

The BDA Prenup: Flawed and Destructive



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Contents

Preface.....	3
Why Assume the Worst of Men?!	3
Deprives a Husband of His Halachic Right to Reconcile.....	4
“Incentivizes” Unnecessary Destruction of Families.....	5
Financial Duress Undermines Willingness.....	7
Lip Service to Reconciliation.....	8
Discriminates Against Poor Husbands.....	9
Rewards a Reckless Bid for Divorce.....	9
Ignores Female <i>Get</i> Refusal.....	10
Severe Prohibition of Using Civil Courts.....	13
Enlisting Civil Courts Constitutes Robbery and <i>Mesirah</i>	13
Ignores Circumstances of Separation.....	15
Even Cooperative Husbands are Fined.....	16
Promotes Misandry.....	16
Other Flaws.....	17
Conclusion.....	17

Preface

The Beth Din of America (BDA), affiliated with the Rabbinical Council of America (RCA) has formulated a prenuptial agreement with the goal of “solving the *Agunah* crisis.” This prenup is being promoted by the Organization for the Resolution of Agunot (ORA).

According to the prenup website (theprenup.org), the prenup’s goal is to “ensure that a *get* is given by the husband to his wife in a timely manner following the functional end of a marriage.” How is this accomplished? The prenup website explains:

If the couple separates, the Jewish law obligation of the husband to support his wife is formalized, so that he is obligated to pay \$150 per day (indexed to inflation), from the date he receives notice from her of her intention to collect that sum, until the date a Jewish divorce is obtained.

Below I will list many reasons why I believe that this contract, although seemingly reasonable and constructive, is in fact flawed and destructive, and deprives men of their legitimate human and halachic rights.

Why Assume the Worst of Men?!

Once a marital separation begins and the wife demands “financial support” from her husband, the prenup requires the husband to fork out \$150 per day to his wife *immediately*. As mentioned, this is deemed necessary “to ensure that a *get* is given by the husband to his wife in a timely manner following the functional end of a marriage.” Note that this payment must begin immediately, even before the couple has appeared before *Beis Din*. What is the purpose? To induce the husband to give the *get* immediately, on the spot, or as soon as humanly possible.

Why? "Some spouses have refused to participate in the *get* process in order to extract concessions in divorce negotiations, in order to extort money, or simply out of spite."

Indeed, the man's motives may be unworthy. But why assume the worst?! By mandating a fine, the prenup assumes that any and every man who doesn't give a *get* the moment it is demanded acts with spiteful intentions. How can a legal document be written on the assumption that a person will act inappropriately? Every Jew deserves to be given the benefit of the doubt ("*chezkas kashrus*").¹

Deprives a Husband of His Halachic Right to Reconcile

Instead of unfairly assuming the worst, one should assume that the husband's delay stems from a most worthy motive: The desire to reconcile with his wife and save his marriage. Not only is this not evil, but this is what any good husband *should* do. Judaism teaches us that divorce is an absolute last resort² and a husband should be granted the opportunity to try his best to honor that value even when the situation looks bleak.

According to *Shulchan Aruch*, there is no obligation for a man to give his wife a *get* when she demands it, with the exception of certain extreme cases that must be verifiable.³ Put differently, in general, a husband is halachically

1 Cf. *Tosfos* on *Chulin* 11b.

2 *Even Ha'ezer* 119:3.

3 Cases in which *Halacha* requires the husband to give a *get* include: he is a Kohen married to a divorcee, he is a *mored* (refuses to have relations with her), he has boils, he is infertile and she wants another child (*Kesubos* 64a), she committed adultery, and various other cases. Without halachic justification, a husband isn't and cannot be

entitled to stay married if he so chooses. One apparent reason for this is that he is entitled to make the judgment whether he thinks he can save the marriage.

In fact, in forbidding a husband from divorcing his wife against her will, Rabbeinu Gershom extended precisely this right to women, allowing them to refuse a *get* when they saw fit, because he saw this privilege as necessary and fundamental.

How dare the prenup come along and presume to deprive a man of his halachic right and responsibility to fight to do everything in his power to save his marriage and family?

“Incentivizes” Unnecessary Destruction of Families

This fine creates a terrible dilemma for both husband and wife:

The wife, having separated, often has additional living expenses, especially if she is renting her own apartment. Even if she is working, she needs as much income as she can get, especially if she has custody of the children. Even when the wife has not ruled out reconciliation completely, in her desperation for funds, she may be tempted to demand this payment although she knows that this will likely expedite an unnecessary divorce. This gives a woman who has separated from her husband a financial incentive to further separate from him. Otherwise, she might not have been in such a rush to push for a *get*, and she might have sobered up and gone back to him.

required to give a *get*. Certainly, if the wife is simply unhappy and thinks she could do better, *Beis Din* cannot require a *get*, although they can advise and encourage one if they see fit. Requiring a *get* when *halacha* does not call for such a requirement casts doubt on the validity of a *get* then given, making it a *get me'usah* (see further in the essay).

Similarly, the husband may desire to make overtures of peace by demonstrating that he has taken steps to address her complaints and concerns. He may simply want to allow her a cooling-off period in the hope that she will reconsider. However, the onerous financial burden makes it very tempting for him to give up on any hope of saving the marriage and cancel any efforts he would otherwise have invested. Even if he chooses to take the fine upon himself and to postpone the *get* in the hope of reconciling, the crippling burden of making these payments (approximately \$55,000 a year!) and the resentment that this ordeal naturally engenders make it far less likely that the husband will be energized enough for his efforts at making peace to succeed.

Moreover, according to a 2006 study released by the Israeli Rabbinate,⁴ 18% of couples don't go through with the *get* because they neglect to follow up after the initial application, another 11% get "cold feet" even after setting a day for the *get* to be given and simply don't show up at the appointed time, and 5% choose to pursue counseling in the hope of repairing their marriage. This demonstrates how even after a divorce process has been set in motion, divorce may not occur for reasons unrelated to the husband's refusal—and in all, this phenomenon is far more common than male *get* refusal (which occurs only 19% of the time).

Now, how is this relevant to the prenup? Unfortunately, there are no similar statistics for frum divorces in the U.S., so let's assume that these figures are the same in the U.S. Without the prenup, they might not end up divorcing because the one who applied for the *get* never took it further, because they mutually chose not come to the *Beis Din* when they had made up to, or

⁴ This report investigated the causes for a divorce proceeding not culminating in the delivery of a *get*. See ["Poll of Religious Courts: More Female Refusers than Male Refusers."](#)

because they're going to counseling (a total of 34% of cases). This possibility is much more likely than male *get* refusal (19%). Yet the prenup, in addition to expediting divorce in the case of male *get* refusal (problematic and questionable in itself, as explained above) will also have the effect of expediting divorces in the case of all these marriages that would otherwise have lasted longer, increasing the likelihood of reconciliation.

A former director of the Beth Din of America, Rabbi Yona Reiss, has declared⁵ that the "prenuptial agreement is one hundred percent effective. In every case of a couple that had previously signed a prenuptial agreement and later came to divorce, there was a *get* delivered in a timely fashion." This may indeed be true, but salient question is: How many marriages might have been saved were it not for the prenup?

Financial Duress Undermines Willingness

A man must give a *get* willingly.⁶ Aside from certain specific cases, there can be no coercion in his act of giving a *get*, including monetary coercion.⁷ A *get* given under duress is called a *get me'usah*, and it is invalid. This renders the wife's future offspring from another man illegitimate (*mamzeirim*), G-d forbid.

By fining the husband for failing to deliver the *get*, the prenup casts serious doubt upon the validity of the *get*.

⁵ See [here](#).

⁶ "A man cannot divorce his wife except of his own free will" (*Yevamos* 112b).

⁷ According to some, even a bribe is considered coercion (see *Meiri, Bava Basra* 48a).

Yes, there is an oft-quoted Torah law that when a husband is coerced into giving a *get*, his delivery of the *get* is considered voluntary despite the duress.⁸ However, this concept is widely misunderstood. It only applies in a handful of specific cases, and only when the husband accepts the jurisdiction of the *Beis Din* ordering the coercion.⁹

However, in a standard case in which a wife wants a divorce simply because she declares she despises him—“*ma’is alai*—he is repulsive to me” and therefore she no longer wants to be married to him—the *Beis Din* have no authority to coerce him in any way to give a *get*.¹⁰ Moreover, they are not allowed to humiliate him into giving the *get*,¹¹ which includes protesting outside his house.

Lip Service to Reconciliation

The prenup website (not the prenup text itself) also states that the purpose of this fine is to induce a *get* when reconciliation is hopeless: “The second obligation provides an incentive for the husband to abide by decisions of the rabbinical court, and give a *get* to his wife *once the marriage is over and there is no hope of reconciliation*” (emphases added). This is highly disingenuous, for a woman’s demand for a divorce in no way proves that “the marriage is over

⁸ *Mishneh Torah, Laws of Divorce 2:20. Cf. Erchin 21a, Kiddushin 50.*

⁹ *Chasam Sofer, Even Ha’Ezer 116; cf. 28.*

¹⁰ *Shulchan Aruch, Even Ha’Ezer 77:3 Remo, Beis Yosef and Gra. Also see Rashba VII:414.*

¹¹ *Rashba VII:414, Radvaz IV:118, Bais Yosef Even Ha’Ezer 154, Chazon Ish Even Ha’Ezer 108:12.*

and there is no hope of reconciliation,” for she may still be persuaded to change her mind.

Since it is quite possible that the wife is misjudging the chances of reconciliation, and in this context, the opinion of others such as extended family, psychologists, psychiatrists, postnatal medical experts (who may recommend professional evaluation and treatment that would remedy the cause of marital discord), and the like should be consulted before rushing headlong into a *get* upon the wife’s demands, never mind imposing financial sanctions.

Rather than pursuing clear-headedness and reconciliation, the prenup’s authors believe that the very act of a woman demanding a divorce is in itself incontrovertible proof that “the marriage is over and there is no hope of reconciliation,” for the prenup requires that as soon as she demands it, he must pay her a financial penalty (which the site euphemistically terms an “incentive”) for every single day that the *get* is not delivered.

Moreover, in many countries today even the secular court system understands that it is destructive to allow a divorce to take effect immediately, and in the hope of reconciliation, they require a separation of twelve months before the divorce is finalized. This is similar¹² to (and apparently derived from) Jewish law, which requires a waiting period of twelve months after a separation for the same reason.¹³

12 Indeed, the civil law differs from Jewish law in that it requires a waiting period even when the desire for divorce is mutual, in contrast with Jewish law which allows a divorce when the desire is mutual without delay; it also differs in that once this period is complete, the marriage is dissolved even if the desire for divorce is one-sided. However, the basic concept of requiring a waiting period before allowing the drastic, socially devastating act of divorce to be formalized is positive for society.

Discriminates Against Poor Husbands

The prenup penalizes the husband with a flat rate of \$150 per day. Since this is not calculated based on income, it discriminates against the poor, because poor husbands will be less able to hold out for long enough to save their marriages, while rich ones may be able to hold out indefinitely, thus creating more stalling time for reconciliation.

Rewards a Reckless Bid for Divorce

As mentioned, from the moment the wife demands a *get* after separation, the prenup penalizes the husband \$150 for every day that passes until he gives the *get*. Nowhere does it mention the circumstances of the separation and differentiate between which spouse left.

This makes a big difference, because Chazal view the spouse who initiates the dissolution of a marriage in a very negative light, and place a hefty financial penalty on one who does so. If a husband seeks to divorce his wife without good reason, he must pay her the sum required by the *kesubah*. Conversely, a wife who demands a divorce without good reason is cautioned that in the event of a divorce, she forfeits her *kesubah* entitlement.¹⁴

It is outrageous that the very same woman whom Chazal condemn for separating from her husband and penalize financially in the hope that she will return, the prenup comes along and awards money for every day that goes by during which the husband doesn't give the *get*, even if his intention is to save the marriage! While Chazal try to keep a marriage together by warning a woman she'll lose her *kesubah* money for separating, the prenup awards her

¹³*Rema, Even Ha'Ezer, 77:2.*

¹⁴*Even Ha'Ezer, 77:2.*

money as soon as she separates. The prenup also stipulates that as soon as the wife demands support, the husband forfeits his ordinary halachic right to his wife's income. This is in stark contrast to explicit Jewish law, which states that if a woman refuses to have relations with her husband, she forfeits any financial support¹⁵ unless she can prove to the *Beis Din* that he is

Ignores Female *Get* Refusal

By fining the husband, the prenup assumes that the cause of the non-delivery of the *get* is the husband's refusal to give the *get* and not the wife's refusal to accept it. This is very misandric (i.e., it unfairly discriminates against men merely because of their gender) because it brazenly ignores the reality (of which the prenup's authors are surely well aware) that women also refuse to accept a *get*. In fact, not only does female *get* refusal exist, but contrary to popular belief, it's even *more* common than male *get* refusal.¹⁶

15Ibid. Outrageously, by failing to distinguish between which spouse has abandoned the marriage and whether that spouse is justified in doing so, the prenup website in effect claims that *Jewish law mandates* that a husband pay his wife money even though she may have initiated the separation without justification: "If the couple separates, the *Jewish law obligation* of the husband to support his wife is formalized, so that he is obligated to pay \$150 per day (emphases added)!"

To be clear, if the wife is truly justified in separating, the husband would indeed be obligated in sending her a support payment until he gives her a *get*. Likewise, if the husband initiates the separation without sufficient justification, he is obligated to send her a support payment until he gives her a *get*. However, this is a case-specific determination that would need to be done by both parties presenting the specifics of their case before *Beis Din*. Furthermore, it would be determined by weighing up the amount that the wife actually needs for support and the husband's and wife's means. Instead, the prenup seeks to impose on the husband an arbitrary amount that is in fact intended not to support her (even if she were so entitled), but to pose a crushing financial burden.

Even if female *get* refusal were far less common, the prenup should still be written in a way that anticipates such a scenario, in the same way that the prenup itself is supposedly written as a precautionary measure against the (hopefully) unlikely scenario of divorce.¹⁷

Some might argue that female *get* refusal is not so bad, because a husband can always obtain a “*heter mei’a rabonim*.” This is a dispensation that allows a man to remarry if one hundred rabbis from three countries sign a document allowing the husband to remarry. However, although it is technically possible to get a *heter mei’a rabonim*, it’s very, very difficult, and therefore quite rare.¹⁸

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See the report of the Israeli Rabbinat cited in the beginning of this essay, which found that wives refused twenty percent of the time, while husbands refused nineteen percent of the time. See also this article: [Jewish Get: More Women Refuse to Accept Get than Men Refusing to Give Get.](#)

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The Beth Din of America does in fact have another version of the prenup, which they call the “[Reciprocal version](#),” which is designed to deter female *get* refusal as well by having both sides pay each other \$150 per day, a privilege to be forfeited upon failure to appear in *Beis Din* when summoned. Since no money is actually lost on either side, but merely exchanged back and forth, and an actual financial sanction only takes effect when one side is uncooperative, this option appears far more reasonable and humane. Why this is not their standard version, and why it does not even appear on their website, but is only available upon request to someone who happens to be aware of the phenomenon of female *get* refusal, is open to speculation. My guess is that they feel that women would be less likely to sign such a document. However, it should be noted that on ORA’s website, only the reciprocal prenup is presented (see [here](#)). If the couple does find out about this version, the prospect of negotiating with one’s bride whether to use the standard prenup or opt for the reciprocal version just in case she is recalcitrant seems very unpleasant and potentially confrontational.

It is only natural that such dispensations are difficult to obtain, for the entire purpose of the rabbinic enactment against divorcing a woman against her will was to level the playing field and ensure that divorce would be voluntary on the part of both husband and wife. This would be a farce if a *heter mei'a rabanim* would be so easy to obtain.

To be fair to both genders, the prenup should also penalize a woman who withholds a *get* by mandating a monetary obligation for every day she is deemed to be refusing to accept the *get*. (As I've explained, I don't believe that divorce should be expected immediately, nor should monetary sanctions be applied. However, if they are to be applied, they should at least not be applied in a sexist way; rather, they should apply equally to all refusers, not just male ones.)

Severe Prohibition of Using Civil Courts

In any case of a dispute, frum Jews are obligated to enlist a mutually agreed-upon *Beis Din* to have their dispute adjudicated, and it is a terrible sin to take another Jew to civil court (*arka'os*). This is even forbidden if the secular law happens to be identical to the Torah law.¹⁹

This is no less true of divorce settlements between husband and wife: The divorcing couple should take their dispute before *Beis Din* and have them rule on all matters of property division, child support, and custody.²⁰ Without explicit permission from a distinguished rabbi, it is forbidden for one spouse to take the other to the secular family court to adjudicate their divorce dispute.

There is no mention in the prenup of the severe prohibition of taking another Jew to a civil court. Now, if a Jew has mocked the very institution of *Beis Din* and rejected its authority by taking his case to a civil court instead, how does he then have the chutzpah to approach a *Beis Din* and demand they give him what he wants—in this case, to give her the get?

Halacha rules clearly that such a woman, like any Jew who takes another Jew to *arka'os*, should be shunned. She isn't entitled to a hello, never mind a get. The same would apply in the reverse, in a case in which a husband takes his wife to court.

Enlisting Civil Courts Constitutes Robbery and *Mesirah*

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Shulchan Aruch, Choshen Mishpat 26:1.

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Another option is mediation, which is halachically permissible under rabbinic guidance.

Since Torah does not allow one Jew to sue another in a civil court, Torah does not consider their rulings in such disputes binding. The concept of “The law of the land is the [Torah] law”²¹ does not apply to such disputes. Therefore, any money extracted is extracted *shelo k’din*, against Torah law, and therefore constitutes *mesirah*, informing on another Jew to the secular authorities.²²

Since Torah has not required that the husband pay the amount of child support and alimony required by the government, a woman who sues for it in the course of a divorce settlement is committing (in addition to the inherent prohibition of going to secular courts) robbery and extortion. This also constitutes *mesirah*, for she has enlisted the government to rob her ex-husband of large amounts of money to which he is not entitled on threat of going to jail.²³ Similarly, any custody orders issued are *shelo k’din*, against Torah law, and therefore constitute kidnapping.

Jewish Law clear states²⁴ that such a woman has no rights in a *Beis Din* to demand that her husband give her a *get*. In fact, the *Beis Din* is obligated to refuse to hear her case absent the approval of the injured party until she revokes any court-mandated payments and submits to follow the rulings of the *Beis Din* alone in all matters related to the divorce settlement.

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Gittin 10b.

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Igros Moshe, Choshen Mishpat, Vol. 4, sec. 8 (p. 22). Rabbi Feinstein quoting 388:9.

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A place where he would also very likely be sexually abused, G-d forbid.

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Mishneh Halachos Vol. 14, 1-11, quoting *Maharsham* 7:159.

In contrast to all this, not only does the prenup not penalize her for suing him in a civil court, but it forces him to pay her additional money for every day that passes!²⁵

Ignores Circumstances of Separation

Although the prenup's stated purpose is to protect wives from vindictive husbands, it completely disregards the very real possibility that in the course of a separation, a wife may become vindictive and stoop to crimes that violate secular law, Torah law, and common decency.

Such grievous crimes all too common in modern times include changing the locks so the husband can't gain access to his own house (robbery), falsely accusing him of domestic violence or even molestation and taking out an order of protection, also known as a restraining order against him (slander and informing to the authorities, *mesira*), using these false claims to gain an advantage in property division (fraud) and custody arrangements (kidnapping through fraud), seizing his personal property and storing it in an

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The prenup does include an "optional" clause in which the couple can agree to have property division, custody, visitation, and child support adjudicated by the *Beis Din*. It's wonderful that this clause exists, but the fact that it's optional is outrageous. The *Beis Din* should send a clear message that it is completely unacceptable to take one's fellow Jew to court. As for the concern that if the prenup includes the requirement (which Jewish law requires of every Jew regardless) to authorize the *Beis Din* to decide all matters of property and custody, then many people will not sign the prenup, if this couple has so little respect for Jewish law, one wonders why they are getting a religious marriage altogether. In any case, in stating that committing to obey *Beis Din* is "optional," the Beth Din of America tacitly endorse *mesirah* and extortion from before the marriage has even begun!

As an aside, the existence of *any* optional clause conjures up the decidedly unromantic image of a starry-eyed engaged *frum* couple thrust into debating whether to retain the option of wickedly suing the other in a civil court (likely the woman suing), or agreeing to follow Torah law and signing that they will submit to *Beis Din* in all matters.

undisclosed location (theft), denying him any chance to see the children, including flagrantly violating even the secular court's custody and visitation orders at whim (kidnapping), absconding with the children to another state or to an undisclosed location (kidnapping), and alienating the father from the children emotionally (child abuse).

Why should a husband be expected to give a *get* while bearing the brunt of such abuse? As a matter of self-defense, he should surely be entitled to say that he's only willing to give the *get* on condition that she sign an enforceable contract guaranteeing that she will retract her evil slander, allow him to see his children without obstruction, and stop alienating him from the children.

Yet instead of including a clause to address such cases, the prenup implies that no matter how much she wrongs him, he should not have recourse to combat her abuse by threatening to withhold the *get*. Instead, he must pay her \$150 a day!

Even Cooperative Husbands are Fined

Rabbi Moshe Feinstein rules that a *get should not* be given until all outstanding property and custody issues have been resolved. By its very nature, this settlement takes many months, and this is in no way the fault of the husband. So long as he states that he is fully willing to give a *get* once these issues are resolved, as *Halacha* requires, why should he be fined immediately for every day that passes until he gives the *get*? At most, the prenup should say that once other issues are resolved, if the husband doesn't give the *get* when directed to by *Beis Din*, he undertakes to pay her a certain amount because of his "recalcitrance" (although using any fine to induce the giving of a *get* is objectionable regardless for the reasons outlined above).

Promotes Misandry

Most men and women are decent people. Only very few men would deliberately withhold a *get* out of spite alone, just as only very few women would deliberately refuse to accept a *get* out of spite alone. So in addition to all the halachic objections to the prenup, the prenup is objectionable on basic human grounds because it promotes a very hostile, hateful view of men by presuming them to be wicked abusers, while dismissing female *get* refusal altogether and thus presuming women to be saintly victims.

To illustrate this, imagine a prenup drafted specifically to penalize a woman for refusing to accept a *get* on demand (and dismissing the possibility that her intentions might be worthy), but completely neglecting to penalize a man for refusing to do the same. Such a formulation would no doubt be harshly condemned by one and all for unfairly discriminating against women (and rightly so). How then is it acceptable for the prenup in its current form to get away with treating men in the same way?

Other Flaws

Another flaw in the prenup is that it appoints one specific *Beis Din* to arbitrate all cases of divorce. However, this is short-sighted. Although the marrying couple might agree on this particular *Beis Din* at the time of the marriage, it is unfair to assume that they will agree on it years later, in the event of divorce.

Furthermore, there is a decent chance the couple will have since moved to a different location from that particular *Beis Din*. Aside from the expenses of travelling and missing work that a protracted hearing would incur, using a *Beis Din* remote from the location of the couple is far from ideal. Divorce is by its nature a local matter, best handled by local rabbis who know the couple and other involved community members personally and can therefore assess how to approach that couple's individual case best.

The prenup should allow the couple to use a local *Beis Din* if they are in agreement on doing so. When the couple disagree on which *Beis Din* to

choose, they should be able to use the method of *zabla*, where each side appoints a rabbi and the two rabbis select a third rabbi to constitute the *Beis Din* panel. The prenup should not overrule these standard halachic formulae employed in choosing a *Beis Din*.

Conclusion

In summary, both men and women concerned for the welfare of themselves and their children in the event of a divorce, G-d forbid, should stay far away from this most non-halachic "halachic" Beth Din of America prenup.²⁶

This essay focuses on the text of the prenup of the Beth Din of America in particular; it is not meant to rule out the idea of a prenup altogether, for a prenup could conceivably be drafted that does not pose any of the problems outlined in this essay, perhaps one that formalizes for the secular courts that all matters of property and custody are to be decided by a *Beis Din*. However, a prenup that requires a *get* on demand is halachically unacceptable.