

# **Israel: Extrajudicial Sanctions Against Husbands Noncompliant with Rabbinical Divorce Rulings**

May 2017



This report is provided for reference purposes only.  
It does not constitute legal advice and does not represent the official  
opinion of the United States Government. The information provided  
reflects research undertaken as of the date of writing.  
It has not been updated.

# Israel: Extrajudicial Sanctions Against Husbands Noncompliant with Rabbinical Divorce Rulings

Ruth Levush  
Senior Foreign Law Specialist

**SUMMARY** In a five-to-two decision, the Israeli Supreme Court rejected petitions by two Jewish husbands against rulings by rabbinical courts subjecting them to the application of twelfth-century social religious sanctions not expressly authorized under Israeli law. The sanctions were designed to pressure husbands to comply with divorce judgements issued against them by rabbinical courts. The Supreme Court accepted the petitions only with regard to one specific sanction that was held to conflict with current principles of Israeli law.

## I. Introduction

On February 28, 2017, an extended bench of Israel's Supreme Court, sitting as a High Court of Justice, recognized the authority of rabbinical courts to apply twelfth-century social religious sanctions not expressly authorized under Israeli law.<sup>1</sup> The sanctions were originally instituted by Rabbi Yaakov Ben Meir Tam<sup>2</sup> ("Rabeinu Tam's Distancing Rules," hereinafter RTDR), as a way to pressure Jewish husbands, when ordered by a rabbinical court to divorce, to deliver their wives a *get* (Jewish bill of divorce).<sup>3</sup>

The authority of rabbinical courts to adjudicate matters of marriage and divorce of Jews, citizens, and residents of Israel, in accordance with Jewish law, is based on the Rabbinical Courts Jurisdiction (Marriage and Divorce) Law, 5713-1953.<sup>4</sup> While rabbinical courts may decide that based on the evidence before them the parties must divorce, they do not have the power to dissolve a marriage. To constitute a divorce under Jewish law, the consensual transfer of a *get* from the husband to the wife and her consensual receipt of it must take place. Special rules govern the text of the *get* and the evidence necessary to prove its validity.<sup>5</sup>

---

<sup>1</sup> HCJ 5185/13 Anonymous and Gez v. Great Rabbinical Court in Jerusalem (2017), <http://elyon1.court.gov.il/files/13/850/051/t36/13051850.t36.pdf>, archived at <https://perma.cc/4BQ9-FJAF>.

<sup>2</sup> Rabbi Yaakov Ben Meir Tam was born in France around the year 1100 and was a leading scholar. See e.g. Solomon Schechter & Max Schloessinger, *Jacob Ben Meir Tam (known also as Rabbenu Tam)*, JEWISH ENCYCLOPEDIA, <http://www.jewishencyclopedia.com/articles/8436-jacob-ben-meir-tam#anchor7> (last visited Apr. 20, 2017), archived at <https://perma.cc/D5PS-WCFL>.

<sup>3</sup> JACOB BEN MEIR TAM ET AL., SEFER HAYASHAR LE RABEINU TAM, QUESTIONS AND ANSWERS PART 42 (1898), electronic copy available at <https://hdl.handle.net/2027/mdp.39015070382794> (last visited Apr. 25, 2017), archived at <https://perma.cc/G7T6-VAXD>.

<sup>4</sup> Rabbinical Courts Jurisdiction (Marriage and Divorce), 5713-1953, §§ 1–2, SEFER HAHUKIM [SH] No. 134 p. 165, *as amended*. Up-to-date text of this law and all legislation in this report is available at the Nevo Legal Database at [www.nevo.co.il](http://www.nevo.co.il) (by subscription, in Hebrew), archived at <https://perma.cc/N9LF-MWEU>.

<sup>5</sup> For additional information, see e.g. *Jewish Divorce 101*, CHABAD.ORG [http://www.chabad.org/library/article\\_cdo/aid/557906/jewish/Divorce-Basics.htm](http://www.chabad.org/library/article_cdo/aid/557906/jewish/Divorce-Basics.htm) (last visited Mar. 28, 2017), archived at <https://perma.cc/8JE4-XBGQ>.

While the wife's refusal to receive a *get* generally prevents the husband from remarrying,<sup>6</sup> the consequences of the husband's refusal to give her a *get* are much harsher. In accordance with Jewish law, a child born to a married woman not from her husband is considered a *mamzer* (a bastard) and is prohibited from marrying another Jew.<sup>7</sup>

The inability of a wife to obtain her *get* because of her husband's disappearance, incapacity,<sup>8</sup> or his refusal to give her a *get* makes her *aguna* (a chained woman), as she is unable to remarry and establish a new family.<sup>9</sup> While releasing *agunot* (plural of *aguna*) from the chains of their ill-fated marriages is considered a *mitzva* (a religious commandment) in the Jewish community, it is recognized that much caution is required to prevent remarriage while the first marriage is still valid. An annulment of the first marriage is rare and is often questionable.<sup>10</sup>

As the delivery and acceptance of a *get* must be consensual, caution must also be used to prevent the pressure exerted on the husband from nullifying the *get* based on coercion. The twelfth-century RTDR were designed to address the concern that physical pressure or harm might force the husband to give the *get* against his will. Instead, Rabeinu Tam's suggestion was to distance the husband from community life by encouraging the community to, for example, sever contact with him, avoid business dealings with him, or refrain from hosting, feeding, or visiting him when he was sick.<sup>11</sup>

Scholars explained that the proposal by Rabeinu Tam to distance the husband from the community constituted a passive measure of nonaction rather than coercion. The distancing was

---

<sup>6</sup> Under rare situations, husbands may get approval to remarry without a lawful divorce. See Rabbi Gedalia Schwartz, *Heter Meah Rabbanim*, JOFA, [https://www.jofa.org/sites/default/files/uploaded\\_files/10002\\_u/00241.pdf](https://www.jofa.org/sites/default/files/uploaded_files/10002_u/00241.pdf) (last visited Mar. 31, 2017), archived at <https://perma.cc/NX93-J97E>.

<sup>7</sup> A *mamzer* is not merely a child born out of wedlock. Jewish law does not recognize illegitimacy of children. The implications of birth to a wedded woman not from her husband only apply to marriage of her offspring: "Except with regard to marriage the personal status of a *mamzer* does not prejudice him in any way. His rights of inheritance are equal to those of any other heir." See *Mamzer*, JEWISH VIRTUAL LIBRARY, <http://www.jewishvirtuallibrary.org/mamzer> (last visited Mar. 29, 2017), archived at <https://perma.cc/W4AU-4SRZ>.

<sup>8</sup> See H CJ 9261/16 Anonymous v. the Great Rabbinical Court of Appeals in Jerusalem (2017), TAKDIN LEGAL DATABASE, [www.takdin.co.il](http://www.takdin.co.il) (by subscription, in Hebrew), archived at <https://perma.cc/YJ4S-EVYQ>; see also Ruth Levush, *Israel: Supreme Court Prohibits Third Party Appeal over Legitimacy of Divorce*, GLOBAL LEGAL MONITOR (Apr. 28, 2017), <http://www.loc.gov/law/foreign-news/article/israel-supreme-court-prohibits-third-party-appeal-over-legitimacy-of-divorce/>, archived at <https://perma.cc/C2A4-EU8D>; and Telem Yahav & Kobin Nachshoni, 'Haaguna from Safed' Will Be Able to Re-marry: "The Happiest Day in My Life", YNET, <http://www.ynet.co.il/articles/0,7340,L-4942752,00.html>, archived at <https://perma.cc/8MNU-66EB>.

<sup>9</sup> *Encyclopedia Judaica: Agunah*, JEWISH VIRTUAL LIBRARY, <http://www.jewishvirtuallibrary.org/agunah> (last visited Mar. 29, 2017), archived at <https://perma.cc/N87B-M927>.

<sup>10</sup> See, e.g., Nathan Guttman, *Is 'Chained' Wife Tamar Epstein's Remarriage Kosher—Even Without Orthodox Divorce?*, THE FORWARD (Dec. 2, 2015), <http://forward.com/news/national/325878/chained-wife-tamar-epstein-divorce-kosher/>, archived at <https://perma.cc/K5XY-D5YY>.

<sup>11</sup> *Distancing of Rabeinu Tam*, MENACHEM ELON, THE STATUS OF THE WOMAN, LAW AND ADJUDICATION, TRADITION AND TRANSITION, THE VALUES OF A JEWISH AND DEMOCRATIC STATE 348–49 (2005).

directed towards the community rather than the husband, and would therefore not nullify a *get* as one delivered without free consent.<sup>12</sup>

The following is a summary of the February 2017 Israeli Supreme Court’s decision authorizing rabbinical courts to utilize the RTDR to assist *agunot* in receiving their *get*. The decision centers on whether the RTDR, which are not explicitly authorized under Israeli law and are not enforceable by state authorities, can be recommended by rabbinical courts as a way to influence Jewish husbands to comply with divorce decisions.

## II. Facts

The Supreme Court’s decision was rendered by a five-to-two opinion in response to two joined petitions presenting similar legal questions. The petitioners in both cases were Jewish husbands who fled Israel after having been ordered by different rabbinical courts in Israel to divorce their wives. One petitioner fled to the US and the other to Belgium, where he was arrested pending extradition proceedings. The relevant regional rabbinical courts issued various injunctions against both husbands in accordance with their authority under Israeli law. These included an order to Israeli consulates in the US not to provide assistance to the first petitioner, and an order requiring the second petitioner to deposit his passport at the local rabbinical court. The second petitioner, however, managed to leave Israel without surrendering his passport, possibly by using a fraudulent identity.<sup>13</sup>

Addressing the refusal of the husbands to comply with the requirement to divorce their wives, both rabbinical courts included in their decisions references to religious sanctions originating from the RTDR. Regarding the first petitioner, the court determined that “it would be a *mitzvah* to assist the wife” to obtain a *get*.<sup>14</sup> Accordingly, the court clarified, the public should refrain from “doing him [the husband] good and/or adding him to a *minyan*,<sup>[15]</sup> and/or negotiat[ing] with him and/or bury[ing] him [in a Jewish burial].”<sup>16</sup>

The rabbinical court also allowed the full disclosure of the husband’s name and other identifying information including a photograph, with a notice that anyone who knew where the husband could be found must assist in getting him to deliver a *get* to his wife. The court noted that any person who assisted the husband in prolonging the wife’s status as *aguna* is considered an accomplice. A copy of the decision was delivered to the rabbi of the community where the petitioner was residing in the US.<sup>17</sup>

---

<sup>12</sup> *Id.*

<sup>13</sup> H CJ 5185/13, majority opinion by Justice Elyakim Rubinstein ¶¶ 1–18.

<sup>14</sup> *Id.* ¶ 3.

<sup>15</sup> A *minyan* is a quorum of ten men over the age of thirteen required for traditional Jewish public worship. See Rabbi Abraham Millgram, *Minyan: The Congregational Quorum*, MY JEWISH LEARNING, <http://www.myjewishlearning.com/article/minyan-the-congregational-quorum/> (last visited Apr. 26, 2017), archived at <https://perma.cc/487E-GC49>.

<sup>16</sup> H CJ 5185/13, ¶ 4.

<sup>17</sup> *Id.*

With regard to the second petitioner, the rabbinical court expressly held that if he continued to refuse to give his wife a *get*, the husband should be subjected to the RTDR. Accordingly, nobody should deal with him in trade or in any financial matter. He should not be hosted, fed, or visited when he is sick, and should not be honored at the synagogue in any way, including by reading publicly from the Torah<sup>18</sup> and publicly reciting the Jewish prayer for the dead, until he gives a *get* to his wife. The court further allowed the wife to publish the decision subjecting her husband to these sanctions and to provide information about the decision to every synagogue and individual so that he would be rejected by everyone in the community.<sup>19</sup>

### III. Subject of the Petitions

The main argument by both petitioners before the Supreme Court was that in the absence of explicit authorization in Israeli legislation, the rabbinical courts did not have jurisdiction to include the RTDR among the sanctions to be imposed on them.<sup>20</sup>

In response to the suggestion by a majority of the Justices, the Rabbinical Courts' Administration and the Attorney General, who were also among the respondents, agreed that the RTDR were referred to in both rabbinical court decisions only as a recommendation and not as a mandatory obligation.<sup>21</sup>

### IV. Majority Decision

#### A. Justice Elyakim Rubinstein

Justice Rubinstein wrote the main decision. In his opinion, the lack of equality under Jewish law in the ability of husbands as compared with wives to obtain a divorce requires looking for ways to assist *agunot*. He therefore opined that although the RTDR are unenforceable, there is no reason why rabbinical courts should not recommend that they be applied.<sup>22</sup>

Rubinstein noted that Israeli law already provides for the enforcement of rabbinical court rulings through the Religious Courts (Forcing Compliance and Hearing Procedures) Law 5716-1956 (hereinafter RC (Forcing Compliance) Law)<sup>23</sup> and the Rabbinical Courts (Enforcement of Divorce Decisions) Law 5755-1995 (hereinafter the RC Law).<sup>24</sup>

---

<sup>18</sup> See *Judaism: The Written Law—Torah*, JEWISH VIRTUAL LIBRARY, <http://www.jewishvirtuallibrary.org/the-written-law-torah> (last visited Apr. 26, 2017), archived at <https://perma.cc/7CTU-SHHX>.

<sup>19</sup> H CJ 5185/13, majority opinion by Justice Elyakim Rubinstein ¶ 11.

<sup>20</sup> *Id.* ¶¶ 5, 13.

<sup>21</sup> *Id.* ¶ 20.

<sup>22</sup> *Id.* ¶ 21.

<sup>23</sup> Religious Courts (Forcing Compliance and Hearing Procedures) Law, 5716-1956, SH No. 200 p. 40, *as amended*.

<sup>24</sup> Rabbinical Courts (Enforcement of Divorce Decisions) Law 5755-1995, SH No. 1507 p. 139, *as amended*.

These laws authorize various measures against noncompliant defendants, including issuing injunctions to prevent them from leaving the country, seizing their property, and blocking Israeli passports from being issued to them. The RC Law also provides for prohibitions against receiving, possessing, and renewing a driving license; being appointed to government positions; operating a licensed business; and opening or possessing bank accounts. Additional sanctions include imprisonment<sup>25</sup> and solitary confinement. The RTDR sanctions, Rubinstein opined, were more extensive than those authorized under Israeli legislation.<sup>26</sup>

The rabbinical courts' recommendation to impose RTDR sanctions, according to Rubinstein, reflected a recognition of a woman's right to dignity, liberty, and family life. This right, he opined, is guaranteed under Basic Law: Human Dignity and Liberty.<sup>27</sup>

Rubinstein opined, however, that unlike other RTDR religious sanctions, preventing a noncompliant husband from having a Jewish burial contradicts Israeli law.<sup>28</sup> In accordance with section 1 of the Capacity and Guardianship Law, 5722-1962, "[e]very person shall be capable of having rights and obligations from the completion of his birth until his death."<sup>29</sup> Therefore, for example, a person's individual debt (as compared with the estate's debt) expires upon death. The duty of a husband to give a *get* to his wife similarly expires upon his death, after which his wife becomes a widow.<sup>30</sup>

According to Rubinstein, the authority of rabbinical courts to publish their decisions derives from their authority under the RC (Forcing Compliance) Law<sup>31</sup> to determine whether hearings on matters under their jurisdiction will be held publicly or behind closed doors. Therefore, he did not find any fault in widely publishing the rabbinical courts' decisions against the petitioners.<sup>32</sup>

Rubinstein rejected the argument that the publication of the rabbinical courts decisions could be likened to social media "shaming."<sup>33</sup> He opined:

A major part of the problem associated with the phenomenon of "shaming" in social media derives from the fact it is often done recklessly, sometimes based on mere rumors and may result in unjustly harming an individual's reputation, often in an irreparable

---

<sup>25</sup> Imprisonment may be for a period of five years, which may be extended periodically up to ten years. *Id.* §§ 3, 3A.

<sup>26</sup> H CJ 5185/13, majority opinion by Justice Elyakim Rubinstein ¶ 22.

<sup>27</sup> Basic Law: Human Dignity and Liberty, SH No. 1391 p. 150; H CJ 5185/13, majority opinion by Justice Elyakim Rubinstein, ¶ 36.

<sup>28</sup> *Id.* ¶ 36.

<sup>29</sup> Capacity and Guardianship Law, 5722-1962, § 1, SH No. 380 p. 120.

<sup>30</sup> H CJ 5185/13, majority opinion by Justice Elyakim Rubinstein ¶ 38.

<sup>31</sup> Religious Courts (Forcing Compliance and Hearing Procedures) Law, 5716-1956, § 1A(a), SH No. 200 p. 40, *as amended*.

<sup>32</sup> *Id.* ¶ 39.

<sup>33</sup> *Id.* ¶ 43.

way; It is different when [publication is] done after verification of the facts, as in our case, and as a matter of almost last resort.<sup>34</sup>

Moreover, Rubinstein determined that unlike referenced American cases involving online shaming of drunk drivers and prostitution customers by state authorities, the state did not take positive actions in shaming individuals in the cases at hand.<sup>35</sup>

## B. Concurring Opinions

Agreeing with Justice Rubinstein, Justice Isaac Amit added that the limited effectiveness of the RTDR on nonreligious Jews, “who might not fear being excluded from a *minyan*<sup>[36]</sup> or [from] being honored with an *aliya*<sup>[37]</sup>” does not make their application a violation of the principle of equal treatment under Israeli law.<sup>38</sup> In Amit’s view, courts have to find the most effective relevant measure depending on the particular circumstances of the case before them.<sup>39</sup>

Both Justice Uri Shoham and Justice Isaac Amit opined that the petitioners lacked clean hands as they unlawfully fled Israel.<sup>40</sup> Without making a decision regarding the authority of the rabbinical courts to recommend application of the RTDR, Justice Esther Hayut agreed that the petitions must be rejected on the ground of lack of clean hands.<sup>41</sup>

Concurring that the petitions should be generally rejected, Justice Neal Hendel held that the recommended application of the RTDR by the rabbinical courts might harm the rights of the *get*-refusing husband. The harm that might result, however, does not affect his rights with such force that it cannot be based on the rabbinical courts’ general authorities and would therefore require express authorization by law.<sup>42</sup>

Both Justice Hendel and Justice Amit, however, disagreed that the petitions should be denied with regard to the RTDR’s recommendation to deprive the petitioners of Jewish burial.<sup>43</sup>

---

<sup>34</sup> *Id.* (translated by author).

<sup>35</sup> *Id.* ¶¶ 42–43.

<sup>36</sup> See explanation, *supra* note 15.

<sup>37</sup> Being honored with an *aliyah* means being asked to recite blessings over the Torah. See Ronald L. Eisenberg, *How to Have an Aliyah*, MY JEWISH LEARNING, <http://www.myjewishlearning.com/article/aliyah/> (last visited Mar. 31, 2017), archived at <https://perma.cc/H8TZ-L3HF>.

<sup>38</sup> H CJ 5185/13 Justice Shoham’s opinion ¶ 9.

<sup>39</sup> *Id.*, Justice Amit opinion ¶ 8.

<sup>40</sup> *Id.*, Justice Amit’s opinion ¶ 1; Justice Shoham’s opinion ¶ 2.

<sup>41</sup> *Id.*, Justice Hayut’s opinion ¶¶ 1–7.

<sup>42</sup> *Id.*, Justice Hendel’s opinion ¶¶ 7–11.

<sup>43</sup> *Id.*, Justice Hendel’s opinion ¶ 14; Justice Amit’s opinion ¶ 17.



## V. Minority Opinions

### A. Justice Yoram Danziger

Justice Danziger disagreed with the conclusion that because the RTDR were merely extrajudicial “recommendations” rather than mandatory requirements, they could be imposed by the rabbinical courts. In his opinion, like any other institution that operates by law, the rabbinical courts enjoy only those authorities that were determined by legislation.<sup>44</sup>

As noted in Justice Rubinstein’s opinion, the legislature provided for enforcement authorities of the rabbinical courts in the RC Law and in the RC (Forcing Compliance) Law.<sup>45</sup> A review of the explanatory notes for a bill preceding the RC Law, Rubinstein stated, indicates that the drafters of the legislation intended to “utilize a *halachic* [Jewish law] tool” to solve the problem of women who are denied a *get*. The drafters noted that the legislation “coincided with implementing the idea of the RTDR.”<sup>46</sup>

Danziger concluded, therefore, that there was no doubt that the legislature was aware of the RTDR and even viewed the RC Law as a civil “translation” of the RTDR. If the legislature wished to apply the RTDR themselves, he opined, the legislature could have achieved this goal by an express authorization in the RC Law. The legislature’s choice to “translate” the RTDR into a limited list of sanctions without making such authorization, Rubinstein determined, suggests its intention not to allow an expansion of the enforcement measures specified in the RC Law.<sup>47</sup>

This conclusion is further supported, according to Danziger, by a review of amendments to the RC Law since its enactment in 1995, authorizing the addition of specific sanctions against “*get* refusers.”<sup>48</sup> As the application of the RTDR imposes social sanctions on “*get* refusers,” Danziger concluded, their application could not be recommended by the rabbinical courts in the absence of explicit authorization by law.<sup>49</sup>

### B. Court President Justice Miriam Naor

Concurring with Justice Danziger, Justice Naor rejected the distinction adopted by the majority between an order and a recommendation. She opined that a recommendation made by a rabbinical court based on Jewish law might have normative effect, at least for part of the public, especially when included in a court decision. It is not the terminology that determines the nature of the rabbinical court decision, but the substance of it. Therefore, Naor disagreed with the

---

<sup>44</sup> *Id.*, Justice Danziger’s opinion ¶ 1.

<sup>45</sup> *Id.* ¶ 2.

<sup>46</sup> *Id.* ¶ 16.

<sup>47</sup> *Id.* ¶ 16.

<sup>48</sup> *Id.* ¶ 17.

<sup>49</sup> *Id.*

majority opinion that the rabbinical courts' decisions regarding the application of the RTDR were merely recommendations without any normative effect.<sup>50</sup>

Naor expressed concern that if the Supreme Court allowed the rabbinical courts to recommend application of the RTDR, over time and with a change of circumstances a rabbinical court might add additional sanctions in accordance with its own perceptions. According to Halacha, the collective body of Jewish religious laws, the list of sanctions depends on the discretion of the rabbinical courts and does not constitute a limited list. Naor disagreed that rabbinical courts should be authorized to impose a wide range of sanctions without any defined criteria, stating that “[t]his time it concerns a prohibition on feeding or offering drink [to the *get* refuser] or conversing with him, and maybe next time the court might recommend sanctions regarding family members or other persons interacting with the *get* refuser[.]”<sup>51</sup>

Naor also questioned the possible implications of the RTDR on violations of other laws. For example, if, based on a rabbinical court's recommendation not to have business dealings with the *get* refuser, a person who has been negotiating or even signed a contract with the *get* refuser reneges on his contractual commitments, does he risk a lawsuit based on breach of contract? Without expressing any opinion on the matter, Naor explained that she posed these questions to illustrate the wide, even possibly unintended, implications that might arise from authorizing the rabbinical courts to recommend sanctions that are not authorized by law.<sup>52</sup>

## VI. Ruling

Based on the majority opinion, the Supreme Court held that the rabbinical courts were authorized to recommend application of the RTDR in response to the unlawful behavior of the petitioners and their refusal to give their wives a *get* in violation of the judicial decisions requiring them to do so. The husbands' petitions were therefore rejected, except with regard to voiding the RTDR-based sanction of depriving the petitioners of a Jewish burial upon their death.<sup>53</sup>

---

<sup>50</sup> *Id.*, Justice Naor's opinion ¶¶ 4–11.

<sup>51</sup> *Id.* ¶ 15.

<sup>52</sup> *Id.* ¶ 16.

<sup>53</sup> *Id.*, summary ¶¶ 1–2.