



## Re-Envisioning Jewish Commitment and Marriage for the 21<sup>st</sup> Century

### Unit 4: Towards a Just and Protected Marriage of Partnership

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As we've learned in the previous three Units, our tradition has been moving towards egalitarian partnership in marriage on several fronts, yet at the same time, unbalanced divorce law as well as the danger of *get* refusal still pose significant threats to women. For people contemplating marriage in a modern Jewish framework these issues raise many challenging questions. On the one hand, we want to embrace the beauty and sacredness of Jewish tradition. But we are hesitant to enter an institution that is built around unilateral power for men and poses significant dangers to us and our freedom as women. Surely, it is a Jewish value to protect every party in a marriage. How can we embark on marriage with a ceremony and agreement that truly reflects the full range of these commitments?

This question is often posed to me by my thoughtful and committed students at the [Pardes Institute for Jewish Studies](#). I do not believe that there is a single one-size fits all answer for all of these questions. Quite the opposite, there are many factors that must be weighed when men and women are thinking about getting married. In this unit, we will explore three possibilities that I explore with my students – moving from traditionally acceptable to radically innovative.

#### 1. The Halakhic Prenuptial Agreement: A Framework for Mutual Respect

[Various versions](#) of Halakhic prenuptial agreements have become commonplace in the Orthodox world. The [Orthodox Union](#) and [Rabbinic Council of America](#) recommend that its rabbis insist on using their [version](#) with their congregants. The Young Israel movement has a [slightly different version](#). In Israel, these prenuptial agreements are still less prevalent, but the mainstream [Tzohar movement](#) has endorsed this [version](#). While there are variations [between the agreements](#), the explanations below pertain to both the Agreement for Mutual Respect endorsed by Young Israel and the Tzohar agreement.



These agreements work on a basic principle: a gender-neutral civil contract to support one another with monthly payments (50% of his or her salary or a minimum standard in Israel of \$1,500, whichever is greater). At the same time, the couple agrees to waive these monthly payments as long as they are living together and happily married. However, should either member of the

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couple request a divorce in a (previously designated) Jewish court, and if that request has not been honored in a given period (usually six months), the payments kick in.

Because, as we have discussed in Unit 3, a writ of divorce given under duress is invalid, it must be emphasized that this payment is not a fine. It is for this reason that the monthly payment remains at a level that can be understood as spousal support, a basic marital obligation. Couples may be content to live on bread and water when they are happy and in love, but if they aren't surviving on love, they at least want to eat well! If the agreement looks too much like a fine, rabbis may refuse to execute the divorce, for fear that the *get* will actually be invalid.

Furthermore, it is important to note that this is a secular financial agreement that is enforced entirely in the civil courts. Though not very well tested in courts either in Israel or abroad, one case was successfully enforced in the last ten years in [Connecticut](#). Many advocates argue that the proof of the agreement's success is the fact that so few of them have gone to court—the very threat of a suit and the reminder of the written commitment pressures spouses to cooperate with the *get*. While the agreement has not yet been fully proven, it has also not been disproven—that is to say that there are no known long standing *get* refusers who have signed such an agreement, despite the fact that the agreements have been circulating since 1953, and promoted by the RCA since 1981.

These prenuptial agreements offer a lot of advantages:

1. They leave the traditional Jewish wedding ceremony entirely intact.
2. They are widely acceptable even in the Orthodox community.
3. They protect most women and men from the traumas of *get* refusal using the threat of financial penalty.
4. They are easy to sign.

However, they also have some disadvantages:

1. They assume that the parties will be influenced by financial pressure. However, people with limited financial resources to lose, great resources to spend, or people who are irrational may be impervious to the threat of a lawsuit.
2. They only protect from willful *get* refusal. However, these agreements do not protect from the dangers of incapacitated or missing husbands. Women in these unfortunate circumstances remain chained for life.
3. They do not fundamentally alter the power imbalance in marriage: the woman is “acquired,” and has entered into an agreement which can be dissolved at her husband's whim only.

### 2. The Tripartite Agreement or Conditional Marriage

In 2007, a man in Israel was severely injured in a car accident. While he survived the crash, he was tragically left in a vegetative state. His spouse spent several years at his bedside as he swung between life and death. Over time, his condition stabilized, but it became clear that he would remain forever unconscious. At this point, the woman, still young and seeking to have children, looked to the future. However, while her husband was alive, he was neither capable of being her partner nor of giving her a *get* so that she could start a new life. She was a chained woman. In 2014, [one courageous court](#) found a creative solution to grant her a *get*, but was barraged by criticism from the Ultra-Orthodox world. The professional advance of the promising and bold head judge was subsequently halted, and as a result, discouraged other judges and courts from taking similar action.

While a halakhic prenuptial agreement can protect a woman from willful *get* refusal, it does not prevent her from being trapped in cases where the husband is mentally incapacitated, or disappears without proof that he is dead. In extreme situations, rabbis have gone to great lengths to try to free trapped women. In the past century, there have been especially difficult cases with Holocaust survivors and wives of soldiers who are [missing in action](#).



More recently, after the September 11, 2001 [bombing](#) of the World Trade Center, [ten cases of married Jewish men](#) were referred to the Beit Din of America. All of the wives were freed in good time, but [finding solutions is challenging](#) and not guaranteed.

One way of avoiding this problem is through an arrangement called “conditional marriage” that uses a legal construct laid out already in the Mishnah in many variations. For our purposes, a single example suffices ([Kiddushin 3:2](#)):

*[With regard to] one who says to a woman, "You are hereby betrothed to me on condition that I will give you two hundred zuz [a specific unit of money]," she is betrothed, and he must give [her the money]. "On condition that I give you [two hundred zuz] from now and until thirty days," if he gave it to her within thirty days, she is betrothed; and if not, she is not betrothed.*

Since the woman only agrees to marry the man if he gives her money within thirty days, if thirty days pass and he has not made the good on his promise, then the marriage is null and void. This same model is adopted but with a different stipulation: on condition that they continue to live together and neither party requests a divorce. Should either party ask for a divorce and it not be granted, then the marriage is retroactively annulled.

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This model is being adopted in Israel in a new initiative called [Huppot by Hashgacha Pratit](#) and advocated for by the [Center for Women's Justice](#). Many rabbis in the diaspora are also prepared to perform weddings using this mechanism. It is generally combined with the prenuptial agreement described above.

According to other authorities, a third part of the agreement is necessary in order to “cover all bases,” because many Orthodox rabbis question the efficacy of conditional marriages of this type. Thus, an additional prenuptial agreement adds a clause giving the rabbinic court the authority to dissolve the marriage themselves, if necessary. This has been advanced by Orthodox authorities Rabbi [Michael Broyde](#) and [Dr. Rachel Levmore](#), as well as [Rabbi Diana Villa](#) of the Conservative/Masorti movement.

The advantages of this solution are as follows:

1. It too leaves the traditional Jewish wedding ceremony entirely intact, preserving the optics of a traditional marriage.
2. It protects women from a much wider range of dangers, including the husband's mental incapacitation or disappearance.
3. In addition to offering protection, it diminishes the principled objections of women who are uninterested in voluntarily surrendering their freedom in a one-sided agreement.

However, they also have some disadvantages:

1. While it is endorsed by the liberal Orthodox world and more progressive movements, it has only limited acceptance in the broader center-right Orthodox community.
2. It does not entirely abandon the power imbalance in marriage: the woman is still “acquired,” even though the agreement grants agency to both parties to initiate its dissolution.

### 3. *B'rit Ahuvim*: Abandoning Kiddushin for a Marriage between Partners

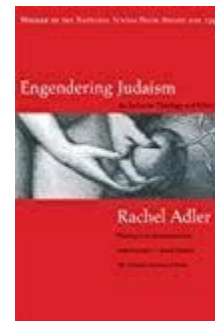
In principle, a conditional marriage is intended to avoid the perils of being either an *agunah* or a *mesurevet get*. However, it is not a perfect solution. First, because conditional marriage is halakhically controversial, there is always the risk that rabbinic authorities will reject it and declare the couple legally married with all of the attendant dangers. Second, a conditional marriage still remains a one-sided agreement. In *kiddushin*, the woman becomes *mekudeshet*—set aside for the man without him making any parallel commitment to her. Her extramarital sex is considered a capital crime, while his is merely frowned upon. The husband promises to care for the wife, because she is assumed to be powerless, and in exchange, at least officially, she surrenders control of her property to him.

Rabbi Dr. Rachel Adler, a leader of the Reform movement, has proposed abandoning this institution entirely and creating an alternative partnership:

Marriage, some wit once remarked, makes man and woman one - and the man is the one. We have just reached a point in history where it is possible to envision, and sometimes to realize,

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marriage in which two remain two, marriages that are not incorporations but covenants. ...This intention is not reflected in an act of acquisition. It can only be expressed by an act of covenanting. Like all covenants, a marriage agreement must embody some of the characteristics of contracts, articulating standards for an ethical relation and laying out some of what the partners most need and want. The marriage agreement must specify the obligations that will form the fabric of the marriage. The partners must be able to make some promises to one another, even though promises are sometimes broken. And if the marriage loses its qualities as a *shutafut*, a partnership, people must be free to dissolve it. [Rachel Adler, \*B'rit Ahuvim: A Marriage between Subjects, Engendering Judaism\*, 1998, p. 192,](#)



Rabbi Adler replaces the biblical institution of marriage with a civil partnership rooted in monetary law. Just as a business partnership is constituted by a contract of partnership and a symbolic ceremony of undertaking, so too is the modern covenant of lovers that she has imagined.

In her [beautiful contract](#), she suggests the ways that this partnership should be parallel to the ancient covenants of our people:

It is a covenant of protection and hope like the covenant God swore to Noah and his descendants, saying:

*When the bow is in the clouds, I will see it and remember the everlasting covenant between God and all living creatures, all flesh that is on earth. That "God said to Noah" shall be the sign of the covenant that I have established between me and all flesh (Genesis 9:16–17).*

It is a covenant of distinction, like the covenant God made with Israel, saying:

*You shall be My people, and I shall be your God (Jeremiah 30:22).*

It is a covenant of devotion, joining hearts like the covenant David and Jonathan made, as it is said:

*And Jonathan's soul was bound up with the soul of David. Jonathan made a covenant with David because he loved him as himself (1 Samuel 18:1-3).*

It is a covenant of mutual lovingkindness like the wedding covenant between God and Zion, as it is said:

*I will espouse you forever. I will espouse you with righteousness and justice and lovingkindness and compassion. I will espouse you in faithfulness and you shall know God (Hosea 2:21-22).*

Adler also supplements poetry with “nuts and bolts” commitments to sexual exclusivity, mutual partnership, and providing intimate care to each other and their offspring.

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The advantages of this solution are as follows:

1. It is a completely egalitarian and gender-neutral ritual, appropriate in every way to both heterosexual and same sex unions.
2. In addition to offering protection, it diminishes women's principled objections to voluntarily surrendering their freedom in a one-sided agreement. In the words of Rachel Adler "It amends the commodification and subjugation of women inherent in kiddushin.

However, there are also some disadvantages:

1. It abandons the traditional Jewish wedding ceremony entirely.
2. While it has gained [traction](#) in some [liberal courts](#), it remains unconventional.
3. It does not have a sufficiently clear mechanism for dissolving the union.
4. Some halakhic authorities consider this civil union to be a halakhic marriage and would still require or at least [still recommend using a get](#), as a precaution.

### Summary:

Over these four units we have examined marriage and divorce in Jewish tradition. The Sheva Berakhot said under the Chuppah reflect an idyllic image of the redemptive power of romantic love. However, the problematic underpinnings of this image were exposed in Unit 2, when we examined the patriarchal roots of marriage. Over the course of history, the rabbis did much to improve the status of women in marriage—creating an insurance policy for them and protecting their basic human rights. Unfortunately, in Unit 3, we saw that divorce law does not reflect similar development. Men hold the exclusive power to dissolve the bonds of marriage, sometimes leaving women captive to belligerent husbands. In this Unit, we examined three possible ways to redress that power imbalance, using a prenuptial agreement, a conditional marriage or a form of legal partnership called *brit ahuvim*.

Our personal decisions can have real impact in shaping communal norms as well as our personal future. Rabbis respond to grassroots pressure from the community. Just as Talmudic rabbis improved the protections offered to women because women refused to marry without these improvements (as seen in Ketubot 82b and Unit 2), so too we can expect community leadership to respond to our insistence. As women have the right and responsibility to demand these changes.

### Issues for Thinking and Further Study:

**Same Sex Unions:** Because the traditional marriage ceremony has such defined, non-egalitarian gender roles, how to adopt the wedding ceremony for same sex marriage has posed significant challenges. One of the advantages of the *Brit Ahuvim* ceremony described above is that it is appropriate for marriages of all types. The Conservative Committee of Law and Standards has proposed [several ceremonies](#). Orthodox [Rabbi Steve Greenberg](#), who is openly gay, has also [performed](#) such a ceremony, parts of which can be

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[viewed online](#). Orthodox authorities in Israel have also performed commitment [ceremonies](#). A collection of material for the same sex couple can be found [here](#).

**The Holocaust:** I briefly mentioned the challenges posed by the Holocaust with regard to issues such as *get* and *agunah*. See [here](#) a study of a prenuptial agreement composed in Bergen-Belsen to deal with some of these problems.

### **Suggestion for Action:**

If you are already married but didn't sign a prenuptial agreement – don't worry, it's not too late to sign a [post-nuptial agreement](#). Some communities are organizing parties to promote such agreements and to publicly create communal norms.

Join the Facebook Group for the Prenuptial Agreement: [Agreement for Mutual Respect](#). This way, when it is time to discuss the agreement with a potential spouse, you'll be able to prove that it is a principled decision rather than a concern specifically about the potential spouse.