



Since the Rabbinical Courts (Marriage and Divorce) Law, 5713 – 1953, was passed, Israeli law requires that *all* marriage ceremonies, without exception, must be authorized by a religious court. For Jewish Israelis, the State Rabbinical Court under the auspices of the Ministry of Religious Affairs, was given full jurisdiction over marriage as well as over divorce. This extended to determining the halakhic criteria for Jewish identity, since the ability to marry as a Jew rests on this determination. In other words, the Law of Return recognizes a person as Jewish if they have or had a Jewish grandparent and thus, entitles them to citizenship in the State of Israel.

The State will also allow Jews who convert in non-Orthodox conversion program to apply for citizenship. The Rabbinate on the other hand, regards anyone without a *halakhically* proven Jewish mother as not Jewish and only regards as valid Orthodox conversions performed by approved Orthodox rabbis, which has consequence in all areas of personal status, including marriage, divorce, and burial.

The rationale behind this legislation was that for the Jewish people, marriage historically has defined and sustained the homogeneity of the Jewish people. Supervision of marriage, divorce, conversion and religious identity by the State Rabbinical Court, it was argued, would maintain this homogeneity. It would also reassure the Orthodox and ultra-Orthodox, especially in the case of divorce, that women were not being permitted to remarry in violation of *halakha* with the spread of *mamzerut* as a possible consequence. (A *mamzer* is a child resulting from a relationship between a Jewish married woman and a Jewish man other than her husband or from incest; such children are put on a list of “unmarriageables” kept in the files of the Rabbinate)

Likewise, Israeli law requires that Jews marry only through the religious ceremonies of *huppa* and *kiddushin* that are overseen by a rabbi authorized to do so by the Office of the Chief Rabbinate, which recognizes only Orthodox and ultra-Orthodox rabbis. Reform and Conservative rabbis are prohibited by law to perform marriage ceremonies for their congregants and this past summer, in an unprecedented flexing of political muscle, the Haifa Rabbinical Court filed a criminal report against Conservative Rabbi Dov Haiyun for performing illegal marriages, which resulted in his being detained by police at 5:30 in the morning this past summer.

By the same law, Christian and Muslim Israelis can only marry in accordance with their respective religious requirements. While this blocks the possibility of interfaith couples marrying in Israel, it complicates things for citizens who have no religious affiliation or for Israelis who identify as Jewish but are not considered *halakhically* Jewish by the Orthodox rabbinate. This category includes hundreds of thousands of Russians who emigrated in the 1990’s. In addition, the control of the Rabbinate prevents marriage between individuals who are barred for *halakhic* reasons from marrying one another, for example, a Kohen marrying a divorcee or a child born from an adulterous relationship (the *mamzer* referred to above). Finally, Jews who affiliate with denominations other than Orthodox are not recognized as married when marrying in a ceremony that reflects their non-Orthodox rituals and practices.

In stark contrast to this Israeli law, marriage in Western democracies is a civil, not a religious matter. The Universal Declaration of Human Rights adopted by the United Nations General Assembly in 1948, for example, declares that “Men and women of full age, without any limitation due to race, nationality or religion, have the full right to marry and to found a family... They are entitled to equal rights as to marriage, during marriage and at its dissolution.... The family is the natural and fundamental unit of society and is entitled to protection by society and the State.”

Legally mandated *halakhic* requirements have created a situation in Israel where many citizens, Jewish and non-Jewish, do not have the right to marry within the state, violating what in secular democracies is enshrined as a basic human right. The cause of this problem lies in assigning all marriages to a religious court system without an option for civil marriage. The end result is that the status quo severely impairs the fundamental rights of individuals in Israeli society today and allows religious institutions to provide services that secular state institutions should provide.

In November 2006, now retired President of the Supreme Court [Aharon Barak](#) ruled that the recognition of a civil marriage entered into abroad extended to its validity and recognition as a marriage for the purpose of [Israeli law](#), overruling a rabbinical court that had ruled that only a religious court had the authority to decide the validity or otherwise of a civil marriage entered into abroad. This Supreme Court ruling led the Great Rabbinic Court to recognize civil marriage between two Jewish citizens and to require such couples to appear before the rabbinic court in order to work out in advance the divorce process. As a result, family courts and rabbinic courts are able to work in parallel and to determine divorce arrangements based on the legal definition of marriage given to their civil marriage by the rabbinic court.

At the time of the Supreme Court ruling, in response to intense polarization between the secular and religious populations in Israel, Professor Shahar Lifshitz, at the request of the Israel Democracy Institute, drafted a proposal for a spousal registry. Presented first in 2006 and then reissued again in 2013, Lifshitz proposed that couples who were not interested in religious marriage or were ineligible, could enter into a civil union and be recognized by the State as a couple, with all of the ensuing rights and obligations that Israeli civil law gives to marriage, but without the formal language of marriage. In addition, he proposed a system for civil dissolution of such unions by stipulating that such unions not be considered marriage in the eyes of *halakha*, thus avoiding *mamzerut* situations. While Lifshitz' proposal has yet to be adopted, there has been renewed public interest in the last few years in a spousal registry as a possible solution to the civil marriage crisis.

In 2010, the Israeli Knesset passed the *Civil Union Law for Citizens with no Religious Affiliation*. This law allows a couple to form a [civil union](#) in Israel if they are both registered with the Ministry of the Interior as not belonging to any religion. This civil union is an agreement between two partners who wish to establish a family unit. This union is legally recognized as marriage without using the language of marriage and is similar to what Prof. Lifshitz suggested, though on a very limited scale because it affects only those citizens who are prepared to officially register as lacking a religion. Nevertheless, it has been seen by some as an opportunity to explore whether broader application of the 2010 law might solve more of the challenges mentioned earlier. In addition, secular courts now recognize common law marriages on an *ad-hoc* basis, taking into account such factors as joint living quarters and joint bank accounts. This allows couples to be recognized for National Insurance purposes and for the right to enter Israel if one is not a citizen, but is still far from recognizing such people as fully married.

What Is A Jewish Marriage?

<p>Mishna Kiddushin 1:1</p> <p>A woman is acquired in three ways, and she acquires herself in two ways. She is acquired through money, through a document, or through sexual intercourse.</p>	<p>משנה מסכת קידושין פרק א משנה א</p> <p>[*]האשה נקנית בשלש דרכים וקונה את עצמה בשתי דרכים נקנית בכסף בשטר ובביאה בכסף בית שמאי אומרים בדינר ובשוה דינר ובית הלל אומרים בפרוטה ובשוה פרטה וכמה היא פרוטה אחד משמנה באיסור האיטלקי וקונה את עצמה בגט ובמיתת הבעל היבמה נקנית בביאה וקונה את עצמה בחליצה ובמיתת היבם:</p>
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<p>Shulchan Aruch Even Haezer Hilchot Kiddushin 33:1</p> <p>With sex, how? He said to her before two witnesses: "Behold you are married to me with this sex," and he secludes himself with her before two witnesses, behold she is betrothed (even though she is bold.) Either he has sex with her in the normative fashion or he has sex with her in the non-normative fashion. And her status is only as someone who is engaged, not like a married woman. Ram"a: There are those who say that a single man who has sex with a single woman before witnesses, we are concerned lest he intends [this act] for the sake of marriage, and the presumption is that a man does not have promiscuous sex. But if he is already presumed towards promiscuity, or that he has another wife, we are not concerned. There are those who are lenient in this matter.</p>	<p>שולחן ערוך אבן העזר הלכות קידושין סימן לג סעיף א</p> <p>בביאה כיצד, א (א) אמר לה א [בפני שני עדים: הרי את מקודשת לי בביאה זו, ב (ב) ונתייחד עמה בפניהם, הרי זו מקודשת אף על גב דחוצפא היא. (ב) בין שבא עליה כדרכה [א] בין שלא כדרכה (טור). ג [ואין דינה אלא כמאורסה, ולא כנשואה. הגה: ד] ויש אומרים דוקא ג שבא עליה בבית חמיו, (ג) אבל ד כנסה לביתו ובא עליה, (ד) ה [ה] או (ה) שקידש כבר ובא עליה, דינה כנשואה. ו] י"א דפנוי הבא על הפנויה לפני עדים, חוששין ה שמא כוון לשם קידושין (מרדכי פ' האומר), [א] [ב] דחזקה אין אדם עושה בעילתו בעילת זנות. ז] אבל אם כבר הוחזק לזנות, או שיש לו אשה אחרת, לא חיישינן (ת"ה סי' ר"ט). ויש מקילין בכל ענין, ועיין לקמן סימן קמ"ט וקס"ז סעיף ב', ולעיל סימן ט"ו סעיף י"ד.</p>
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<p>Gittin 81a</p> <p>MISHNA: With regard to one who divorces his wife, and afterward she spent the night with him at an inn [befundaki], Beit Shammai say: She does not require a second bill of divorce from him, and Beit Hillel say: She requires a second bill of divorce from him, since they may have engaged in sexual intercourse at the inn and thereby betrothed her once again.</p> <p>When did they say this halakha? When she was divorced following the state of marriage. Beit Hillel concede that when she was divorced following the state of betrothal, she does not require a second bill of divorce from him, due to the fact that he is not accustomed to her. Therefore, there is no concern that they engaged in sexual intercourse, even though they spent the night together at the inn.</p> <p>GEMARA: Rabba bar bar Hana says that Rabbi Yoḥanan says: The dispute between Beit Shammai and Beit Hillel is specifically in a case where they saw that she engaged in sexual intercourse, as Beit Shammai hold: A person does engage in licentious sexual intercourse. Although they were seen engaging in sexual intercourse, one cannot assume that he intended to betroth her, since they were recently divorced. The assumption is that they were simply engaging in licentious sexual intercourse. Consequently, he is not required to give her a second bill of divorce.</p> <p>And Beit Hillel hold: A person does not engage in licentious sexual intercourse. Therefore, he had the intention to betroth her, and he must give her another bill of divorce. But if they did not see that she engaged in sexual intercourse, even though they spent the night together at an inn, everyone agrees that she does not require a second bill of divorce from him, as there is no concern that perhaps they engaged in sexual intercourse.</p> <p>....</p> <p>Rather it can be explained that the mishna is actually speaking about a case in which they did not see that she engaged in sexual intercourse. Rabbi Yoḥanan stated his opinion in accordance with the statement of that tanna. As it is taught in a baraita that Rabbi Shimon ben Elazar said: Beit Hillel and Beit Shammai did not disagree about a case where they did not see that she engaged in sexual intercourse. Everyone agrees that in such a scenario, she does not require a second bill of divorce from him.</p>
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With regard to what case did they disagree? They disagreed about a case where they saw that she engaged in sexual intercourse. As Beit Shammai say: A person does engage in licentious sexual intercourse. And Beit Hillel say: A person does not engage in licentious sexual intercourse. Rabbi Shimon ben Elazar disagrees with the mishna.....

Rambam Laws of Divorce 10:18

17 When a man divorces his wife and then engages in relations with her in the presence of witnesses before she marries another man, we assume that since she was [originally] his wife, he remarried her and engaged in relations with the intent of consecrating her, and not as a licentious act.

18 [There is an extension to the above principle.] If a man entered into privacy with his divorcee in the presence of witnesses, the two witnesses observed [their conduct] simultaneously, and [the couple] had been married previously, we suspect that they engaged in sexual relations.

The witnesses to their entrance into privacy are thus considered to be witnesses to sexual relations. For a person who consecrates his wife via sexual relations need not engage in relations in the presence of witnesses. [All that] is necessary that [the couple] enter into privacy in the presence of witnesses and engage in relations in privacy, as explained.

19 Several of the *geonim* have ruled that any woman with whom a man engaged in sexual relations in the presence of witnesses requires a *get*, [the rationale for their ruling being that] a person will not carry out sexual relations with a licentious intent....I considered these opinions to be far from the paths of the Torah judgment, and it is not fit for one to rely on them. Our Sages made such statements only with regard to [a man's] wife whom he divorced, or to a person who consecrated a woman conditionally and then entered into sexual relations without clarifying his intent. For in these instances the woman is the man's wife, and with regard to a man's wife we assume that he will not enter into sexual relations with a licentious intent unless he explicitly states that this is his intent, or that he is entering into these relations with a condition in mind.

With regard to other women, however, [we do not follow this assumption]. Instead, whenever [a man enters into relations with] a wanton woman, we assume that he had a licentious intent, unless he explicitly states that he intends to consecrate her.

רמב"ם הלכות גירושין פרק י הלכה יז

המגרש את אשתו וחזר ובעלה בפני עדים קודם שתנשא לאחר בין שגירשה מן הנשואין בין מן האירוסין הואיל ואשתו היתה הרי זו בחזקת שהחזירה ולשם קידושין בעל לא לשם זנות, ואפילו ראו אותו שנתן לה מעות, שחזקה היא שאין אדם עושה בעילתו באשתו בעילת זנות והרי בידו לעשותה בעילת מצוה, לפיכך הרי זו בחזקת מקודשת קידושי ודאי וצריכה ממנו גט שני.

הלכה יח

נתייחד עמה בפני עדים והוא שיהיו שני העדים כאחד, אם היתה מגורשת מן הנשואין חוששין לה שמא נבעלה והן עידי יחוד זה הן עידי ביאה, שכל המקדש בביאה אינו צריך לבעול בפני עדים אלא יתייחד בפניהן ויבעול כמו שבארנו, לפיכך צריכה גט מספק והרי היא ספק מקודשת, ואם היתה מגורשת מן האירוסין אין חוששין לה שהרי אין לבו גס בה.

רמב"ם הלכות גירושין פרק י הלכה יט

הורו מקצת הגאונים שכל אשה שתבעל בפני עדים צריכה גט, חזקה שאין אדם עושה בעילתו בעילת זנות, והגדילו והוסיפו בדבר זה שעלה על דעתם עד שהורו שמי שיש לו בן משפחתו חוששין לו ולא תתייבם אשתו שמא שחרר שפחתו ואחר כך בא עליה, ויש מי שהורה שודאי שחרר שאין אדם עושה בעילתו בעילת זנות. וכל הדברים האלו רחוקים הם בעיני עד מאד מדרכי ההוראה ואין ראוי לסמוך עליהן, שלא אמרו חכמים חזקה זו אלא באשתו שגירשה בלבד או במקדש על תנאי ובעל סתם שהרי היא אשתו ובאשתו הוא שחזקתו שאינו עושה בעילתו בעילת זנות עד שיפרש שהיא בעילת זנות או שיפרש שעל תנאי הוא בועל, אבל בשאר הנשים הרי כל זונה בחזקת שבעל לשם זנות עד שיפרש שהוא לשם קדושין, ואין צריך לומר בשפחה או בגויה שאינה בת קדושין שאין חוששין להן כלל והרי הבן מהן בחזקת גוי ועבד עד שיודע בודאי שנשתחררה אמו או נתגיירה. +/השגת הראב"ד/ והרי הבן מהן בחזקת גוי ועבד עד שיודע בודאי שנתיגיירה אמו או נשתחררה. א"א בגויה ודאי כן הוא כדבריו שהרי אין בידו לגיירה אבל בשפחתו שיש בידו לשחררה דבריהם קרובים דלא שביק היתירא ואכיל איסורא אלא א"כ הוחזק בפריצות עריות, וכן בת ישראל שתבעל בעדים אם לא היו חשודים בפריצות עריות העמד בני ישראל ובנות ישראל על חזקתן ובחזקת כשרות הן שלא יתפרצו בפני עדים לזנות ודברי הגאונים ז"ל קיימים הם. +

Rabbi Abraham son of Maimonides Chapter 52

שו"ת רבי אברהם בן הרמב"ם סימן נב

<p>Question: With regard to a man who has left the faith who has married a woman who has left the faith in the gentile courts and both act as gentiles and violate the Sabbath publicly. Does she have the law of a married woman and thus one who has relations with her is committing adultery or is her status that of a single woman and there is no question of marriage between them?</p> <p>Answer: If he married her only in the gentile court and do not perform kiddushin in front of two Jewish witnesses, then she is not married. And if he did perform kiddushin in front of two kosher Jewish witnesses, then she is married</p>	<p>שאלה ילמדנו רבנו אדם משומד נשא משומדת בדיני גוים, ושניהם גוים גמורים מחללי שבת בפרהסיא. האם יש לה דין אשת איש והבא עליה חייב כמו שנתחייב כל הבא על אשת איש כשר או דינה כדין אשה פנויה ואין אישות ביניהם כלל. יורנו אדוננו ושכרו כפול.</p> <p>תשובה אם נשאה בדיני גוים בלבד ולא קדש אותה בעידי ישראל כלל איננה אשת איש. ואם קדש אותה בעידי ישראל כשרים הרי היא אשת איש גמורה ולו היה עובד ע"זא וכתב אברהם ביר' משה זצ"ל.</p>
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<p>Rabbi Isaac Ben Sheshet Perfet (Rivash) 14th century Spain Chapter 6</p> <p>Question: A woman came from Majorca, from the community of conversos to idolatry, and her child is in her arms and she was asked; What is your status and the status of the child? And she said that a converso from Argonne had proposed to her before the decree prohibiting Jewish marriage and he did not end up marrying her. And after the decree, like a week later, another converso came who was a friend to the first one who desired her and he spoke to her heart and asked her to marry him and she was taken in and agreed and they decided to marry. But he did not perform kiddushin in front of witnesses or in front of ten men but he went to the church and married her there. And she lived with him as a wife in every way and was known to many conversos as married. She lived with him for three months and she became pregnant and this is the child; and the man left on a journey across the ocean and has not been heard of again and let the rabbi tell us what to do with her and do we have to consider her as a married woman.</p> <p>Answer: There is no question that betrothal or marriage whatever you want to call it, that is done among the gentiles and in the church, are not kiddushin even if there would be kosher witnesses there for the criteria of he gave her [an object] and he said to her [behold you are betrothed to me as in the manner of Moses and Israel] were not upheld.</p> <p>And in this case he did not give her an object for the priest blessed them loudly and then gave each one a ring. But the question is what about the seclusion after the marriage which is public knowledge. And she clearly had relations with him and became pregnant and we know the text in Gittin (Above)..we know from the Talmudic sources that only sexual relations that are designated in the name of kiddushin serve to turn her into a married woman according to halakha. And anyone who does not perform sexual intercourse for the purpose of kiddushin [with witnesses] is not</p>	<p style="text-align: right;">שו"ת הריב"ש סימן ו</p> <p>שאלה: אשה אחת באה ממירוקה, מאותן האנוסות לעבודת כוכבים, ובנה בחקה ונאמר לה: מה טיבך ומה טיבו של בן זה? ואמרה שאנוס אחד מארץ ארגון תבעה לינשא לו קודם הגזרה כדת משה ויהודית ולא עלתה בידו. ולאחר הגזרה בכמו שבוע אחד, בא [אנוס אחד] לע*בודת כוכבים אוהבו של אותו אנוס החפץ בה, ודבר על לבה להנשא אליו, והיא נתפייסה ונגמר הזווג ביניה! אלא שלא קדשה בעדים ולא נשאת לו בעשרה, אלא על ידי עובדי כוכבים בחקות דתם ובכהני במותם. וישבה בביתו עמו כאשתו לכל דבר בחזקת אישות, והיו יודעים זה אנוסים רבים. וישב עמה כמשלש חדשים, ונתעברה ממנו וזה פריה; והלך האיש ההוא מעבר לים, ולא יסף שוב אליה עוד. ילמדנו רבינו מה יהיה משפטה, ואם יש לחוש לה אם לא.</p> <p>תשובה: אין ספק כי האירוסין או הנשואין, תקראם כמו שתראה, שנעשו בנימוסי עובדי כוכבים ובכהני במות', שאין בהם חשש קדושין, אף אם היו בהם עדים כשרים, שהרי לא נתקיים בהם נתן הוא ואמר הוא /קדושין, ה:/. ואף אם נאמר שאין אמירתו מעכבת, כיון שנתקבצו יחד כדי להתארס או להנשא, /קדושין ו/ והוי כמדבר עמה על עסקי קדושיה, ונתן לה ולא פירש, דקיי"ל: דיו כל שעוסקין באותו ענין. מ"מ =מכל מקום= בכאן הרי לא נתן לה כלום, רק שהכומר מברך אותם בקול גדול ונותן טבעת לכל אחד. אבל מה שיש לעיין הוא במה שנתייחד עמה בפרסום, ועמדה תחתיו ונתעברה ממנו. ושנינו בגיטין: (פ' הזורק פא) המגר' את אשתו ולנה עמו בפונדקי, ב"ש אומרי' אין צריכי' הימנו גט שני, וב"ה אומרים צריכה הימנו גט שני. אימתו, בזמן שנתגרשה מן הנשואין, ומודים בנתגרשה מן הארוסין, שאין צריכה ממנו גט שני, מפני שאין לבו גס בה. ואסיקנא בגמ', דמתני' לאו בראוה שנבעלה, דבכה"ג ליכא לאיפלוגי בין שנתגרשה מן הנשואין לנתגרשה מן הארוסין, ולכ"ע צריכה ממנו גט שני, שאין אדם עושה בעילתו בעילת זנות, וחוששין דלשם קדושין בעל. אלא מתני' בדאיכ' עידי יהוד וליכא עידי ביאה, דב"ש סברי לא אמרינן הן הן עידי יהוד הן הן עידי ביאה, וב"ה ובתוספתא... סברי אמרינן הן הן עידי יהוד הן הן עידי ביאה. (בריש קידושין א, ג) /ג/ תניא: כל ביאה שהיא לשם קידושין הרי זו מקודשת, ושאינה לשם קידושין אינה מקודשת; ומפשטא משמע דבעינן שתהא בפירוש לשם קדושין; וכל שאינה בפ"ל לשם קידושין אינה מקודשת. ולפי דעת זו שנראה נכון ושראו לסמוך עליו, בנדון זה שלא אמר בפ"ל לעדים כשנתייחד עמה שהוא מתייחד עמה על דעת . וא"כ אינה כנשואה, ... לבעול לשם קידושין, אין חוששין לה. ואמרו בשם . אלא שהיא אצלו כמו פלגש בלא כתובה וקדושין... הרא"ה ז"ל, דאפ"ל עידי יהוד אינה צריכה, דכיון דאשתו היא ועומדת</p>
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<p>married according to halakha. And one can rely on this especially since he did not tell witnesses that he was secluding himself for the purpose of kiddushin and thus she is not married...and she is more like a concubine without ketuba and kiddushin. And the Re'eh wrote that we all know that since she considers herself his wife and she is under his protection and when secluded they have relations, she should be considered as married but that is one opinion for the rest of the Rishonim wrote that there need to be witnesses to the seclusion and there is no reason to rule according to this stringency in order to entrap her.</p>	<p>תחתיו, כ"ע ידעי שנתייחד עמה ובא עליה; זהו דעת יחיד, שכל הראשונים ז"ל כתבו שצריכה לעידי יחוד. ועוד, דליכא למנקט כל חומרי הסברות לעגן את זו. זהו מה שנראה לי בזה, והתמתי שמי יצחק בר ששת זלה"ה.</p>
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<p>Rabbi Israel Isserlis, 14th century Austria, Terumat Hadeshen 209</p> <p>Question: A young man went on a journey with a young virgin travelling from city to city and explaining that she is a poor woman wanting to be escorted to her family. After a time it was made known that she was pregnant and with her belly between her teeth she told everyone that this young man was the father and there is reason to believe her based on various pieces of information and he denies it and says he never behaved in an unscrupulous manner with her and gave some explanation that is not fit for ears to here. And after some time, this virgin wanted to marry and some "experts" on marriage cast aspersions on her marrying without a Jewish divorce from the man who impregnated her, for she said that several times he promised to marry her and thus, one should consider her as married because of the sexual relations for perhaps one of the times he had kiddushin in man and this man has another wife. Do we have to be concerned?</p> <p>Answer: It seems that there is no room to permit her in this case except that he did not have relations with her in front of witnesses and Maimonides and others all wrote that the act must be done in front of witnesses for without witnesses even if both admit they had relations for the purpose of marriage, there is no concern for kiddushin. And therefore, even if he were to admit that he was the father, if there were not witnesses to the sexual relations there is not kiddushin...and there was another case that came before me of a heretic who married a Jewish woman who had also left the faith in front of the priest and they were together for 2-3 years and she repented and returned to the true religion and married another with kiddushin and I permitted her for there is no way that she and her former husband considered kiddushin as the basis for their marriage even though he designated her for himself alone by getting married in the church...and I have seen a few cases in which a single daughter of Israel became pregnant and pointed to a specific man and there was reason to believe her and I</p>	<p>תרומת הדשן סימן רט</p> <p>שאלה: פלוני אחד הוליך עמו בתולה אחת מעיר לעיר ואומר שהיא ענייה ורוצה להולכה אל קרובה. אחר כך נודע שמעוברת היא וכריסה בין שיניה ואמרה לכל שממנו נתעברה, וכן יש רגלים לדבר באומדנות ניכרות, והוא מכחישה ואמר שלא פעל עמה עול ונתן קצת אמתלא לדבר שאין נכנסין לאזנים. לאחר זמן רצתה אותה בתולה להנשא וקראו מקצת יודעי ספר תגר על הנישואין בלא גט מאותו פלוני דנתעברה מיניה, כי אמרה שכבר כמה פעמים הבטיחה לישאנה לכך איכא למימר שמא קידשה בביאה ולאותו פלוני יש לו אשה אחרת, יש כאן בית מיוחד או לאו?</p> <p>תשובה... לכך נראה דאין צד יפה להתיר בנ"ד וכה"ג אלא משום דלא בעל בפני עדים, והרמב"ם והאשירי ור"ב =ורבינו ברוך = כולהו כתבו ונקטו בהדיא בעל בפני עדים, דבלא עדים אפילו שניהם מודים אין כאן חשש קידושין. ולכך בנ"ד אפילו היה מודה לה שממנו נתעברה אם לא היו עידי ביאה אין חוששין לקידושין. ... וכן היה מעשה שבא לפני במומר שנשא בגיותו עם הגלח בת ישראל שהמירה ג"כ ושהו יחד כמו ב' או ג' שנים, ולבסוף חזרה היא לדת האמת וקדשה אחר והתרת לוי, משום דודאי היא והמומר לא נתכוונו בהזדווגם יחד בגיותם לשם קידושין כדת משה וישראל, אלא לייחד בעלמא כדי שתהא מצויה לו בכל עת ולא לאחר, לכך בא עמה אל הגלח לזווגם. והנה ראינו כמה מעשים שנתעברו הפנויות בנות ישראל ותלו העיבור בפלוני או בפלוני, והיה קצת רגלים לדבר ולא שמענו אוסרים ולא לינשא לאחר מטעם חשש קידושין, אף על גב דשוויה לנפשיה חתיכה דאיסורא אי הוי חיישינן לקדושין שהרי אמרה לפלוני נבעלת. עוד י"ל צד להתיר משום דהאיש נשוי הוא כבר, ואם היה מקדש זו שבעל היה פוגע בחרם רבינו גרשום ז"ל. וכה"ג נוכל לומר דאין לחוש שבעל לשם קדושין כדי שלא תהא בב"ז, ואדרבה בב"ז עדיפא לעניין חרם רבינו גרשום. ומאן לימר לן דהאי איסורא חמירא ליה דילמא האי חמירא ליה, דהך בעילת זנות נמי לאו איסור חמור הוא, ואת"ל דחמור הוא מ"מ אשכחן לפעמים דאיסור קל חמירא לאינשי מאיסור חמור, כדאמרינן פ' הניזקין/גיטין נד ע"א/באתריה דרבי יודא חמירא להו שביעית טפי מחלול שבת כדמוכח התם. אף על גב דיש לחלק בהך סברא מ"מ נראה דבסברא כל דהו דחינן להך חזקה א"א עב"ד. כה"ג בנ"ד, דיפה כתב הרמב"ם שהדבר רחוק מן הדעת והלב מהסס לומר על איש ואשה שנתפתו ליצרם ונכנסו לסתור לבעול שיבעול לשם קדושין, ועתה בדורותינו אינו מצוי כלל.</p>
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<p>never heard that such women were prevented from marrying other men because of a fear of kiddushin associated with such a sexual act...and here there is another reason to permit her because the man was married already and if had in fact performed kiddushin with her he would have violated the decree of Rabbeinu Gershon and what is worse – an act of promiscuous sex which is not a severe transgression or violating a rabbinic decree...and Maimonides wrote well when he said such an act is simply the release of sexual desire and is not about kiddushin at all.</p>	
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<p>Shulchan Aruch Even Haezer 26:1 A woman is not considered to be married except by way of betrothal in which the kosher betrothal was done appropriately. However, if he were to lie with her by way of harlotry, without the name of betrothal, it is nothing (towards her status as being a married woman). Even if he lies with her with the intent of marriage, mutually agreed between him and her, she is not considered as his wife and even if she dedicated herself only for him, rather the opposite is true and he must be forced (by Beis Din) to send her away from his home. Rem"a: For certainly she would be considered an embarrassment for immersion in a mikveh and he will lie with her in ritual impurity (niddah); however, if she dedicates herself exclusively for him as his wife and she immerses for him, there are those who would say that this is allowed and she would be a Pilegsh as described in the Torah and there are those who say that this is forbidden and they should both get whiplashes from the Torah as they have transgressed the precept "don't be a harlot." A Kuti who marries a Kutis and even a Mumar who marries a Mumerres in their (non-Torah) customs and they convert (or want to follow Halacha) afterwards, we are not at all concerned that they had an appropriate betrothal and he is permitted to send her out her without a Get, even though he remained together with her many years, this relationship is not considered anything but simple harlotry (Rivash 6 and Terumat HaDeshen, Part I 209), see Halachah 149:</p>	<p>שולחן ערוך אבן העזר הלכות קידושין סימן כו סעיף א</p> <p>א] אין האשה נחשבת אשת איש אלא על ידי קדושין שנתקדשה כראוי, אבל אם בא עליה (א) דרך זנות, <א> שלא לשם קדושין, אינו כלום. א ב] ואפילו בא עליה לשם אישות בינו לבינה, אינה נחשבת כאשתו, ג] ואפילו אם ייחדה לו, ד] אלא אדרבא כופין אותו להוציאה מביתו. הגה: דבדאי בושה היא מלטבול, ה] ובא עליה בנדתה (טור). אבל אם מייחד אליו אשה וטובלת אליו, ו] יש <ב> אומרים שמותר והוא פלגש האמורה בתורה (הראב"ד וקצת מפרשים). ז] ב (ב) וי"א [א] שאסור, ח] ולוקין על זה משום לא תהיה קדשה (דברים כג, יח) (הרמב"ם והרא"ש והטור). ט] עכו"ם שנשא עכו"ם, ג (ג) וכן מומר שנשא מומרת לעבודת כוכבים בנימוסיהו, ונתגיירו אח"כ, אין כאן חשש קידושין כלל ומותרת לצאת ממנו בלא גט, אף על פי ששהה עמה כמה שנים [ב] אינו אלא כזנות בעלמא (ריב"ש סימן ו' ובת"ה סימן ר"ט) וע"ל סימן קמ"ט 'סעיף ו</p>
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<p>Rabbi Moshe Feinstein Even Haezer Part 1 Chapter 75 A woman who was married in the civil court and was not religious.</p> <p>In the manner of the woman who was married civilly in the USA and lived with her husband for two months in a place where there were no Jews and afterwards lived alone for three and a half years, and afterwards went back to her husband and lived with him for five years in a Jewish community but they had not contact with</p>	<p>שו"ת אגרות משה אבן העזר חלק א סימן עה</p> <p>באשה שניסת רק בערכאות ולא היו שומרי תורה י"ז אייר תשכ"א. מע"כ ידידי הנכבד מהר"ר אהרן משה ווייץ שליט"א .</p> <p>הנה בדבר האשה אשר היתה נשואה לבעלה רק בערכאות המדינה ודרה עמו שני חדשים במקום שאין שם יהודים ואח"כ דרה לבדה שלש שנים וחצי, ואח"כ שב בעלה ודרו חמש שנים במקום שיש יהודים אבל לא היו להם שום מגע ומשא עם יהודים שומרי תורה אולי עם יחידיים ואח"כ עזב אותה ודרה לבדה חצי שנה ואח"כ בא בעלה ודרו במקום שאין שם שומרי תורה ואין יודעין מעניני הדת כלל ואח"כ דרו בלאס אנדזעלעס בשכונה שיש גם שומרי תורה שמונה שנים בארבעה מקומות שנה במקום אחד ב' שנים במקום שני</p>
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<p>the religious Jewish community and afterwards he left her and she lived alone for half a year and afterwards he returned and they lived in a place without religious Jews and they did not know anything about religion and then they moved to Los Angeles to a community with many religious Jews and they lived there for eight years in four different places...and every year he would leave her for a period of time and this year he left her and has not been heard from again and during the last year after he left, she came under the influence of Torah and became religious and she cannot get a Get from her husband, is there room to allow her to remarry?</p> <p>...Since she lived for five years among religious Jews who regarded them as husband and wife sharing a roof, and especially since they had children together and in public she was known as Mrs. And although he left her many times, the neighbours knew that he returned and lived with her.... And thus if so many religious people considered her married perhaps she needs a Get for a man does not want his sexual relations to be promiscuous and perhaps he really did have relations with her one of the times for Kiddushin and when possible, one should try to get a Get. But if it is impossible to get a Get, and it will cause her to be an Aguna or chained woman, one can rely on the Rivash and the Rema who ruled like the Rivas and the Shulchan Aruch, for such people violate the laws of Torah and thus have no presumption of kiddushin and thus it is all as promiscuous relations and does not require a Get.</p> <p>And nonetheless one should make the effort of finding the husband and extracting a Get from him but if impossible, one should permit her without a Get. But my friend, if this woman will not take upon herself keeping the laws of Nidda, then we are helping her violate the prohibition of Nidda, And we go out of our way to help chained women who keep Torah...but if she agrees to keep the laws of Nidda, we should certainly help her for if it is true that she only was married in the civil court, then there was no Kiddushin...</p>	<p>ב' שנים במקום שלישי וג' שנים במקום רביעי ובכל שנה היה עוזב אותה על משך זמן ועתה זה שנה שעזב אותה ולא נשמע ממנו, ובמשך שנה זו האחרונה אחרי שעזב אותה באה תחת השפעת התורה ונעשית שומרת דת, ואי אפשר להשיג גט מבעלה, אם יש לסמוך להתירה על מה שלא נתקדשה מעולם.</p> <p>והנה מכיון שחמש שנים דרה עם בעלה במקום שיש שם יהודים וידעו השכנים שהיא ובעלה הם יהודים אף שלא היה להם שום מגע ומשא עם יהודים שומרי תורה יש לחוש שדרו שם בשכנות גם שומרי תורה שידעו שהם איש ואשתו הדריים בבית זה, ובפרט שהיו להם ילדים שהחזיקה אותם ברחוב כדרך הנשים וידעו כל השכנים שהם ילידיה והם ודאי מהבעל שנקראת על שמו מיסעס/אשת/ פלוני, וגם אח"כ שדרו בלא/בלאס/ אנדזעלעס איזה זמן בשכנות שיש שומרי תורה אף שעזב אותה הרבה פעמים מסתמא ידעו השכנים גם מהחזרה שדר עמה ועל שמו היא נקראת כל העת, ובפרט דבר כזה שאינה מן הרגילים שהבעל עזב אותה בכל שנה על משך זמן ובא בחזרה ודאי ידעו מזה, עיין בחולין דף ע"ה שאמר כל מלתא דתמיהא מידכר דכירי לה אינשי ופרש"י קול יוצא עליו מאז, והוא מוכרח דאל"כ מה מהני מה שדכירי אם לא ידעו מתחלה, ולכן גם בזה שבעלה היה עוזב אותה הרבה פעמים וחזר הוא ג"כ מלתא דתמיהא שידעין אינשי מזה. ולכן אם היו אנשים כשרים היתה צריכה גט מטעם חזקה אין אדם בועל בעילת זנות וגמרו ובעלו לשם קידושין, וכשאפשר יש להצריך גט גם באנשים שאינם שומרי תורה וכמו שנוהגין אנחנו להצריך גט.</p> <p>אבל אם אי אפשר להשיג גט והיא עגונה נראה שיש לסמוך על הריב"ש שפסקו כותיה הרמ"א בסימן כ"ו סעיף א' והמחבר בסימן קמ"ט סעיף ו' דבאלו שמופקדין לעבור על איסורי התורה שאין בהם חזקה זו הוא כזנות בעלמא שאינה צריכה גט. וכבר בארתי בתשובה אחת שמעצם הדין הלכה כהריב"ש ואפשר שגם אין חולק עליו....</p> <p>ולכן למעשה ישתדל כתר"ה למצא הבעל ולהשיג ממנו גט, ואם אי אפשר להשיג גט מהבעל יש להתירה לעלמא בלא גט. אבל ידידי כתר"ה אם לא תקבל האשה עליה לשמור הלכות נדה אין לנו להזדקק לה שנמצא כמסייעין אנו לעבור על איסור נדה. וגם כל דבר שמתירין בשביל תקנת עגונות מסתבר שהוא בשומרי תורה דאל"כ למה יקילו שהרי הוא לעבור על איסורין וצ"ע לדינא אבל כשתקבל עליה לשמור הלכות נדה יש להזדקק לה באם שהאמת אחר חקירה ודרישה גדולה שלא היו קידושי תורה אלא שניסת לו רק בערכאות של המדינה, יידו, משה פיינשטיין</p>
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Can religious and civil marriage coexist?

Various options have been proposed in the framework of public discourse on this topic. Four of the main options are presented below

1. *Two parallel legal structures for marriage in which people can choose between civil or religious marriages.* The tracks would be kept separate with no interaction. Couples will decide for themselves which track to choose – religious or civil but the laws for each track will be separate and distinct from one another. Civil marriage would end in civil divorce and religious marriage in religious divorce. If a woman who married in a religious ceremony cannot be freed with a *Get* due to the resistance of her spouse, she cannot avail herself of the civil option. Each track would be recognized by the state but the state would be

unable to mandate any sort of universal policy regarding marriage and divorce because the religious marriage track would be completely governed by the rabbinat. In other words, a centralized body of marriage and divorce law developed by the State will not be relevant for citizens who choose the religious marriage and divorce option, even if the civil track develops a systematic codification and enactment of such laws. One concern is that the religious track will be labelled Orthodox only, and it will distance many traditional but non-Orthodox Jews from choosing to be married through the Rabbinat. Another possible concern is the delegitimization of the *agunah* crisis out of a feeling that people who get married religiously “ask for it”.

2.

A civil union option. A civil union is an agreement between two partners to establish a family unit. Couples who are not interested in a religious wedding or who cannot marry according to religious law will be able to legally formalize their relationship in a special registry. Couples will be given the legal rights and obligations that Israeli civil law currently gives to married couples such as social benefits, inheritance rights, property rights, alimony and eligibility to adopt children. The system will be parallel to the system of religious marriage and divorce and as described in option number one in that there will be no contact between the two systems.

Marriage remains in the hands of the religious courts but this option will build on the currently limited civil union option mentioned earlier in this article to all who seek an alternative to the rabbinat, in the manner suggested by Prof. Lifshitz. Couples who choose this option would deliberately be choosing marriage without any intent for *kiddushin*. In addition, the dissolution of such unions would require a set of laws that would apply to such dissolutions, including guidelines for financial arrangements between the partners. Such laws might include parallels to no-fault divorce and alimony payments currently unavailable in Israel because of the religious halakhic restrictions involving divorce.

The main argument presented against this proposal is that it leaves marriage and divorce again only under the authority of the rabbinic courts and halakha, since “civil union” conspicuously avoids the use of the term marriage. Even if legally protected, using terminology that does not include the word “marriage” already weakens such unions in the eyes of many and suggests something more liberal than marriage. It also does not provide any solutions for non-Orthodox citizens seeking Jewish but non-Orthodox wedding ceremonies.

At the same time, the Orthodox are concerned that opening up civil unions to all who seek them weakens the rabbinic courts exclusive authority over legal life partnerships and legitimizes sexual relationships not sanctified by Jewish law.

Nonetheless, the Israel Democracy Institute’s argument for civil unions recognizes the compromise of both sides in moving in this direction. The secular/liberal population of Israel receive a legally legitimate structure in which they can effectively “marry” and be recognized by the state. By stating they are deliberately not marrying with *kiddushin*, they avoid the *halakhic* necessity for *Get*. The rabbinic courts maintain a monopoly over the institution of Jewish marriage and equally over the institution of divorce. It maintains halakhic integrity in the sense that it effectively distinguishes between marriage through *kiddushin* and a legal structure equal in status to marriage.

3. *A complete separation between Rabbinat and State in the manner of marriage and divorce carried out in western democracies like the United States, England and France.* Marriage and divorce will be conducted according to civil law. If a couple meets the state’s standards and is granted a license to marry, the couple will be able to choose the type of marriage ceremony they desire. The same would be true of divorce. As long as the couple files for a marriage license and divorce document with the State, according to the standards of marriage and divorce laws, the State will not intervene. In addition, the State will not intervene in the religious ceremonies and rituals surrounding marriage or divorce unless there is a situation in which a man systematically refuses to give his wife a religious divorce in which case the State could still use whatever resources are at its disposal to free the woman. Religious laws and rituals for marriage and divorce would be overseen by rabbinic authorities on a community wide basis. There would be no competition between state and religion. In addition, couples could choose to have Jewish but non-Orthodox ceremonies and interfaith couples could marry civilly and with a religious ceremony. Such a mix and match

system would closely resemble the American system for marriage and divorce. The danger, which exists in all Jewish communities outside of Israel is that couples who married with *kiddushin* might divorce without *Gittin* and there would be no mechanism to regulate such a system. This could potentially lead to a split in the country with the Orthodox and ultra-Orthodox forming their own registries and creating two nations – the fully Jewish and the nominally Jewish.

4. *A pluralistic system of the sort recommended by Justice Ruth Gavizon and Rabbi Yaakov Meidan in which there is an awareness and synergy between the religious and civil structures.* The initial registration would take place through official State channels and the couple would then choose the type of marriage ceremony they desire. The innovation is in the divorce structure.

In acknowledgement of the complexity of divorce, Gavizon-Meidan propose that a person will only be recognized as single and able to remarry if he or she meets the religious criteria for that definition. This would allow a certain amount of *halakhic* control over the institutions of marriage and even more importantly, over divorce. It is a compromise that addresses the religious concerns of adultery and *mamzerut*. While this maintains a certain monopoly over divorce, nonetheless, it is likely that couples who refuse to undergo a Jewish divorce after being civilly married or even married in a non-Orthodox ceremony and similarly divorced, will not be coerced to do so based on the majority position that such marriages are not *halakhically* recognized (see sections C and D in the article above). The women will not be defined as adulteresses and their children will not be labeled *mamzerim*. In this integrated approach, the system would allow for civil divorce for the purpose of structuring financial and personal agreements, child support etc. but would mandate the presence of the rabbinic court to facilitate the *Get* when the couple married with *kiddushin*. Couples that choose religious marriage must understand the *halakhic* consequences so that they do not enter into it lightly.