cooperative husband. Each of the ways proposed in order to achieve the projected purpose is justifiable on halakhic point of view. However it does not make the unanimity and it has sometimes fierce opponents because it can have weak points on halakhic level. The combination of these different strategies has the great advantage to create parallel ways ensuring the pursued goal. At the end of the day we don't know which way was effective. Anyone can consider that it was his preferred solution that was used. This allows us to gather the support of a greater number of authorities. A complete theoretical survey of the halakhic implications of the question and its solutions, including an original, detailed and exhaustive examination of each of the three adopted strategies, is offered by the book: *Tenai bekiddushin ve Nisu'in* R. Eliezer Berkovits, Mossad ha-Rav Kook, 1964 (Hebrew).<sup>3</sup>

The first strategy adopted is the principle of the conditional marriage. This strategy is based on serious Talmudic and halakhic basis. It was used in European Jewry, from the 14<sup>th</sup> – 15<sup>th</sup> century onwards in order to allow the marriage of young men who could not engage otherwise in marriage. Indeed in case of untimely decease of young

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<sup>2</sup> This is the title of the paper presented by the author, Michael J. Broyde in Jewish Law Association Studies XX: The Manchester Conference Volume, 2010. A first version of this paper was already published in 2004.

<sup>3</sup> This book was edited by Mossad ha-Rav Kook. Its edition was already the occasion of fierce debates. Rabbi Menahem Kasher was opposed to the book's edition because it championed the principle of conditional marriage which had been objected and condemned by the Rabbis in the beginning of the 20<sup>th</sup> centuries. Therefore he spread a piece of news that R. Weinberg, E. Berkovits' master and moral support, had removed his support to that book. Berkovits denied vehemently that R. Weinberg would have removed his support and that their relationship would have awakened at the end of the latter's life. Furthermore the intellectual itineraries of Berkovits lead him to a Zionist religious and philosophical attitude and to a philosophical critical position against the rabbinical "ultra-conservatism" in some aspects of marital legislation and that made him suspect. For this reason, I suppose, he was and he is still designated by the title of Professor Berkovits rather than Rabbi Berkovits and he was ignored by the rabbinical world. However that may be, the author was an authentic great Talmudic scholar and his book, *Tenai bekiddushin ve Nisu'in* remains the best book ever written on the subject, the most erudite and the most comprehensive, as R. Weinberg had emphasized it in his enthusiastic preface.

husbands without living descents, their wives would remain chained (*Agunah*) in the following cases:<sup>4</sup>

- The groom has only one brother, still very young.
- The groom has only one brother living far away.
- The groom has only one brother who is apostate, insane, dumb or missing.
- The rich family of the bride fears extortion by the groom's brothers.
- The groom is a successful businessman and fears extortion by his brothers.<sup>5</sup>

Because of these problems, a young man could not practically find a wife without a "*shtar pitaron me-halitsa*", by which the groom's brothers accepted, by *kinian* and oath, to grant, if necessary, a *halitsa* to the widow at pre-determined financial conditions.<sup>6</sup> In more intricate situations<sup>7</sup> this contract could not be provided.

The principle adopted was then a conditional marriage in which it was specified that in such cases where the bride could become *zekukah le-yavam* after an untimely decease of her man without living descents, then a marriage had never existed between groom and bride and the ring of *kiddushin* was a present.<sup>8</sup> Thus in the case of a possibility that the widow could not receive a *halitsah* whether because of the minority of the *yavam*, material difficulties or the risk of extortion, the condition could be the following: if no *halitsah* was granted within a delay of 120 days (for example) by one of the groom's brothers, the marriage had never existed and the ring of *kiddushin* had been merely a present.<sup>9</sup> Although this solution had its opponents, it was however widely accepted by most Ashkenazi authorities and it was regularly used in the middle ages and even in the modern times and many references are made to it through the rabbinic literature until the nineteenth century.

In the beginning and during the 20<sup>th</sup> century a few tentative were made in order to generalize this approach and introduce a general scheme of conditional marriages. These tentative were the result of the development of the civil legislation in Europe, the apparition of a civil divorce procedure that had never existed before and which concerned also the Jews. They were also the result of the concomitant acculturation of important layers of the Jewish population, which ignored now completely the fundamental rules of the Jewish marriage and divorce. These tentative were intended in order to escape the risk of adultery prohibition for the women, even without their knowledge and *mamzerut* for the offspring. The rabbinic authorities of central and east

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<sup>4</sup> This strategy was used by Askenazi Jewry in order to avoid a situation of *agunah* because of the interdiction of a *yevamah la-shuk* (or *shomeret yavam*). It is exact that this case belongs to a minor category of interdict: a *lav*, by contrast with the general case of *eshet ish* which belongs to the category of *karet* and *mitah*.

<sup>5</sup> This is a modern concern. In ancient times the childless widow did not inherit her husband.

<sup>6</sup> The financial conditions accepted by the communities were generally fixed to 5% of the amount of the *ketubah* in favor of the brother giving the *halitsa*. In the absence of such contract, the unreasonable demand of the brother-in-law could reach 50% of the *ketubah* and, in modern times, of the husband's inheritance.

<sup>7</sup> There is only one brother and he is an apostate, he left for America or another far or unknown country, his exact location is unknown or he is a very young child.

<sup>8</sup> The condition must however be enunciated in such a way that it doesn't give the impression to object the Bible formulation. Therefore R. Akiba Eiger refused a condition telling that if the bride could become *zekukah le-yavam* after an untimely decease of her man without living descents, then a marriage had never existed between groom and bride and the ring of *kiddushin* was a present. He proposed the following text: if the groom dies during the life of his brother without descent then a marriage had never existed between groom and bride and the ring of *kiddushin* was a present. The condition must be formulated according to the rules of the conditions.

<sup>9</sup> This formulation is certainly better for modern times because it lets the door open for a possible *halitsa*.

Europe vehemently rejected these tentative. Their argumentations were however more polemical (at social and moral level) than halakhic.

The present solution, combining three different strategies, reduces the importance of this first working direction. The conditional marriage is only one of the strategies adopted in the general solution proposed and the probability that it plays a major role in the process has diminished.

The second strategy adopted in the present solution is a *harsha'ah* or a power of attorney given by the husband to write, sign and deliver a *get* to his wife when certain conditions are fulfilled. This solution is apparently used by the I.D.F. the Israel army in order to avoid *agunah* problems in case of disappearing of soldiers. The halakhic problems connected to this power of attorney are very complicated.<sup>10</sup> The greatest problem raised by the use of this strategy in our general solution is that the proxy is given at the very beginning of the marriage and is then followed by a normal marital life and sexual intercourses.<sup>11</sup> Therefore we face the risk that the *get* written according to this strategy n°2 is invalid.<sup>12</sup> But in fact it appears that other *Rishonim* and *Aharonim* don't follow Maimonides' opinion. If the seclusion precedes the writing and the dating of the *get*, there is no problem and the proxy is valid.

We face also another risk that the husband annuls the proxy, putting an end to the strategy n° 2.<sup>13</sup> Therefore it is justified to impose him an oath that he will never annul

<sup>10</sup> See Berkovits : *Tenai bekiddushin ve Nisu'in* pp. 71-119.

<sup>11</sup> See Rambam *Hilkhot Gerushin* 9: 25 and *Shulhan Arukh Even ha-Ezer* 149: 7. If a man gives the order to write in the future a *get* and to deliver it to his wife, seclusion between him and his wife nullifies the order of writing the *get*. This last ruling is however questioned: see *Magid Mishneh* and *Kessef Mishneh* ad locum who write in the name of Ramban, that this ruling is only valid if the seclusion occurred after the *get* was written and dated. R. Eliahu Mizrahi: *Mayim amukim* n°5 and R. Yom Tov Tsahaloni: Responsa *Maharits* n° 175 ruled according to Ramban's opinion. It fits better the literal text of the Mishna Gittin 8: 4 "what is *get yashan*? It is a *get* which, after it was written, was followed by seclusion of man and wife." See also details in Berkovits pp. 78 and 83-84 and 87. The end of the responsum of R. Elijah Mizrahi is very interesting because of the critic, at the end of the responsum, of those who want to be stricter (and follow the ruling of Maimonides in *hilkhot gerushin* 9:25):

אי משום גט ישן, הרי עדיין הגט לא נכתב ואין היחוד שנתיחד עמה בין הכתיבה לנתינה עד שיהיה גט ישן. וכיון שכן, אין כאן בית מיוחד כלל. הילכך כשיעברו השלש שנים מעת שצוה הבעל לסופר שיכתוב ולעדים שיחתמו ויתנוהו לאשתו, יעשו כפי מה שצוה ואז תותר האשה להנשא לכל אדם. זהו הנראה לע"ד וכל מי שלבו נוקפו ורוצה להחמיר ולהכניס עצמו לפנים משורת הדין הרי הכנים עצמו בעונש עגבא דאתתא, נאום הטרוד והעלוב אליא מזרחי.

<sup>12</sup> Because their conduct is the proof of love and good feeling.

<sup>13</sup> See Rambam, *Hilkhot Gerushin* 6 : 17-19 and 21, and *Shulhan Arukh Even ha-Ezer* 141: 59-60 and 66. In B. Gittin 33a there is a discussion between R. Simeon ben Gamliel and his son Rabbi in the case of a man sending a *get* to his wife. Rabbi considers that the annulment of the mission to deliver a *get* is valid and the mission is annulled even if the messenger and the wife were not aware of it. R. Simeon ben Gamliel considers that if the wife and the messenger were not aware, there is a danger of use of this *get* because of the lack of publicity of its annulment. Because of this danger the rabbis annulled the *kiddushin* of this couple retroactively. In the time of the Talmud or of the rabbis, this annulment was the proof that the man wanted to behold his wife. This fear does not exist in the military modern use of this strategy (for theoretical and halakhic details see Berkovits (1964)) because the married couple is generally strong and loving. The man is not at variance with his wife. In our present situation, the fear is that he annuls the proxy in order to harm her. If the husband annuls the mission before two witnesses without informing the wife or the messenger, R. Simeon ben Gamliel annulled the marriage retroactively. According to Rabbi the mission is annulled and the wife is not divorced. However, according to Tossafot (Gittin 32a ve rav Nahman), if the annulment happened before only one witness, anyone agrees that Rabbi accepts the *takanah* of R. Simeon ben Gamliel. But if the husband informs his wife or his messenger, the annulment is valid. Now in our strategy n° 2, the *get* is not yet written and the mission is much wider than bringing and delivering the *get*. Therefore it is far from certain that the discussion between Rabbi Simeon ben Gamliel and Rabbi concerns our present case. The eventual annulment does not concern the delivery of a written

the proxy and also an important penalty. It is indeed essential that the validity of this proxy be warranted. It is also important to make sure that if the man ever annuls the proxy then there was no marriage at all and the conduct of the two protagonists will have been like unmarried people sharing a residence and the blessing of marriage recited should be a nullity and the ring given a gift.

A third strategy is provided by a *takanat ha-kahal* of *hafka'at kiddushin*, a regulation adopted by the members, the scholars and the Rabbis of a community annulling the marriage by *hefker beit din*, dispossession and deprivation of the wedding ring imposed by *beit din*.<sup>14</sup> This strategy was often used during history in Sephardic communities in order to annul undesirable marriages concluded against *halakhah* or against the regulations adopted by the communities.<sup>15</sup> In our case the regulation would apply when a marriage failed and the spouses are de facto separated but the marriage was not terminated by a halakhic divorce i.e. the free delivery of a *get* by the husband to the wife within a fixed delay. According to this regulation, failed marriages must end within a fixed delay. If the marriage failed and the spouses live separated without the delivery of a *get* within the fixed delay, the *takanat ha-kahal* of *hafka'at kiddushin* annuls retroactively the marriage by confiscation, *hefker beit din*, of the money or the ring of the *kiddushin* (*kiddushei kesef*) which becomes now a mere present.

This strategy has also its problems. According to some important authorities it is impossible to annul a consumed marriage by a simple *takanah* of annulment except a few exceptions<sup>16</sup> considered in the Talmud.<sup>17</sup> The *takanah* can only help in the presence of a *get*,<sup>18</sup> even a dubious *get*. The *takanah* is constructed on similar basis as Talmudic decisions of annulment when the dubious *get* could mislead women. In order to avoid that women could be misled by a dubious or an invalid *get*, and believe that they had been freed according to *halakhah*, the *tana'im* and *amora'im* had already decided in a few specific cases to annul retroactively such marriages. The problem is still debated today, whether a *takanah* would be sufficient or if a dubious *get* (*get kol dehou*) is at least necessary; each thesis has its champions. Some consider that a *takana* can annul a marriage indistinctly at its inception or even after. Others consider that a consumed marriage can be annulled only on the basis of a *get*, even an invalid *get*.<sup>19</sup> The third strategy works as an independent and autonomous *takanah* without the

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and dated *get* but the mission of writing a *get* and delivering it afterwards. This annulment must occur before two witnesses and the man will certainly inform his wife in order to harm her. The man can thus easily put an end to this strategy n° 2 by annulling the proxy before two witnesses.

<sup>14</sup> The word nationalization explains perhaps better the exact meaning. At the origin the word *hefker* means that it belongs to no one and anyone can take it.

<sup>15</sup> See Rivash : *Tshuvot Bar Sheshet* n° 399 and R. Moses Alashkar: *Tshuvot* n° 48.

<sup>16</sup> See Yevamot 90b and 110a, Ketubot 50a, Gittin 33a and 73a, Bava Batra 48b.

<sup>17</sup> See a careful analysis of this problem in *Tenai bekiddushin ve Nisu'in* R. Eliezer Berkovits, Mossad ha-Rav Kook, 1964, pp. 119 -163. See also note 15 and note 49. R. Berkovits has demonstrated that the cases of *hafka'at kiddushin* at the end of the marriage considered in the Talmud were caused by a *get*, which was in fact invalid but could mislead the wives. The *get* was thus the problem and the rabbis solved it by confiscating the *kiddushin* through *hefker beit din* of *kesef kiddushin* or by making the *kiddushei biah* a licentious intercourse.

<sup>18</sup> These authorities, even today, consider that the *get* is not the problem but the element of the solution.

<sup>19</sup> See *Tenai bekiddushin ve Nisu'in* R. Eliezer Berkovits, Mossad ha-Rav Kook, 1964, pp. 119 -163. Berkovits champions the lenient view according which the *get* considered in the Talmud in a few cases of retroactive annulment of *kiddushin* was the problem and the cause of the annulment, the *get* is never part of the solution and

existence of a *get kol dehu*<sup>20</sup>. Another striking point of the present strategy is that we don't speak about a specific community with a geographical location but a moral community, without a precise geographic location, internationally dispersed, whose members are all those people who accept these principles. We introduce thus a moral community including all those people who accept the principle to annul the marriage of separated spouses when no legal *get* was given before a certain fixed delay.

Professor Berachyahu Lifshits of the University of Jerusalem proposed, but this concerns essentially Israelis that the Knesset, acting as the representative of the Israel people should enact a law, making *hefker* the *kessef kiddushin* of the married couples separated for a period of a fixed duration, for example 449 days and not yet terminated by a valid *get*. This would be in agreement with the responsum of R. Moses Alashkar and it could constitute an independent<sup>21</sup> solution for Israelis. It could be extended to all the Jews if they accept to be represented by the Knesset or if the Knesset, at the occasion of the vote of this law, associates representatives of the communities of the Diaspora, in order to constitute one world Jewish community.

### Objections raised again each of these strategies

One of the great objections made against the first and the third strategy is that after the epilogue deciding that there was no marriage at all *ab initio* (strategy 1) or after the retroactive annulment (strategy 3) we remain with a man and a woman whose common life appears *à posteriori* as a licentious cohabitation between unmarried people who had possibly children together and to whom we must attribute a licentious relationship. This situation runs counter what seems considered as a quasi-law: “*ein adam osseh be'ilato be'ilat zenut*”<sup>22</sup> a man does not want to have his sexual relationship qualified as licentious sexual relationship. This was always one of the reasons why a conditional marriage was considered with much reservation and was strictly limited to a restricted number of cases where it was not possible to do otherwise.

However this argumentation does not seem pertinent. Important authorities wrote about the conditional marriage, instituted in order, for example, to allow grooms having a brother abandoning the Jewish fate to marry, that this relationship is completely licit. This relationship was kept “*derekh ishut*” on the basis of a marital relationship. It is an exclusive and lasting relationship. The spouses have not in mind each day that this relationship could break off. The best proof is that during their common life this woman has certainly the halakhic status of “*safeek eshet ish*”; she is at least a doubtful spouse. Similarly in the strategy 3, where the marriage will be

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a *get kol dehu* is not required in such a *takana*. See references about the champions of the two contradictory opinions in note 49.

<sup>20</sup> A dubious *get*; it would drag or facilitate the *takana* of *hafkhat kiddushin*, the retroactive annulment of the *kiddushin*. Unfortunately we cannot create such a dubious *get*. If the second strategy worked out correctly a valid *get* will be delivered, this is our first choice. Otherwise the mission is annulled and we must rest on the first and the third strategy.

<sup>21</sup> Independent from the two other strategies, but it requires convincing those who require a *get kol dehu*.

<sup>22</sup> B. Yevamot 107a; B. Ketubot 73a; B. Gittin 81b.

annulled retroactively, the situation is similar and the stable and lasting relationship was kept “*derekh ishut*” on the basis of a marital relationship. Maimonides wrote in a responsum<sup>23</sup> about a marriage annulled later retroactively by a Talmudic rule of annulment: if the spouses had concluded their marriage by sexual intercourse *kiddushei biah* (one of the three legal possibilities for the conclusion of a marriage, today practically excluded and even prohibited)<sup>24</sup> the rabbis were formally obliged to declare this intercourse as licentious and extra marital in order to void the legal aspect of the conclusion of their marriage. Indeed in a normal case the rabbis would confiscate the money of the *kiddushin* by making them *hefker* and transforming the ring into a present. But in the case of *kiddushei biah* the only way to annul formally the marriage is to declare this intercourse, *kiddushei biah*, as licentious and extra marital.<sup>25</sup> However, so writes Maimonides, the spouses had not during their relationship a dissolute life and did not practice debauchery, it was “*derekh ishut*”. Similarly, in the case of the conditional marriage R. Yonah Landsofer<sup>26</sup> wrote in *Me’il Tsedaka*,<sup>27</sup> that this relationship was “*derekh ishut*”.

Thus the fear of “*be’ilat zenut*” so often invoked in the rabbinic literature, even in the paper of R. Broyde, seems unjustified and not accepted by important authorities. This argument is often heard but it seems to be mostly used more with polemical and moral intent than than a real argumentation.

Another argument against this first strategy is the Talmudic quotation *ein tenai benissu’in*,<sup>28</sup> which is often understood as: there cannot remain conditions after the consumption of a marriage. In the Talmud we find the principle of conditional marriages in two cases: a man marries a woman on the condition that she has no corporal defects or on the condition that she did not take any vows which could affect their future common life.

Normally these conditions should be clarified before the *nisu’in* the effective marriage. Therefore if a man gave the *kiddushin* on condition but married later his wife without uttering again the condition, it is assumed that he waived the condition because he probably received favorable information. Therefore Rambam ruled in this general case<sup>29</sup> that the marriage is definitive without any condition. It is also in the same spirit that we understand the Talmudic aphorism quoted above which means that generally there is no condition remaining after the marriage is consumed. But as Tossafot<sup>30</sup> wrote it is generally the case but it is not an absolute rule.

<sup>23</sup> Maimonides, responsum 357 (Blau).

<sup>24</sup> Rav in the beginning of the third century prohibited this way of *kiddushin* and lashed the protagonists.

<sup>25</sup> Here is an indisputable proof of this argument: In all the Talmudic references the text is the following:

“The rabbis declared this single intercourse (in the singular) a licentious intercourse *זנות* לבעילתו בעילת זנות. In Gittin 33a and in Yevamot 90b Rashi explains it clearly that this is necessary for a purely technical reason, it was the only possible way to annul the marriage. Apparently it is only this first intercourse, which is declared licentious. However many Rabbis understood that all their intercourses became licentious.

<sup>26</sup> R. Yonah Landsofer of Prague (1678 – 1712).

<sup>27</sup> Prague 1757.

<sup>28</sup> B. Yevamot 107a.

<sup>29</sup> *Ishut* 7; 23.

<sup>30</sup> Tossafot on B. Yevamot 107a end of the first Tossafot beginning with *Beit Shamaï*.

But even people sensitive to these argumentations, will appreciate that the proposed strategy working with different working directions aims also at minimizing this risk.

### The order of priorities.

R. Broyde fixed the order of priority on the basis of the presumption “*ein adam oseh be'ilato be'lat zenut*” a man, generally, prefers licit rather than illicit sexual relationship.<sup>31</sup> Therefore he wrote: “if the husband were to maintain a desire to minimize *be'ilat zenut*, it is clear that he would prefer the termination of a valid conditional marriage to its dissolution by annulment. What's more is that he would rather have the pre-authorized *get* be given because that completely eliminates the problem of non-marital relations.”

In fact if minimizing *be'ilat zenut* was the only preoccupation of this man, then I don't see the true difference between ending the conditional marriage with regard to its dissolution by annulment. In both cases, at the end of the day, there was à posteriori no marriage and both were living in cohabitation. There is in fact no difference at this level between the two working directions, the first, the conditional marriage and the third the annulment. I think that there are other elements intervening in the determination of the desirable order of priority.

The first priority is certainly to end always a marriage by a *get*. The second priority is to terminate the conditional marriage and the third priority will be to achieve the dissolution of the marriage by annulment. Indeed the conditional marriage is a free choice of the spouses. By contrast the annulment of the marriage through the *takanat ha-kahal*, a communal decree, is a procedure adopted by the rabbis in order to correct misbehavior of the husband, which could otherwise have catastrophic consequences. Now in the second working direction we face the danger of a retraction by the husband, annulling the proxy that he had given never to annul the pre-authorization to write a *get*. If he annuls this pre-authorization and informs his wife of it, then he puts an end to the second strategy. The only lifebuoy possible is the introduction in the first agreement, to be signed before the *kiddushin*, of an additional clause according which, in such a case (claim of annulment of the pre-authorized *get*) there was no marriage at all and the liaison was licentious. Furthermore the acceptance by the husband of an important penalty in the case of such a claim should avoid its occurrence.

### B. The tripartite agreement of Dayan Broyde. Addenda and Corrigenda.

**First strategy:** the conditional marriage.

#### 1. The conditions.

The condition adopted in the strategy n° 1 is the following:

“If I return to live in our marital home with you present at least once every fifteen

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<sup>31</sup> R Ezekiel Landau in Responsa *Noda bi-Yehuda I Even ha-Ezer* 54 has moderated the absolute character of this principle. This principle is valid only if it does not create this man any loss or undesirable disadvantage. Therefore in the justification of the conditional marriage he considered two possibilities: whether we follow the *Beit Shemuel* and consider that in this case, *derekh ishut*, there is not *be'ilat zenut* or because she doesn't want to be submitted to this *yavam* (*mumar* for example) she accepts voluntarily the possibility of *be'ilat zenut*.

months until either you or I die, then our betrothal (*kiddushin*) and our marriage (*nisu'in*) shall remain valid and binding.”

“But if I am absent from our joint marital home for fifteen months continuously for whatever reason, even by duress, then our betrothal (*kiddushin*) and our marriage (*nisu'in*) will have been null and void. Our conduct should be like unmarried people sharing a residence, and the blessings recited a nullity. The ring I gave you should be a gift.”

This formulation is in contradiction with the formulation adopted in the strategy n° 3

“Furthermore I recognize that my wife has agreed to marry me only with the understanding that should she wish to be divorced that I would give a *Get* within fifteen months of her requesting such a bill of divorce.”

According to the formulation of the first strategy, only the case of the man leaving the marital home is considered and the initiative of a possible reconciliation depends only on him. Furthermore, considering that marital life is resumed because he came back unilaterally once in fifteen months in order to live in the marital house in the presence of his wife seems a very caricatural description of a serious reconciliation. More the formulation of Broyde departs from the prerequisite that the woman has the financial means remaining in the marital house for fifteen months waiting there for a hypothetical coming back of her husband and that she is disposed to resume marital life at any condition and any moment! This first formulation contradicts completely the formulation of strategy n° 3 which recognizes the right of the wife to petition for a *get*.

In the formulation of the second strategy it speaks about a *beit din* requesting the husband to give a *get*: “Should a Jewish divorce be requested of me for whatever reason, by any orthodox rabbinical court (*beit din*) selected by my wife”.

All these formulations are contradictory and must be made homogeneous and coherent. They must have the same starting point if we want to control the order of succession of the expiries of the three delays.

## 2. The delays.

The delays adopted are contradictory: The delay n° 1 is 15 months counted from the de facto separation of the spouses or according to the formulation of Broyde, counted from the abandonment by the man, of the marital home. The delay n° 2 is 15 months counted from the moment of the advice and recommendation of the *Beit Din* for a divorce. The delay n° 3 is 15 months counted from the moment of the request of a *get* by the wife.

Thus delay n° 1 will end the first, followed by delay n° 3 followed finally by delay n° 2. This is in contradiction with the wished order of succession of the delays.

We have seen and justified our preference for the strategy n°2 ending first, followed by the strategy n° 1 and finally the strategy n°3. In other words we wish that delay n° 2 ends before delay n° 1 and delay n° 1 before delay n° 3.



3. The formulation should then be the following:

If we resume our marital life<sup>32</sup> within 450 calendar days counted from our separation, even for only one day, then our betrothal (*kiddushin*) and our marriage (*nisu'in*) shall remain valid and binding.

But if we don't resume our marital life within 450 calendar days counted from our separation for whatever reason, even by duress, then our betrothal (*kiddushin*) and our marriage (*nisu'in*) will have been null and void. Our conduct should be like unmarried people.

4. We refer now to the following sentences:

"I recite this condition to our marriage not only during the wedding ceremony, but prior to our intimate relationship and *yihud* (seclusion). I take a public oath that I will never remove this condition from the marriage".

"I acknowledge that I have effected the above obligation by means of a *kinyan* (formal Jewish transaction) before a *beit din hashuv* (esteemed rabbinical court) as mandated by Jewish law. Even a sexual relationship between us shall not void this condition. My wife shall be believed like one hundred witnesses to testify that I have never voided this condition".

The mention of *beit din hashuv* is surprising because this principle is limited to the cases of *asmakhta*<sup>33</sup> and *prouzbol*<sup>34</sup>.

The preceding sentences are the reflex of requirements imposed by the rabbis in the 17<sup>th</sup> and 18<sup>th</sup> and even 19<sup>th</sup> centuries. These authorities imposed indeed the repetition of the condition during the three stages of the conditional marriages. These conditional marriages were accepted to avoid critical situations of young people who could not find a match otherwise. Indeed in the case of untimely decease of the young husband, there was a risk of *iggun* in different situations. This was notably the case if the second brother was very young, if he was living abroad or in the new world, if he had abandoned the Jewish faith.

In the Talmud we find the principle of conditional marriages in two cases: a man marries a woman on the condition that she has no corporal defects or on the condition that she did not take any vows which could affect their future common life.

Normally these conditions should be clarified before the *nisu'in* the effective marriage. Therefore if a man gave the *kiddushin* on condition but married later his wife without uttering again the condition, it is assumed that he waived the condition because he probably received favorable information. The conditions examined in the Talmud were conditions imposed by the groom in order to protect him. These conditions must allow the groom feeling reassured. Similarly we consider also in the Talmud, the case of a financial condition in favor of the bride,<sup>35</sup> which must be fulfilled before the *kiddushin*

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<sup>32</sup> Of course if this reconciliation fails, the date of the new de facto separation will replace the date of the first separation. A reconciliation of even one day interrupts the process and it begins again.

<sup>33</sup> B. Nedarim 27b and Rambam, *hilkhot Mekhirah* 11 : 13.

<sup>34</sup> B. Gitin 36b and Rambam *hilkhot shemittah ve yovel* 9 : 17.

<sup>35</sup> הרי את מקודשת לי על מנת שאתן לך מאתים זוז

become effective.<sup>36</sup> By contrast with the precedent conditions we are dealing now with a very different type of condition. It is a condition adopted in favor of the bride and in fact on purpose at her request. This condition will last during their whole marital life. The great rabbinical authors, *Noda bi Yehuda*<sup>37</sup> and *Hatam Sofer*<sup>38</sup> have already put the emphasis on the fundamental differences between these conditions. They noted that the man cannot waive a condition made in her favor<sup>39</sup> and even if she did not repeat the condition at the occasion of the marriage, the seclusion and the intimate relationship, we cannot assume that she waived the condition.<sup>40</sup> Therefore there is no reason to fear that the man waives the condition at the occasion of the sexual relationship and there is no reason to repeat the condition before the *yihud* and the intimate relationship. *Hatam Sofer* had written: <sup>41</sup>למאי נִיחֹשׁ לְדַבְרִים שֶׁאֵין הַדַּעַת סוֹבֵלֶת, why should we fear possibilities that the common sense cannot accept.<sup>42</sup> *Hatam Sofer* noted already that the bride would never waive the condition; it is her lifebuoy. We see thus that these authorities considered already these practices as stringencies. However the oath that we impose the man to take is more problematic because it is completely not useful and it seems difficult to consider this practice as stringency.<sup>43</sup>

5. The above condition is made in accordance with the laws of the Torah, as derived from Numbers Chapter 32.

This reference is relative to the laws of the validity of conditions.<sup>44</sup> According to some authorities this formula is sufficient to give a legal character to a condition but for others the condition must satisfy the formal rules of conditions. In the detail of the condition of the strategy n° 1 these rules were respected and therefore I don't see the necessity of this sentence. Despite this remark and the former critics I let the text unchanged. *Hatam Sofer* had already adopted the same attitude.

**Second strategy:** Signing a proxy for writing, signing and delivering a *get* without the husband's intervening (if he refuses delivering normally a *get*).

The dispositions of this second working direction are part of this general agreement, which represent a prerequisite and a preamble to the bride's acceptance of the *kiddushin*. This seems precisely the problem: how is it possible to give a power of attorney in order to write, sign and deliver a *get* to a woman before she is married. As Maimonides writes it, the order to write a conditional *get* or to sign a proxy for writing

<sup>36</sup> See *Shulhan Arukh Even ha-Ezer* 38; 35. Of course the woman can renounce the condition and then she will be married unconditionally. The man can also renounce the condition but she will not be married to him.

<sup>37</sup> R. Ezekiel Landau (1713 – 1793). See *Noda bi-Yehuda* I, *Even ha-Ezer* 35 (last three paragraphs).

<sup>38</sup> R. Moses Sofer (1762 – 1839).

<sup>39</sup> This remark had already been made by R. Solomon ben Aderet or Rashba, as it is mentioned in *Magid Mishneh* and *Kessef Mishneh* on Rambam, *Hilkhot Ishut* 7: 23.

<sup>40</sup> See *Shulhan Arukh Even ha-Ezer* 38; 35 and *Pithei Tshuva* n° 18.

<sup>41</sup> These very strong words are already found in the text of Rif, R. Isaac ben Jacob al-Fassi, on B. Ketubot, chap 7, § 313, top of p. 34a of Rif.

<sup>42</sup> Responsa *Hatam Sofer*, *Even ha-Ezer* II, 68.

<sup>43</sup> Imposing an oath without any utility cannot be considered as stringency. However *Noda bi-Yehuda* included this oath in the ceremony: *Noda bi-Yehuda*, I, *Even ha-Ezer* 56.

<sup>44</sup> See *Shulhan Arukh*, *Even ha-Ezer* 38; 2. See also 38; 3 and 4.

a *get* is valid only if the man can already divorce the woman now.<sup>45</sup> She must therefore be at least *arusato* and it requires that she received already the *kiddushin* from him. This remark has important implications. The agreement must be divided in two parts. The first part of the agreement should deal with the first and the third strategy. It must imperatively be signed before the *kiddushin*. The second part of the agreement will deal with the second strategy. It must be signed imperatively after the *kiddushin*. This seems to be the only way for the bride to achieve her purpose and get the protection she wanted to receive.

Therefore the text to be recited under the *huppah* should be:

**'בהתאם לתנאים שכבר חתמנו עליהם ועל מנת שנחתום על ההרשאה שכתבנו, וכל התנאים האלה הם כתנאי בני גד ובני ראובן, ועל מנת שנחתום על ההרשאה שכתבנו וששמור על השבועה לא לבטלה הרי את מקודשת לי בטבעת זו כדת משה וישראל.'**

The reference to the second group of conditions gives the bride the guarantee that the second part of the agreement will be signed.<sup>46</sup> Otherwise there is no *kiddushin*.

The redaction of the marriage formula to be recited under the *huppah*, is essential. It must be clear and short, the nearest possible to the usual text. The groom and bride want generally certain discretion about the details of the two agreements.

Now we have multiple conditions and furthermore some of the conditions are already signed and others will be signed only later. In the present text we rested on the note of Rema on *Shulhan Arukh* 38: 3 and *Arukh ha-Shulhan* 38:50 allowing to mention that the conditions are conform to the conditions of the sons of Gat and Reuben and the condition was mentioned before the main action, although this is not necessary when we use *על מנת* or *שיו כעמ*. In the present text, the beginning of the first line refers to conditions already signed and corresponds to *מעכשיו*. All these conditions were drafted in the most precise and complete form in the signed agreement but we used a shortened version in the verbal ceremony.

## 1. The condition.

Here we are not dealing with a real condition; it is rather a criterion, which must precise and explain at which moment the pre-authorized *get* will be delivered. The starting point of the delay is a judgment by an orthodox *Beit Din* requesting or advising a *get*. In fact the delay is not specified in the text of the second strategy. However in the third strategy the starting point is the request of a *get* by the wife. There is a formal contradiction between the beginnings of the different delays leading to maturities in contradiction with the pursued purpose. If we begin the delay when the *beit din* rules that the spouses should divorce, we will postpone appreciably the starting point of the delay n° 2. More, the different *battei dinim* do not work on the same manner in Israel and abroad. One can choose the starting point of the delay whether at the beginning of the de facto separation of the spouses or at the moment of the request of the *get* by the wife. In the present proposition we chose the first possibility. According to this strategy the *get* will be given through the power of

<sup>45</sup> See Rambam, *Hilkhot Gerushin* 3; 6 and *Shulhan Arukh* 132 ; 1 and 2.

<sup>46</sup> Rambam *Ishut* 6: 17 and *Shulhan Arukh* 38: 3.

attorney given by the husband, within the delay of 450 days counted from the de facto separation of the spouses. It is of course the responsibility of the wife to introduce the proxy signed by her man for a *get* before a *beit din*, in time.

2. “Even if my wife and I should continue to reside together after the providing of this authorization to divorce her, and even if we have a sexual relationship after I have authorized the writing,”

The agreement precedes the *nisu'in* and it would be more correct to avoid of the conditional and to write in the affirmative:

“Even if my wife and **I will reside** together after the providing of this authorization to divorce her, and even if we **will** have a sexual relationship after I have authorized the writing,”

3. The oath.

We insisted above that the oath that we ask the husband to take in the first strategy is useless and therefore it should be forbidden. However I am well aware that this oath belongs to the traditional procedure.<sup>47</sup> But in the present strategy the oath that we impose to the husband is fundamental. Otherwise we must fear an annulment of the power of attorney pre-authorizing the writing of the *get* and its delivery. Now because of the importance of this oath we must consider the consequences of a violation of the oath, which could possibly happen during an outburst of passion.<sup>48</sup> A severe penalty accepted by the husband could prevent such a possibility. But only an additional clause specifying that should the husband ever annul the proxy, there was no marriage, the liaison between them was promiscuous and the ring a gift, can give a complete guarantee to the woman that she is not trapped in a dead end.

**Third strategy:** the communal decree to annul marriages.<sup>49</sup>

Although the subject was much debated during history, different communities adopted decrees about the requirements of the community concerning marriages. These decrees concerned mainly the formal aspects of the *kiddushin* and they implied the annulations of the *kiddushin* if they did not satisfy certain rules of publicity, of free acceptance of the *kiddushin* by the bride and the agreement by her parents. However, with only a few exceptions, the decrees of annulment enacted in the past did not concern the case of annulment of the *kiddushin* after consumption of the marriage. There is a theoretical discussion whether a decree of annulment can be effective after the consumption of the marriage. The stringent opinion requires the existence of a *get*, even an invalid *get*. As we already saw, it is not possible, in the strategy n§ 3 to satisfy this condition.

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<sup>47</sup> See *Noda bi-Yehuda I Even ha-Ezer* 56.

<sup>48</sup> The rabbis feared also such an annulment during intercourses, in the heat of the passion..

<sup>49</sup> For a general and elaborated examination of the subject see R. Eliezer Berkovits, *Tenai be Nissu'in ve Get*, Mossad ha-Rav Kook, 1967 (Hebrew) pp. 119 - 163. See also R. Solomon Riskin, *Hafka'at kiddushin- Pitaron le-Aginut*, *Tehumin* 22, 2002 pp.191-209. R. Zalman Nehemiah Goldberg, *Hafka'at kiddushin- Einah Pitaron le-Aginut*, *Tehumin* 23, 2003 pp. 158-160. R. Solomon Riskin, *Koah ha-hafka'ah Mone'a Iggun*, *Tehumin* 23, 2003 pp. 161-164. R. Zalman Nehemiah Goldberg, *Ein Hafka'at kiddushin belo Get*, *Tehumin* 23, 2003, pp. 165-168.

Now another difficulty is that R. Moses Alashkar,<sup>50</sup> accepted the principle of the communal decree of annulment but required that all the communities of a country should adopt the same decree. His argument was that otherwise, In the case of a marriage between people belonging to different communities, we would have difficulties in the application of the decree. We could not confiscate the money of the *kiddushin* belonging to a member of another community, which did not accept the decree.

Normally the decree must be adopted by the great majority of the members and the rabbis of the community and according to the request of R. Moses Al-Ashkar by all the communities of the land.

Now the specificity of the present communal decree is that it does not have a geographical extension and was not submitted to a vote. Here we consider a virtual community, without a clear geographical extension. This virtual community regroups all the people in the world who accept the principle of this decree. According to it all the marriages in this community must end with a *get* freely delivered within 450 calendar days counted from the certain date of the de facto separation of the spouses.<sup>51</sup> If not they are subject to the delivery of a pre-authorized *get* on this 450<sup>th</sup> day, to the retroactive annulment of the marriage because of the conditional clause on the 451<sup>st</sup> day and to annulment on the 452<sup>nd</sup> day counted from the de facto separation of the spouses.

The weak point of this fiction based on a virtual community is that we could not satisfy the request of R. Moses Alashkar. But in fact the bride and the groom acknowledge that they belong to that community. We will never have the case of one spouse belonging to another community, which does not accept the decree and therefore even R. Alashkar would agree.

*Yihud* witnesses.

It is the first time that I see a document with the signature of the *yihud* witnesses. Normally the *yihud* witnesses don't sign any document. In the Sephardic marriages there is no *Yihud*. The absence of any *yihud* doesn't harm the marriage.

C. How does this agreement practically work?

- If the agreement is not valid on halakhic level, there was no marriage.
- If the husband annulled the pre-authorized *get* then there was no marriage.
- If no valid *get* was delivered before the 450<sup>th</sup> day counted from the de facto separation of the spouses, then according to the strategy n° 2 a *get* will be delivered to the wife on the 450<sup>th</sup> day. Normally she should be divorced according to the halakhic requirements.
- On the 451<sup>st</sup> day, even if no valid *get* was delivered and if the marital life was not resumed within 450 days, then the strategy n° 1 must now work. By virtue

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<sup>50</sup> Responsum n° 48. He refers to the responsa of his predecessors: Ramban, Rashba and Rivash.

<sup>51</sup> This starting point was adopted in order to have coherence between the different delays. It is possible, if this draft becomes ever reality that the delays and the starting point must change. It is likely that the rabbinate will impose that the starting point be a judgment recommending a divorce. The delays should then be drastically shortened. For example 98, 99 and 100 days.

of the conditions of the marriage, the *kiddushin* had not existed and there was never a marriage. Furthermore if the husband annuls the proxy there was also no marriage because of the conditional clause associated to the proxy-annulment at the beginning of the first agreement.

- On the 452<sup>nd</sup> day if no valid *get* was delivered, then the strategy n° 3, the *takanat ha-Kahal* of *hafka* 'at *kiddushin* must work.

Thus at the end of the process the wife is free. She received a *get* (strategy n° 2) and if the man annulled the power of attorney, then the marriage was retroactively annulled by the communal decree of annulment. Parallel to it, there was no marriage because of the conditional clause associated to the annulment of the proxy. Furthermore there was no marriage (strategy n° 1).

#### D. Improved and completed tripartite documents.

##### 1. Main changes.

The suggested tripartite agreement was split in two parts. The first part must be signed before the *kiddushin*. It concerns the first strategy about the conditional marriage and the third strategy about the communal decree.

The second part of the agreement cannot be signed before the *kiddushin*. The best solution is thus to sign it after *kiddushin* and before the handing over of the *ketubah* and *nisu'in*. This is the most secure solution and it allows mentioning globally these conditions in the *ketubah*.

##### 2. New dispositions proposed.

###### 1. Conditional marriage in the case of denial of *halitzah* by the husband's brothers.

The problem of women prevented from remarrying because of the impossibility to get a valid *halitzah* was once a very important problem. Whether the *yavam* was abroad and could not be located, or he was so far that it was not possible to reach him. When he had abandoned the Jewish fate (18-19th century) or had become a member of the communist party (20th century), he opposed any collaboration. Today the difficult cases result from money extortion. The present dispositions foresee a conditional marriage, which will be annulled retroactively if no valid *get halitsah* is delivered within 120 days counted from the death of the husband. This gives the future wife an insurance policy. The principle of this conditional marriage was already accepted in *Shulhan Arukh Even ha-Ezer* 157. We find examples of wording of these conditions in *Noda bi-Yehuda I Even ha-Ezer* 56, *Hatam Sofer Even ha-Ezer* II 68 and response R. Akiba Eger I: 93.

###### 2. Conditional marriage in the case the man has heavy defects.

All through Jewish history there were situations of young brides trapped in a marriage with a groom presenting heavy defects incompatible with a normal marital life. The present agreement should free them in the worse case within 15 months. However in

such a case this delay is too long. These cases are generally so tragic that we propose a conditional marriage with immediate effects instead of relying on an annulment, very rarely and severely granted,<sup>52</sup> based on a hypothetical appreciation<sup>53</sup> by the rabbis who must certainly all agree that the bride had not accepted the *kiddushin* in such a case.<sup>54</sup>

### 3. Waiver of the man's rights on his wife's estate, legacy, incomes and wages.<sup>55</sup>

This waiver has been proposed in order to avoid a frontal contradiction between the requirements of the modern life and the halakhic rules.

This waiver was already accepted in *Shulhan Arukh Even ha-Ezer* 92. This waiver must be granted compulsorily between *kiddushin* and *nisu'in*.<sup>56</sup> Indeed it cannot be done before *kiddushin* when there is still no link between the spouses but it is too late to grant it after *nisu'in*. This waiver is irreversible. Any wife in our modern world should require such a waiver. The best would be to place the second part of the agreement just before the delivery of the *ketubah*.

### E. Conclusion.

In his tripartite prenuptial agreement, the author R. Broyde had presented his solution with much humility. He had denied any originality and he would not use his method without an agreement of reputable *poskim* accepting the effective character of his solution, at least *bediavad*, a posteriori and without knowing that it would be accepted as valid *bediavad* even by *poskim* who do not advocate its use.

Of course I will also accept his words and make them mine.

The reader of the present paper understands now why the sum of the three strategies is much mightier than each of them individually.

In the present paper we tried to correct different imperfections and contradictions in the original scheme proposed by Dayan Broyde.

We added a clause in the case of annulment of the proxy of the pre-authorized *get*.<sup>57</sup>

We have also added three additional clauses, which seem indispensable in our modern world to solve the main problems raised by the Jewish marriage and the Jewish legislation:

- A clause in order to avoid the possibility of *iggun* if the widow cannot receive a *halitsa*.

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<sup>52</sup> Some require that the wife runs away as soon as she becomes aware of the defect. That was the ruling of R. Moses Feinstein in responsa *Igrot Moshe*. Others tolerate that she remains with her husband as long as there is hope of a recovery and a medical solution. The situation can be very delicate and constitute a true dilemma. Anyhow when the man is recalcitrant and does not want to grant a *get*, the situation can be very arduous and tragic. Today the cases of possible annulment because of a heavy defect of the man, are very rare and the conditions of application very restricted.

<sup>53</sup> אומדנא

<sup>54</sup> אדעתא דהכי לא קדשה עצמה, בבא קמא ק"י ע"ב

<sup>55</sup> שטר סילוק. Different prenuptial agreements incorporate a waiver by the husband of his rights on his wife's wages. This is the case of the prenuptial agreement of RCA and the Israeli prenuptial agreement of R. Kenuel (mutual respect). However the promoters of these prenuptial agreements did not take into account that the halakhic validity of this waiver requires that it should be signed after *kiddushin* and before *nisu'in*.

<sup>56</sup> See *Pithei Tshuva* ad locum and the reference to responsa *Noda bi-Yehuda II Hoshen Mishpat* 90.

<sup>57</sup> Some may consider it as redundant but it avoids ending strategy n° 2 by a setback.

- A clause according which there was no marriage if the man suffers from great defects, incompatible with marital life. This clause should avoid that the wife should be obliged to wait for 452 days after the de facto separation to recover her freedom.
- A clause giving the wife Jewish religious financial rights similar to those reached by women in the civil society during the twentieth century.

Furthermore we tried to bring coherence between the three clauses of the Broyde project and organize the different delays in order to control the order of preference between the three strategies considered.

We divided the agreement in two different parts. A first agreement should be signed before the *kiddushin* and a second agreement should be signed after the *kiddushin* but before the signature and the delivering of the *ketubah*. This second agreement includes two clauses which cannot be signed validly before *kiddushin*. The first clause is the power of attorney to write, sign and deliver a *get*. The formulation of R. Broyde cannot work. You cannot give a power of attorney to write, sign and deliver a *get* to a woman who is not yet your wife. Similarly the second clause that we introduced, according which the man waives his rights on his wife's properties, salary and wages, cannot be signed before the *kiddushin*.

#### *Appendix 1: Original Broyde Tripartite Document*

This document is to certify that on the [ordinal number] day of the month of [name of month], in the year [calendar year], in [location], [name of groom], the groom, and [name of bride], the bride, of their own free will and accord entered into the following agreement with respect to their intended marriage.

The groom made the following declaration to the bride under the *huppah* (wedding canopy):

“I will betroth and marry you according to the laws of Moses and the people of Israel, subject to the following conditions:

“If I return to live in our marital home with you present at least once every fifteen months until either you or I die, then our betrothal (*kiddushin*) and our marriage (*nisu'in*) shall remain valid and binding;

“But if I am absent from our joint marital home for fifteen months continuously for whatever reason, even by duress, then our betrothal (*kiddushin*) and our marriage (*nisu'in*) will have been null and void. Our conduct should be like unmarried people sharing a residence, and the blessings recited a nullity. The ring I gave you should be a gift.

“I recite this condition to our marriage not only during the wedding ceremony, but prior to *yihud* (seclusion) and to our intimate relationship. I take a public oath that I will never remove this condition from the marriage.

“I acknowledge that I have effected the above obligation by means of a *kinyan* (formal Jewish transaction) before a *beit din hashuv* (esteemed rabbinical court) as mandated by Jewish law. The above condition is made in accordance with the laws of the Torah, as derived from Numbers Chapter 32. Even a sexual relationship between us shall not void this condition. My wife shall be believed like one hundred witnesses to testify that I have never voided this condition.

“Under the *huppah* I recite the formula, ‘*Harei at mekudeshet li betaba'at zo kedat*



*Moshe veYisrael al pi hatena'im shekatavtnu vehatamnu* ('Behold you are betrothed to me with this ring according to the practices of Moses and Israel, subject to the conditions that we have written and signed').

"Should a Jewish divorce be requested of me for whatever reason, by any Orthodox rabbinical court (*beit din*) selected by my wife, even if at the time of our separation I explicitly reject the particular rabbinical court (*beit din*) she selects, I also appoint anyone who will see my signature on this form or a copy of this form to act as scribe (*sofer*) to acquire pen, ink and feather for me and write a *Get* (a Jewish Document of Divorce), one or more, to divorce with it my wife, and he should write the *Get lishmi*, especially for me, *velishmah*, especially for her, *uleshem gerushin*, and for the purpose of divorce. I herewith command any two witnesses who see my signature on this form or a copy of this form to act as witnesses to the bill of divorce (*Get*) to sign as witnesses on the *Get* that the above-mentioned scribe will write. They should sign *lishmi*, especially for me, *velishmah*, and especially for her, *uleshem gerushin*, and for the purpose of divorce, to divorce with it my abovementioned wife. I herewith command anyone who sees my signature on this form or a copy of this form to act as my agent to take the *Get*, after it is written and signed, and be my messenger to give it into the hands of my wife whenever he so wishes. His hand should be like my hand, his giving like my giving, his mouth like my mouth, and I give him authority to appoint another messenger in his place, and that messenger another messenger, one messenger after another, even to one hundred messengers, of his own free will, even to appoint someone not in his presence, until the *Get*, the document of divorce, reaches her hands, and as soon as the *Get* reaches her hands from his hands or from his messenger's hands, or from his messenger's messenger's hands, even to one hundred messengers, she shall be divorced by it from me and be allowed to any man. My permission is given to the rabbi in charge to make such changes in the writings of the names as he sees fit. I undertake with all seriousness, even with an oath of the Torah, that I will not nullify the effectiveness of the *Get*, the Jewish Document of Divorce, to divorce my wife or the power of the above-mentioned messenger to deliver it to my wife. And I nullify any kind of a statement that I may have made which could hurt the effectiveness of the *Get* to divorce my wife or the effectiveness of the above-mentioned messenger to deliver it to my wife. Even if my wife and I should continue to reside together after the providing of this authorization to divorce her, and even if we have a sexual relationship after I have authorized the writing, signing and delivery of a *Get*, such a sexual relationship should not be construed as implicitly or explicitly nullifying this authorization to write, sign and deliver a *Get*. My wife shall be believed like one hundred witnesses to testify that I have not nullified my authorization to appoint the scribe to write the *Get* on my behalf, or the witnesses to sign the *Get* on my behalf or any messenger to deliver it to the hand of my wife.

"Furthermore I recognize that my wife has agreed to marry me only with the understanding that should she wish to be divorced that I would give a *Get* within fifteen months of her requesting such a bill of divorce. I recognize that should I decline to give such a *Get* for whatever reason (even a reason based on my duress), I have violated the agreement that is the predicate for our marriage, and I consent for our marriage to be labeled a nullity based on the decree of our community that all marriages ought to end with a *Get* given within fifteen months. We both belong to a community where the majority of the great rabbis and the *batei din* of that community have authorized the use of annulment in cases like this, and I accept the communal decree on this matter as binding upon me. The *beit din* selected by my

wife shall be irrevocably authorized to annul this marriage when they feel such is proper and the above conditions are met.

“Furthermore, should this agreement be deemed ineffective as a matter of *halakhah* (Jewish law) at any time, we would not have married at all.

“I hereby grant jurisdiction to any Orthodox *beit din* selected by my wife to enforce any and all parts of this document and do not consent to jurisdiction in any *beit din* that my wife does not wish to select. As a matter of Jewish law, I accept (through the Jewish law mechanism of *kim li*) whatever minority opinions determined by the *beit din* selected by my wife are needed to effectuate my statements.

“I announce now that no witness, including any future testimony I might provide, shall be believed to nullify this document or any provision herein.”

Signature of Groom: \_\_\_\_\_

The bride replied to the groom:

“I accept this proposal of marriage subject to the condition that we are both in residence together in our marital home at least once every fifteen months until you or I die, then our betrothal (*kiddushin*) and our marriage (*nisu'in*) shall remain valid and binding;

“But if either one of us is absent from our joint marital home for fifteen months continuously for whatever reason, even by duress, then our betrothal (*kiddushin*) and our marriage (*nisu'in*) will have been null and void, and I impose this as a condition of my acceptance of this marriage proposal. Our conduct should be like unmarried people sharing a residence.

“I acknowledge that I have accepted the above obligation by means of a *kinyan* (formal Jewish transaction) before a *beit din hashuv* (esteemed rabbinical court) as mandated by Jewish law. The above condition is accepted in accordance with the laws of the Torah, as derived from Numbers Chapter 32. Even a sexual relationship between us shall not void the acceptance of this condition.

“I further declare that I would not have accepted a marriage proposal from a man if he were ever to revoke his authorization to give me a *get*, or if as a matter of *halakhah* (Jewish law) as determined by an authorized *beit din* the communal *takkanah* (decree) were to be considered invalid.”

Signature of Bride: \_\_\_\_\_

Signature of Groom accepting bride's conditional acceptance: \_\_\_\_\_

We the undersigned duly constituted *beit din* witnessed the oral statements and signatures of the groom and bride.

Rabbi \_\_\_\_\_

*Kiddushin* Witness 1 \_\_\_\_\_

*Kiddushin* Witness 2 \_\_\_\_\_

*Yihud* Witness 1 \_\_\_\_\_

*Yihud* Witness 2 \_\_\_\_\_

## *Appendix 2: Improved and completed Tripartite Document*

*A. Improved and completed tripartite document to be signed before the kiddushin.*

This document is to certify that on the [ordinal number] day of the month of [name of month], in the year [calendar year], in [location], [name of groom], the groom, and [name of bride], the bride, of their own free will and accord entered into the following agreement with respect to their intended marriage.

**Preliminary declarations (points 1 and 2).**

**1. ‘If the validity of the conditions adopted in the present agreement and of the proxy included in the second agreement that we drafted is consistent with *halakhah*, then they will be, both, the basis of our marriage. But if it is not consistent with *halakhah*, then our betrothal (*kiddushin*) and our marriage (*nisu’in*) will have been null and void. Our conduct should be like unmarried people sharing a residence and the blessings recited a nullity. The ring I gave you should be a gift.’**

**The bride declared to the groom:**

**2. ‘If you respect the oath included in the second declaration, never to annul the proxy giving the pre-authorization to write a get then we marry according to the practices of Moses and Israel.’**

**‘But if you ever transgress the above-mentioned oath and annul the proxy to write and deliver a get within 450 days counted from our de-facto separation then our betrothal (*kiddushin*) and our marriage (*nisu’in*) will have been null and void. Our conduct should be like unmarried people sharing a residence and the blessings recited a nullity. The ring I gave you should be a gift.’**

**3. The groom made the following declaration to the bride under the *huppah* (wedding canopy):**

**“I will betroth and marry you according to the laws of Moses and the people of Israel, subject to the following conditions:**

**If we resume our marital life within 450 calendar days counted from our de facto separation, even for only one day, then our betrothal (*kiddushin*) and our marriage (*nisu’in*) shall remain valid and binding.**

**But if we don’t resume our marital life within 450 calendar days counted from our de facto separation, for whatever reason, even by duress, then our betrothal (*kiddushin*) and our marriage (*nisu’in*) will have been null and void. Our conduct should be like unmarried people sharing a residence and the blessings recited a nullity. The ring I gave you should be a gift.**

**“I recite this condition to our marriage not only during the wedding ceremony, but prior to our intimate relationship and *yihud* (seclusion). I take a public oath that I will never remove this condition from the marriage.**

**“The above condition is made in accordance with the laws of the Torah, as derived from Numbers Chapter 32. Even a sexual relationship between us shall not void this condition. My wife shall be believed like one hundred witnesses to testify that I have never voided this condition.**

**4. “Under the *huppah* I recite the formula:**

**‘ *Im tokfan shel ha-tena'im veshel ha-harsha'ah shekatavnu hou beheteem lahalakhah, az anahnou nekabeel otam ke yessod shel kelouloteinu aval im hou eino behetheem***

*lahalakhah, az anahnou lo mithatnim kedat Moshe ve yisrael ve ha-hayyim ha-meshutafim shelanu yisha'arou begeider yahass bein penuyim, shelo kedat Moshe ve Yisrael.*

*Beheteem la tena'im shekevar hatamnu aleihem ve al-menat shenahatom al ha-harsha'ah shekatavnu, ve kol hatena'im ha'eilei hem kitenaei benei Gad u benei Reouven, harei at mekudeshet li betaba 'at zo kedat Moshe ve Yisrael'*

**'If the validity of the conditions and of the proxy that we drafted is consistent with *halakhah*, then they will be the basis of our marriage. But if it is not consistent with *halakhah*, then we don't marry according to the practices of Moses and Israel'.**

**'Subject to the conditions that we have already signed, all of them being like the conditions of the sons of Gad and the sons of Reuben, and on the condition that we will sign the proxy that we drafted and that I will respect the oath not to annul it, behold you are betrothed to me with this ring according to the practices of Moses and Israel'.**

**'אם תוקפן של התנאים ושל ההרשאה שכתבנו הוא בהתאם להלכה אז אנחנו נקבל אותם כיסוד של כלולותינו אבל אם הוא אינו בהתאם להלכה, אז אנחנו לא מתחתנים כדת משה וישראל והחיים המשותפים שלנו ישארו בגדר יחס בין פנוים שלא כדת משה וישראל.'**  
**'בהתאם לתנאים שכבר חתמנו עליהם ועל מנת שנחתום על ההרשאה שכתבנו, וכל התנאים האלה הם כתנאי בני גד ובני ראובן, הרי את מקודשת לי בטבעת זו כדת משה וישראל.'**

5. "Furthermore I recognize that my wife has agreed to marry me only with the understanding that should she wish to be divorced that I would give a *Get* within 450 calendar days counted from our de facto separation. I recognize that should I decline to give such a *Get* for whatever reason (even a reason based on my duress), I have violated the agreement that is the predicate for our marriage, and I consent for our marriage to be labeled a nullity based on the decree of our community that all marriages ought to end with a *Get* given within fifteen months. We both belong to a community where the majority of the great rabbis and the *batei din* of that community have authorized the use of annulment in cases like this, and I accept the communal decree on this matter as binding upon me. The *beit din* selected by my wife shall be irrevocably authorized to annul this marriage when they feel such is proper and the above conditions are met.

**The groom made the additional following declaration to the bride under the *huppah* (wedding canopy):**

**6. "Furthermore if I die before my wife letting after me a living descent or if I survive my wife then our betrothal (*kiddushin*) and our marriage (*nisu'in*) shall remain valid and binding.**

**But if I die before my wife, God forbids without letting after me a living descent but I am survived by at least one brother and no valid *halitsah* is granted within a delay of 120 calendar days counted from the date of my death, then our betrothal (*kiddushin*) and our marriage (*nisu'in*) will have been null and void. Our conduct should be like unmarried people sharing a residence and the blessings recited a nullity. The ring I gave you should be a gift".**

**The groom made still the additional following declaration to the bride under the *huppah* (wedding canopy):**

**7. Furthermore if I am healthy then our betrothal (*kiddushin*) and our marriage (*nisu'in*) shall remain valid and binding.**

**But if God forbids it appears that I suffer great defects incompatible with our marital life: impotence, sterility, insanity, madness, severe mental illness, epilepsy, VIH or AIDS, then our betrothal (*kiddushin*) and our marriage (*nisu'in*) will have been null and void. Our conduct should be like unmarried people sharing a residence and the blessings recited a nullity. The ring I gave you should be a gift”.**

“I hereby grant jurisdiction to any Orthodox *beit din* selected by my wife to enforce any and all parts of this document and do not consent to jurisdiction in any *beit din* that my wife does not wish to select. As a matter of Jewish law, I accept whatever minority opinions determined by the *beit din* selected by my wife are needed to effectuate my statements.

“I announce now that no witness, including any future testimony I might provide, shall be believed to nullify this document or any provision herein.”

“I acknowledge that I have accepted the above obligations by means of a *kinyan* (formal Jewish transaction) before a *beit din hashuv* (esteemed rabbinical court) as mandated by Jewish law.

Signature of Groom: \_\_\_\_\_

The bride replied to the groom:

“I accept this proposal of marriage subject to the following condition:

**8. The preliminary declarations mentioned above, i.e. points 1 and 2.**

**9. If we resume our marital life within 450 calendar days counted from our de facto separation, even for only one day, then our betrothal (*kiddushin*) and our marriage (*nisu'in*) shall remain valid and binding.**

**But if we don't resume our marital life within 450 calendar days counted from our de facto separation, for whatever reason, even by duress, then our betrothal (*kiddushin*) and our marriage (*nisu'in*) will have been null and void. Our conduct should be like unmarried people sharing a residence.**

**10. Furthermore if my husband dies before me letting after him a living descent or if he survives me then our betrothal (*kiddushin*) and our marriage (*nisu'in*) shall remain valid and binding.**

**But if he dies before me, God forbids without letting after him a living descent but he is survived by at least one brother and no valid *halitsah* is granted within a delay of 120 calendar days counted from the date of his death, then our betrothal (*kiddushin*) and our marriage (*nisu'in*) will have been null and void. Our conduct should be like unmarried people sharing a residence and the blessings recited a nullity.**

**11. Furthermore if he is healthy then our betrothal (*kiddushin*) and our marriage (*nisu'in*) shall remain valid and binding.**

**But if God forbids it appears that he suffers from great defects incompatible with our marital life: impotence, sterility, insanity, madness, severe mental illness, epilepsy, VIH or AIDS then our betrothal (*kiddushin*) and our marriage (*nisu'in*) will have been null and void. Our conduct should be like unmarried people sharing a residence and the blessings recited a nullity.**

**I know that these conditions were introduced at my request and in my favor. I am fully aware of their importance and I will never waive them. I take a public oath that I will never remove these conditions from the marriage.'**

“I acknowledge that I have accepted the above obligations by means of a *kinyan* (formal Jewish transaction) before a *beit din hashuv* (esteemed rabbinical court) as mandated by Jewish law. The above condition is accepted in accordance with the laws of the Torah, as derived from Numbers Chapter 32. Even a sexual relationship between us shall not void the acceptance of this condition..”

“I further declare that I would not have accepted a marriage proposal from a man if as a matter of *halakhah* (Jewish law) as determined by an authorized *beit din*, the communal *takkanah* (decree) were to be considered invalid.”

Signature of Bride: \_\_\_\_\_

Signature of Groom accepting bride's conditional acceptance: \_\_\_\_\_

We the undersigned duly constituted *beit din* witnessed the oral statements and signatures of the groom and bride.

Rabbi \_\_\_\_\_

Witness 1 \_\_\_\_\_

Witness 2 \_\_\_\_\_

*B. Improved and completed tripartite document to be signed after the kiddushin and before the delivering of the ketubbah.*

“Should a Jewish divorce be requested of me for whatever reason, **by my wife**, even if at the time of our separation I explicitly reject the particular rabbinical court (*beit din*) she selects, I appoint **from today (me-achshav)** anyone who will see my signature on this form or a copy of this form to act as scribe (*sofer*) to acquire pen, ink and feather for me and write a *get* (a Jewish document of divorce), one or more, to divorce with it my wife, and he should write the *get lishmi*, especially for me, *velishmah*, especially for her, *uleshem gerushin*, and for the purpose of divorce. I herewith command any two witnesses who see my signature on this form or a copy of this form to act as witnesses to the bill of divorce (*get*) to sign as witnesses on the *get* that the above-mentioned scribe will write.

They should sign *lishmi*, especially for me, *velishmah*, and especially for her, *uleshem gerushin*, and for the purpose of divorce, to divorce with it my abovementioned wife. I herewith command anyone who sees my signature on this form or a copy of this form to act as my agent to take the *Get*, after it is written and signed, and be my messenger to give it into the hands of my wife whenever he so wishes. His hand should be like my hand, his giving like my giving, his mouth like my mouth, and I give him authority to appoint another messenger in his place, and that messenger another messenger, one messenger after another, even to one hundred messengers, of his own free will, even to appoint someone not in his presence, until the *get*, the document of divorce, reaches her hands **within 450 calendar days counted from our de facto separation, in front of two delivery witnesses appointed by the last messenger according to the laws of the get delivery**, and as soon as the *get* reaches her hands from his hands or from his messenger's hands, or from his messenger's messenger's hands, even to one hundred messengers, she shall be divorced by it from me and be allowed to any man. My permission is given to the rabbi in charge to make such changes in the writings of the names as he sees fit. I undertake with all seriousness, even with an oath of the Torah, that I will not nullify the effectiveness of the *get*, the Jewish document of divorce, to divorce my wife or the power of the above-mentioned messenger to deliver it to my wife. And I nullify any kind of a statement that I may have made which could hurt the effectiveness of the *Get* to divorce my wife or the effectiveness of the above-mentioned messenger to deliver it to my wife. **Furthermore, in order to guarantee my good fate I accept to pay from today**

**(מעכשיו) a penalty of 50000 \$ to my wife. However she renounces this payment as long as I don't violate this oath.** Even if my wife and I shall continue to reside together after the providing of this authorization to divorce her, and even if we have a sexual relationship after I have authorized the writing, signing and delivery of a *get*, such a sexual relationship should not be construed as implicitly or explicitly nullifying this authorization to write, sign and deliver a *get*. My wife shall be believed like one hundred witnesses to testify that I have not nullified my authorization to appoint the scribe to write the *Get* on my behalf, or the witnesses to sign the *get* on my behalf or any messenger to deliver it to the hand of my wife.

**Furthermore I declare that I waive all my halakhic rights on the possessions and assets of my wife, whether she owns them already or she will inherit them later. Similarly I waive my halakhic rights on her incomes and wages. But we agree both that each of us will contribute to the expenses of our household in proportion of his incomes and wages.**

“I hereby grant jurisdiction to any Orthodox *beit din* selected by my wife to enforce any and all parts of this document and do not consent to jurisdiction in any *beit din* that my wife does not wish to select. As a matter of Jewish law, I accept whatever minority opinions determined by the *beit din* selected by my wife are needed to effectuate my statements.

“I announce now that no witness, including any future testimony I might provide, shall be believed to nullify this document or any provision herein.”

“I acknowledge that I have accepted the above obligations by means of a *kinyan* (formal Jewish transaction) before a *beit din hashuv* (esteemed rabbinical court) as mandated by Jewish law.

Signature of Groom: \_\_\_\_\_

The bride replied to the groom:

I declare that I would not have accepted a marriage proposal from a man if he were ever to revoke his authorization to give me a *get*, or if he would not have accepted to waive his halakhic rights on my present and future possessions, estate, returns and salary.”

Signature of Bride: \_\_\_\_\_

Signature of Groom accepting bride's conditional acceptance: \_\_\_\_\_

We the undersigned duly constituted *beit din* witnessed the oral statements and signatures of the groom and bride.

Rabbi \_\_\_\_\_

Witness 1 \_\_\_\_\_

Witness 2 \_\_\_\_\_

### 3. Completed text of the kiddushin.

**אם תוקפן של התנאים ושל ההרשאה שכתבנו הוא בהתאם להלכה אז אנחנו נקבל אותם כיסוד של כלולותינו אבל אם הוא אינו בהתאם להלכה, אז אנחנו לא מתחננים כדת משה וישראל והחיים המשותפים שלנו ישארו בגדר יחס בין פנוים שלא כדת משה וישראל. בהתאם לתנאים שכבר חתמנו עליהם ועל מנת שנחתום על ההרשאה שכתבנו, וכל התנאים האלה הם כתנאי בני גד ובני ראובן, הרי את מקודשת לי בטבעת זו כדת משה וישראל.**

4. Completed text of the Ketubah.

איך רבי פב"פ אמר לה להדא בתולתא פב"פ אם תוקפן של התנאים ושל ההרשאה שכתבנו הוא בהתאם להלכה אז אנחנו נקבל אותם כיסוד של כלולותינו אבל אם הוא אינו בהתאם להלכה, אז אנחנו לא מתחתנים כדת משה וישראל והחיים המשותפים שלנו ישארו בגדר יחס בין פנוים שלא כדת משה וישראל. וכך אמר לה רבי פב"פ להדא בתולתא פב"פ, ולפום אלין תנאייא, דהוון כתנאי דבני גד ובני ראובן וההרשאה דכתבנא ודחתמא עליהון, הוי לי לאנתו כדת משה וישראל ואנא אפלי'.....כאורח כל ארעא ודווקא רק לפום תנאייא והרשאה האלין צביאת מרת פב"פ בתולתא דא והות לאנתו.....