

Additions

1:10:

Hillul HaShem is an accurate description of the disrepute brought upon the Jewish People and the Torah itself in front of a well-informed and morally critical world – in large parts of which women enjoy full equality before the law – by the spectacle of the highly immoral and illegal conduct of a recalcitrant husband wreaking havoc upon the life of an innocent wife and by the irony of a Divine Law – whose ways are ways of pleasantness and all of whose paths are peace (*Mishley* 3:17) – being harnessed as the very instrument of such oppression.

This means not only that everything must be done within the *Halakhah* as at present fixed to avoid such scandalous desecration but also that our fixing of the *Halakhah* itself in this area should be affected by such considerations. In support of this I would refer to the remarkable suggestion of the *Hazon 'Ish (Bava' Qamma'*, section 10, sub-section 9) who discusses a ruling of Rambam that seems to contradict the Talmud (*BQ* 38a) where it is recorded that an Israelite is exempt from paying damages caused by his ox (but not by himself) to the ox of a heathen (where the cause of the damage is not known to others and so no *hillul HaShem* will be caused) even if the customary practice (not yet enshrined in government statute – *dina' de-malkhuta'*) of the heathen society is to impose damages in such a case. Rambam, however, states that the Israelite is only exempt if the custom of the said heathen society is **not** to make owners liable for the behaviour of their beasts. Once general society has raised its moral standards and expects its members to accept responsibility for their animals' conduct an Israelite living in that society must do no less and the relevant *halakhah* must be changed so that neither the conduct of the Jew nor the Law upon which that conduct is based shall be a desecration of the Name. This ruling of Rambam, says *Hazon 'Ish*, would seem to be based on the view of Rabbi Aqiva (*BQ* 113a) who, in his dispute with other authorities, states that money owed by a Jew to a heathen – who is unaware of the debt so that non-payment will not cause a *hillul haShem* and in circumstances where payment is not required by *dina demalkhuta* but only by local custom – must be paid “because of *qiddush haShem*” which Rambam interprets, according to this suggestion of *Hazon 'Ish*, to mean that it is forbidden to fix the *Halakhah* on any matter in a way that would be, by its very existence, a *hillul haShem* and thus thwart the whole purpose of Torah and Israel which is *qiddush haShem*.

2.2 (2.1)

To be added at the end of the piece beginning Consensus III.15:

For an important example of the help that could be rendered by a newly discovered reading in the Talmud in the search for solutions to ‘*agunah* problems see my paper “Rabbi Morgenstern’s *Agunah* Solution” §12.2.8, note 56. I point there to a reading in the *Gemara' (Ketubbot* 63b) preserved in the Firkovitch Leningrad manuscript which records, in place of “we do not force her” (the rebellious wife, into marital

compliance), “we force him” (to divorce her).¹ According to this, the view of the *Sabora'im*, *Ge'onim*, Rif and Rambam's school that a woman who declares that she can no longer abide her husband is entitled to a divorce, coerced if necessary, is based upon an explicit ruling in the Talmud. It can then be argued that the opposition to Rambam's ruling by Rabbenu Tam and many other *Rishonim*, who forbid the application of force in such a case and whose view was accepted as normative in the *Shulhan 'Arukh* (EH 77:2), would have been withdrawn had they been aware that Rambam's opinion was supported by a version of the talmudic text. I noted there also that Rambam in *Yad, Malweh weLoweh* 15:2 (see also *'Ishut* 11:13) states that in the course of his research he had found in Egypt a variant reading in two manuscripts of the Talmud (written in scroll form) that were approximately **500 years old**. This reading accorded with logic and was undoubtedly the true version. A false reading in other versions of the Talmud, he tells us, had led some of the *Ge'onim* to rule incorrectly.

2.7 (2.3)

The underlined to be added at the end of note 66:

This debate was conducted in *Tehumin*: R. Shelomoh Riskin, "*Hafqa'at Qiddushin - Pitaron la'Aginut*" *Tehumin* (22), 191-209; R. Zalman Nehemiah Goldberg, "*Hafqa'at Qiddushin 'Enah Pitaron la'Aginut*" *Tehumin* (23), 158-160; R. Riskin, (23) 161-164; R. Goldberg, (23) 165-168. There is also a summary article of Riskin's position in *'Amudim* XIV 17-22. See further - Shlomo Riskin, "*Hafka'at Kiddushin: Towards Solving the Aguna Problem in Our Time*", *Tradition* (36:4) Winter 2002, 1-36; Jeremy Wieder, "*Hafka'at Kiddushin: A Rebuttal*" *ibid.*, 37-43; Shlomo Riskin, "*Response*", *ibid.*, 44-53; Jeremy Wieder, "*Hafka'at Kiddushin: Rejoinder*", *ibid.* (37:1) Spring 2003, 61-78.

3.1

Add to note 107 at the end: See also J.L. Maimon's introduction to the photographic reproduction of the Rome 5240 edition of Rambam's *Mishneh Torah* pp. 22-4, s.v. *Talmud Yerushalmi*.

(First) 3.4 (3.5)

Please change note 121 to read as follows:

¹²¹ I. Warhaftig, *ibid.*, p. 209, footnote 52, argues that the Ran's stance is applicable only to vows and blemishes where an insistence on his condition would annul the marriage at the moment of insistence (according to the wording of the Ran this means at the moment he sees the extent of the blemishes or discovers the nature of the vows and refuses to accept them – and his original condition at the *qiddushin* meant that he leaves the matter in abeyance until he discovers the truth of the situation. However, R. Berkovits argues that the same should apply even if he declares his insistence at any other post *qiddushin* moment without having discovered if there are in fact vows and blemishes and, if there are, what their nature is, so that a future foregoing of the condition would not reinstate it. Even

¹ Cf. *Diqduqey Soferim ha-Shalem*, Jerusalem 1977, II 88; quoted in B. S. Jackson, *Agunah and the Problem of Authority: Directions for Future Research*, Agunah Research Unit, Centre for Jewish Studies, University of Manchester, 20 at note 94.

accepting R. Berkovits's extension of the Ran's meaning, it is not possible to deduce from this that in the case of a condition dependent on some future contingency a post-*qiddushin* declaration that he remains insistent about his condition would render it impossible for him to subsequently forego the condition and therefore **a conditional marriage would remain in force**. What the Ran said was that his insistence **immediately annuls the marriage** retroactively so there remains no marriage at all and no subsequent foregoing of the condition can reactivate the conditional marriage. He did not say that the conditional marriage remains in force! Clearly, where the condition refers to the future, the fact that he insists on his condition at some point after the *qiddushin* does not annul the marriage because – unlike in the case of vows and blemishes – it is impossible for the condition to be breached as yet. Therefore, the Ran's rationale is not relevant. Warhaftig suggests that, in a case of futuristic conditions, it would be feasible to render a future foregoing of the condition impossible by stipulating in the *qiddushin*-condition that he **does not depend the status of his marriage on any future mindset that he might develop**. R. Berkovits's argument in this case, says Warhaftig, seems inaccurate.

(First) 3.4 (3.5) :

Change last sentence in note 122 to read

After all, we have no proof that *SHG* would agree with [R. Berkovits's understanding (see previous note) of the] Ran that once the groom has, post-*qiddushin*, confirmed his condition, he can no longer forego it.

(Second) 3.4 (3.6):

Perhaps we should include section XXXVIII of *HKT*? If so, we need to change (on p. 52) XXXIII-XXXVII to XXXIII-XXXVIII and to add (on the top of p. 55 after the first paragraph) as follows:

XXXVIII R. Zevin claims that R. Uzziel has grafted differing opinions cited in *Shittah* into one. R. Uzziel denies this, arguing that all he has done is to explain the listed opinions by means of one piece of logic. A careful examination of Rashi, he adds, will show that he too agrees that *kol hameqaddesh* works on the principle of 'on the condition that the Sages do not protest the marriage'.²

² In *SM* Ramban, Re'ah and Ritva explain '*ada'ta' derabbanan*' as being parallel to '*al menat sheyirtseh 'abba'*'. Therefore, there is no danger of *zenut* when the marriage is made conditional on the mind of others because the couple want a **matrimonial** relationship and it is only an outside factor – the Sages – which annulled the marriage – which they can do since he made it dependent upon them. From this Rabbi Uzziel deduced that whenever a marriage is made dependent on an outside will (the Sages, the father, the *bet din*) retroactive annulment will not bring about promiscuity. R. Zevin observes on this that these *Rishonim* who compared '*ada'ta' derabbanan*' to '*al menat sheyirtseh 'abba'*' never explained the Talmud's question (as Rashi did, as we shall see) 'If he betrothed with intercourse how can one explain it?' and the answer 'They made his intercourse promiscuous', as pertaining to the groom and meaning: If he betrothed with *bi'ah* how can we read his mind? How can he have intended it purely as a matrimonial liaison when he contemplates the possibility of retroactive annulment? The answer accordingly being: The **Sages** made his intercourse promiscuous – **he** did not! And therefore his intercourse remains licit even after annulment and he, being aware of that, feels no need to forego his condition making his marriage dependent on the Sages. On the contrary, these *Rishonim* explain the Talmud's question as being aimed at the Sages: What authority do they have to annul a marriage if the betrothal was made by intercourse? the answer being that even this is within their power. According to this, it would seem that his intercourse does indeed become retrospectively illicit but he will still marry in accordance with their conditions and it is considered as if he also repeated the condition at the time of intercourse. Therefore, when a person wants to make conditions of his own, in addition to those understood to accompany every marriage as stated in the Talmud, he would have to make an explicit condition, valid according to all the laws of conditions, and repeat it at *bi'ah* for otherwise we would fear cancellation due to his abhorrence of promiscuous intercourse.

3.6 (3.7):

Perhaps add after *get pasul* 'or *batel*'.

The following piece from *Confronting 'Iggun - A combination of three possible solutions to the problem of the chained wife in Jewish Law*, pp. 35-6 would be relevant:

Combining solutions

Considering the traditional opposition of the majority of the *Posqim* to a general enactment of conditional marriage we might hope to win more support if, as the title of this book suggests, we rely not on conditional marriage alone but on a combination thereof with two other solutions, namely communal annulment and a delayed *get*. This has two advantages.

The first is simply that of the multiple doubt effect, in this case a triple *safeq* because although there is a question mark on the effectiveness of each of the above solutions, not one of them is without its supporters among the *Posqim*. Each remains a solution at least according to some authorities so that between them they could operate in practice as well as in theory. Even if the supporters of contemporary *hafqa'ah* and delayed *get* are both minority schools so that they could not constitute a valid *sefeq sefeqa'*,³ conditional marriage is halakhically effective according to most *posqim*⁴ so that it presents us with more than the 50% support needed for leniency in one of the components of *sefeq sefeqa'* and in such a case the other component(s) can be doubts where a lenient outcome is supported by less than 50%.⁵

The second is that the one solution may be fortified by the presence of the other. For example, one of the objections to conditional marriage was that it meant that the wedding bond could be too easily (retroactively) undone so that the couple, in order to avoid the resultant retrospective promiscuous relationship (forbidden according to

True, according to Rashi's understanding (as explained above) – that the intercourse of betrothal becomes promiscuous (and the marriage annulled) only from the outside point of view of the Sages but from the inside view of the matter the act of the groom remains absolutely innocent - there would be no illicit intercourse, no fear of cancellation and therefore no need to repeat the *qiddushin*-condition at *bi'ah*. However, Rashi never said that '*ada'ta' derabbanan* is parallel to '*al menat sheyirtseh 'abba'* (despite R. Uzziel's claim to the contrary)! We can thus deduce according to Rashi only that the **talmudic Sages** have this power and even then only in the case of a flawed *get*. (The groom is assumed to accept only the **talmudic Sages'** conditions and only where there is an externally flawed *get*.)

In summary: According to Ramban etc., we could apply the Talmud's ruling to cases of other 'outside minds' – that of the father or the *bet din* (even a *bet din* of our time) but that would not help us because according to this school of thought the acts of intercourse do become illicit so that if we were to introduce R. Uzziel's condition we would have to insist on repetition of the condition before intercourse. On the other hand, according to Rashi though there is no retrospective promiscuity in the case of talmudic annulment that will not help us because we have no indication that the Sages' annulment is parallel to that of the father and so we cannot assume licit intercourse after annulment by the father or the *bet din* so, again, it would be necessary to repeat the condition before intercourse.

³ R. Ovadyah Yosef, *Yehaweh Da'at I Kileley HaHora'ah, Kileley Sefeq Sefeqa'* no. 11 (p. 26a).

⁴ See above, p. 30, first new paragraph, in the name of R. Kook and p. 34, first new paragraph, in the name of R. Feinstein (supporting the theory of R. Berkovits's *TBU*).

⁵ R. Ovadyah Yosef, *ibid*.

some views) might feel the need to remarry unconditionally (by means of intercourse). However, the less likely it becomes that the marriage would be retroactively undone by breach of the condition, the less likely is it that any promiscuity could occur. Thus, according to some opinions, even if a situation arose in which the husband refused to divorce his wife with a new *get*, the marriage would be **prospectively** concluded by the delayed *get* or by the communal annulment and no retroactive promiscuity would result. This makes it less likely that the couple would ever feel the need to remarry unconditionally.

Similarly, the opposition of many *posqim* to the contemporary application of *hafqa'ah* is based partly on the argument that we do not find in the classical sources any example of post-betrothal annulment without a *get* (that is internally valid but externally flawed). In the talmudic literature the otherwise valid *get* has been cancelled and in the geonic literature it has been coerced. The tripartite solution, however, presents us with *hafqa'ah* accompanied by a *get* that is, at most, externally flawed by the husband's cancellation. This very much strengthens the argument for the efficacy of the *hafqa'ah*. The corollary is also true: The *hafqa'ah* lends strength to the validity of the *get* just as we find the Rosh explaining that the talmudically unsanctioned power of the Geonim to enforce a *get* can be the better understood if viewed as based upon annulment (which, though also talmudically unsanctioned, can be explained as validated by the couple's conditioning their marriage upon the decrees of the sages – '*kedat Mosheh weYisrael*')

4.2 (4.4):

The following from Morgenstern may be useful:

12.2.12 (xii): *Tzitz Eliezer* Book 5, *responsum* 26. This is a most important statement of Dayan Waldenberg in which he defends, in a letter to Rabbi Elyashiv, his call for the re-introduction of coercion in cases of *me'is 'alai*. In this *responsum* (end of (ס), s.v. *we-'a'irenu*), Dayan Waldenberg points out that the *Mordekhai* records that a number of the *Ge'onim* and Rabbenu Hanan'el maintain, like the Rambam and Rashbam, that in a case of *me'is 'alai* we coerce him to divorce her according to the law of the Talmud. So maintains *Tosefot* Rid in the name of Rav Sherira Ga'on — that according to the law of the Talmud after 12 months we force the husband to divorce her, the enactment of the *Sabora'im* being that where coercion is required it is applied immediately. A careful examination of the wording of the *Tosefot* Rid there makes clear that he, too, agrees to this.⁶ See also above, 2.2 (2.1)

⁶ In *Sefer HaYashar leRabbenu Tam, Heleq haShe'elot wehaTeshuvot...we'im ha'arot me'et Rabbenu Shraga Rosenthal*, Berlin 5658; new ed. Jerusalem 5732, number 24, p.40, **Rabbenu Tam agrees** that after a waiting period of 12 months a *get* may be coerced in cases of *me'is 'alai*. He writes: "...and this [*get*, coerced] within 12 months [of the separation of the couple] is considered [a *get* coerced] not in accordance with the law [and is therefore invalid] **even according to Rabbenu Shelomoh's explanation of the case of *moredet*...**". It is not clear what the last phrase (in bold) means. I found the explanation in Maharash Rosenthal's footnote (12) unintelligible. Elon (who also cannot understand Rosenthal's meaning) says in *HaMishpat*

4.3 (4.1):

On p. 66 at the end of note 168 add:
& ZD 6.6.

Page 67, note 182 says: ‘See n. 234, below’ but that does not work in this document – n. 234 refers to an unrelated matter. The reference for Dayyan Waldenberg’s responsa is: *Responsa Tsits ’Eli’ezer* IV 21 and V 26.

P. 69, note 191. Add at the end: ‘photostat of ed. Lemberg 1891, Tel Aviv, n.d.’

P. 69, note 191 See Rabbi Zvi Hirsch Gertner, *Kefiyah be-Get*, Jerusalem 5758, letter ב, note 17 (p. 7"ל) where it is stated that Rabbi A. L. Ginzberg (= ‘the *Ketsot*’) in his response in *Meshovev Netivot* to *Netivot Ha-Mishpat, Hoshen Mishpat* 3, sub-para. 1, understands it as inclusive whereas Rabbi Meir Simḥah of Dvinsk in ‘*Or Same’ah* to *Yad, Gerushin* 2:20 takes it as exclusive. He further refers us to Rabbi Ḥayyim Sofer, *Responsa Maḥaney Ḥayyim, ’Orah Ḥayyim* II, 21:3 s.v. רבז from where it seems that Ramban took it as inclusive and Rabbi Yitshaq Leon Ibn Tsur (the ‘*Megillat Ester*’ – 16th c.) understood it as exclusive.

4.4 (4.2):

P. 73, in the introductory paragraph after *Tzitz Eliezer* add 4, 21 before 5, 26.

P. 74, In the quotation from **Consensus note 166** at the beginning of the second line, replace ‘Lemberg 5651’ with ‘photostat of ed. Lemberg 1891, Tel Aviv, n.d.’

4.5 (4.3)

P. 75, para. beginning 3.3.2, regarding the husband resisting coercion. Maybe add ZD 7.7, note 57:

Ha’Ivri (Jerusalem 1978), vol. I p. 543 n. 79, that Rabbenu Tam is referring to the Rashi quoted in *Shiltey Ha-Gibborim* on the Rif to *Ketubbot* 63b, s.v. כתב סמג בשם רות. Rashi is there quoted as saying that according to the Gemara, after 12 months we force the husband to give the *moredet* a divorce. Thus Rabbenu Tam is saying that even if we accept this view (which Rabbenu Tam himself seems to do at this point) we have no right to bring the coercion forward and doing so would render the *get* illegally coerced and hence invalid. However, on the very next page of *Sefer HaYashar*, Rabbenu Tam is quoted as saying that even after 12 months no coercion may be applied and, should it be applied, the *get* would be considered illegally coerced and would therefore be invalid. This is also the position of Rabbenu Tam as quoted in *Tosafot* to *Ketubot* 63b s.v. ‘aval ’amrah. See further, Y. Abel “A Critique of *Za’aqat Dalot*” 6.6.

5.3 (5.2)

Footnote 245 – see above 2.7 (2.3)

See Rabbi Zvi Hirsch Gertner, *Kefiyah be-Get*, Jerusalem 5758, letter ג, note 17 (p. 7"ל) where it is stated that Rabbi A. L. Ginzberg (= 'the *Ketsot*') in his response in *Meshovev Netivot* to *Netivot Ha-Mishpat, Hoshen Mishpat* 3, sub-para. 1, understands it as inclusive whereas Rabbi Meir Simḥah of Dvinsk in '*Or Same'ah* to *Yad, Gerushin* 2:20 takes it as exclusive. He further refers us to Rabbi Ḥayyim Sofer, *Responsa Mahaney Ḥayyim*, '*Orah Ḥayyim* II, 21:3 s.v. רב"ה from where it seems that Ramban took it as inclusive and Rabbi Yitshaq Leon Ibn Tsur (the '*Megillat Ester*' – 16th c.) understood it as exclusive.

5.4

It may be worth adding from *Confronting 'Iggun* (= *Book*), p. 40:

The theory of rabbinic dissolution of marriage in the three cases of post-betrothal annulment

(i) The majority view⁷ is that the annulment actually works retroactively⁸ to the moment of *qiddushin* so that the couple's marriage is deemed never to have existed. The logic is that since the groom declared that he is marrying according to the biblical and rabbinic law, which is understood to mean that the marriage is conditional on the continuing acquiescence of the rabbinic authorities, once a situation arises which causes those authorities to withdraw their approval the condition for preservation of the marriage has been broken and the union becomes automatically retroactively defunct.

(ii) Some⁹ explain that the Sages validated the externally flawed *get*. This means that the annulment is prospective.

(iii) Others¹⁰ suggest that the groom's awareness of the possibility of rabbinic retroactive annulment – something he does not want as it will reduce his relationship with his wife from one of holy matrimony to one of secular (and possibly sinful) concubinage – will force him to validate the divorce in his heart and the *get* thereby is biblically valid in spite of any indication to the contrary. Again, this means that the annulment is prospective.

⁷ Rashi, *Yevamot* 90b, s.v. *We'afqe'inho rabbanan*; *Tosafot: Ketubbot* 3a, s.v. *Tinah* and *Gittin* 33a, s.v. *We'afqe'inho*; Ritba in *SM Ketubbot* 3a, s.v. *Wekhatav HaRitba*; Me'iri, *Ketubbot* 3a, s.v. *Kol she'amru et al* - see *ET* II p.137 col. 2 – p. 138. The concept of annulment of marriage is nowhere alluded to in the Yerushalmi. It first appears in the final era of the Baylonian Amora'im – in the days of Ravina and Rav Ashi. Although Rabban Shim'on ben Gamliel's ruling is recorded in the Yerushalmi (*Gittin* 4:2) it is explained as being part of the broader authority of the Sages to abrogate Biblical Law (see below, note 124) and not as an independent concept of 'marriage annulment'.

⁸ See, however, *OMH* to *Gittin* 33a, col. 436, s.v. *Kammah*, where it is recorded that a number of great '*Aḥaronim* stated that even the *Rishonim* who speak explicitly of the *qiddushin* being retroactively annulled agree that the marriage is in fact annulled only from the time that the (flawed) *get* reaches her hand.

⁹ Ri HaLavan in *Tosefot Ri HaLavan, Ketubbot* 3a, s.v. *Kol dimeqaddesh*. This means that in spite of the husband's declaration of cancellation of the *get* (for example) in his heart he really adheres to the ruling of the Sages who validated this *get*. See *OMH* *ibid.*, cols. 434-5 and footnote 89.

¹⁰ Ramban, *Hiddushey Ketubbot* 3a s.v. *Shavyuha* citing Rashbam; Rashba in *responsum* I 1162 -see *ET* II p. 137 at note 22. This view is similar to, though not identical with, that of Ri HaLavan – cf. *OMH* *ibid.*, col. 435, lines 2-3: '**Similarly** [to Ri HaLavan] Ramban wrote in his *novellae*'.

(iv) Yet others¹¹ maintain that the *get* remains biblically invalid but the marriage is annulled prospectively¹² as part of the broader principle that the Sages hold the power to introduce enactments that override Biblical Law not only passively but even actively.¹³

5.6

Possibly add to this from pp. 22-3 of *Confronting 'Iggun (Book)*:

Post-betrothal annulment agreed to by the couple at the qiddushin

Rabbi Ya'aqov Mosheh Toledano¹⁴ proposed,¹⁵ in 5691 (1930/1), that a condition be made at every marriage making it dependent on the continuing agreement of the local *bet din* so that if they see that he has not acted fairly with her they can retroactively annul the marriage. The condition should be repeated at the seclusion and should be accompanied by an oath. The wording of this *responsum* makes it clear that the intention is not really conditional marriage but rabbinic annulment which is validated by the fact that the groom states that he is marrying in accordance with the will of the contemporary local rabbinate thus engineering a modern day equivalent of the Talmudic '*ada'ta' derabbanan meqaddesh*. He concludes (in bold) by declaring that he makes the final decision dependant upon the opinion of the leading rabbinic scholars of the generation.

¹¹ *Yerushalmi Gittin* 4:2. *ET* II p. 138, at note 22, citing *SM* quoting 'There are some who answer'. This accords with the view of Rav *Hisda* in the *Bavli* in his dispute with *Rabbah* – see *Yevamot* 89a 90b. Note, however, that in given situations *Rabbah* too would countenance active abrogation – see *ET* XXV cols. 634-37 (top) and especially notes 205 and 230.

¹² Cf. *Elon*, *HaMishpat Ha-'Ivri*, I, 522 and note 55.

¹³ For further discussion of this matter and for a historical-critical investigation of the sources see A. Westreich, "Annulment of Marriage (*Hafka'at Kiddushin*): Re-examination of an Old Debate", Working Papers of the Agunah Research Unit, no. 11., available at www.mucjs.org/agunahunit.htm - click publications.

¹⁴ Born Tiberias, 1880, d. 1960. His first appointment was as rabbi and preacher in Tangiers. In 1929 he became *Av Bet Din* in Cairo and in 1933 *Av Bet Din* in Alexandria and deputy head of Cairo Rabbinic Appeals Court. 1937 – Chief Rabbi in Alexandria. 1942 – Sepharadi Chief Rabbi of Tel Aviv-Jaffa. 1958 – Minister of Religious Affairs.

¹⁵ *Responsa Yam HaGadol* (Cairo 1931) no. 74. See also *SQN* 391, para. 8. In his introduction to these *responsa* (which carry three approbations including one from R. Kook) he notes that the title *Yam HaGadol* alludes not just to his name (**Ya'aqov Mosheh**) but also to the great 'sea of the Talmud' because he based his arguments mainly on the Talmud itself and did not deal so much with the '*Aharonim*. He also asks for the reader's acceptance of the fact that he has issued a number of permissive rulings in cases which had not been dealt with by the rabbis of the preceding generation and he cites sources to demonstrate that one must rule as one knows to be right and ignore the scorn of second rate scholars. He writes: "I think that one can explain that [this account in the *Yerushalmi*] alludes to [a rabbi] whose permissive rulings surprise people somewhat. Such a one must know how to sweeten (make acceptable) his words on the basis of the 'Great Sea' which is the Talmud and he must also know whether or not the times necessitate such [lenient rulings]...He must issue his permissive ruling for the sake of Heaven and as a strengthening of the Faith and of the Law and then it will stand to his credit.... Especially in these generations of ours of which it is said 'who makes a road in the sea and a path in the mighty waters'....which means that one must know how to guide the ship in the midst of the powerful 'waves' of changes that take place before our eyes and one must not issue stringent rulings and safety measures (*lumrot useyagim*) without purpose and without foundation...."

Similarly, **Rabbi Menahem HaKohen Risikoff**,¹⁶ Rabbi in Brooklyn, proposed¹⁷ a condition making the marriage dependent on the continuing acquiescence of a Great *Bet Din* in Jerusalem, the groom declaring at the end of his betrothal formula – *kedat Mosheh weYisrael ukhdad Bet Din HaGadol bIrushalayim*. This would empower the *Bet Din* to retroactively annul the marriage in cases of otherwise irresolvable *'iggun*. He concludes by requesting the opinions of the Sages of the generation.

6.4

Properly formulated and applied, conditions are effective independent of any other solution according to almost all *posqim*. To make up for the tiny minority in opposition we can employ delayed *get*, annulment and coerced *get* (if possible).

7.1:

I have set out my problems with the Broyde proposal in **Comment on Dayan Broyde's Tripartite Agreement** (which I enclose as an attachment). My tripartite solution – set out in *Confronting 'Iggun* (Book) - avoids all these problems, I hope.

7.2:

I think there is a strong argument for introducing *pilagshut* for those who want it. This was also the view of one of my late teachers, Dayyan Yitshaq Golditch *zatsal*. It has been recently practiced in some ultra-orthodox American communities though, needless to say, there were ructions over there. It would mean relying on *rov posqim* and ruling against the Rambam but it might still be preferred by some *posqim* to regular *qiddushin* with conditions, annulment etc.

¹⁶ 1866-1960. Studied in Volozhyn and Vilna and received ordination at age 17 from leading rabbis. He was appointed Rabbi of Kazan in 1895 but, following pogroms, he moved to America where he became rabbi in Brooklyn. He published many works covering a broad spectrum of scholarship – *halakhah*, *aggadah*, biblical commentary, responsa and sermons, including: *Sha'arey Zevah* (1913) on *shehitah* and *terefot*, *Sha'arey Shamayim* (1937) on the *Shulhan 'Arukh*, *Torat Kohanim* (1948) on the laws of *Kehunah*.

¹⁷ *Responsa Sha'arey Shamayim*, New York 5697, *EH* no. 42 as per *SQN* 394.