



Litigating While Chained

The Coercion of the Agunah

Presented by Shalom Task Force

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Legalese Explained

- **Arbitration:** An impartial adjudicator, that is separate from the courts, which upon the parties' consent can make decisions on the case
- **Beis Din:** a rabbinical court that upon the parties' consent can make decisions on their case, including but not limited to, the Get (religious divorce)
- **Civil Court:** government organization that makes decisions between the parties' upon one party filing for relief

Arbitration Process

- What is an arbitration agreement?
- When should you sign one?

*** TAKE HOME ***

Do not sign a binding arbitration agreement before consulting
an attorney



BETH DIN OF AMERICA
BINDING AGREEMENT

STANDARD
VERSION

This agreement consists of two pages and a notarization page. Instructions for filling out this document may be found on page 4. It is important that the instructions be carefully read and followed in completing the form.

THIS AGREEMENT made on the _____ day of the month of _____ in the year 20 _____,
between Husband-to-Be: _____
residing at: _____
and Wife-to-Be: _____
residing at: _____

The parties, who intend to be married in the near future, hereby agree as follows:

- I. Arbitration. Should a dispute arise between the parties, so that they do not live together as husband and wife, they agree to submit to binding arbitration before the Beth Din of America (currently located at 305 Seventh Avenue, Suite 1201, New York, New York 10001; www.bethdin.org), which shall have exclusive jurisdiction to decide all issues relating to a *get* (Jewish divorce), the *ketubah* and *tena'im* (Jewish premarital agreements) entered into by the Husband-to-Be and the Wife-to-Be, any issues and obligations arising from or in connection with this Agreement (including under paragraphs II, III and VI hereof) and any disputes relating to the enforceability, formation, conscionability, and validity of this Agreement (including any claims that all or any part of this Agreement is void or voidable) and the arbitrability of any disputes arising hereunder.

SECTION II: Financial and Custody Issues. Paragraphs II:A and II:B, regarding additional financial issues and child custody issues, are optional.

II:A. The parties agree that the Beth Din of America is authorized to decide all monetary disputes (including division of property and maintenance) that may arise between them, and to utilize principles of equitable distribution in accordance with customary practice, as the Beth Din deems appropriate according to principles of Jewish law, equity and local custom. We choose to have paragraph II:A apply to our arbitration agreement.

Signature of Husband-to-Be _____
Signature of Wife-to-Be _____

II:B. The parties agree that the Beth Din of America is authorized to decide all disputes, including child custody, child support, and visitation matters, as well as any other disputes that may arise between them. We choose to have Section II:B apply to our arbitration agreement.

Signature of Husband-to-Be _____
Signature of Wife-to-Be _____

II:C. The Beth Din of America may consider the respective responsibilities of either or both of the parties for the end of the marriage, as an additional, but not exclusive, factor in determining the distribution of marital property and maintenance, should such a determination be authorized by paragraph II:A or paragraph II:B.

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- III. Support Obligation. Husband-to-Be acknowledges that he recites and accepts the following:

I obligate myself to support my Wife-to-Be according to the requirements of Jewish law governing Jewish husbands. Furthermore, I hereby now (me'achshav) obligate myself, in a manner that I cannot exempt myself with any claim of asmachta (unenforceable conditional obligation) or any other claim, to support my Wife-to-Be from the date that our domestic residence together shall cease for whatever reasons at the rate of \$150 per day (calculated as of the date of our marriage, adjusted annually by the Consumer Price Index-All Urban Consumers, as published by the US Department of Labor, Bureau of Labor Statistics) in lieu of my Jewish law obligation of support, as hereinabove cited and circumscribed, so long as the two of us remain married according to Jewish law, even if she has another source of income or earnings. Furthermore, I waive my halakhic rights to my wife's earnings for the period that she is entitled to the above-stipulated sum, and I recite that I shall be deemed to have repeated this waiver at the time of our wedding. I acknowledge that I have now (me'achshav) effected the above obligation by means of a kinyan (formal Jewish transaction) in an esteemed (chashuv) Beth Din as prescribed by Jewish law.

INITIALS



BETH DIN OF AMERICA
BINDING AGREEMENT

STANDARD
VERSION

However, this support obligation shall terminate if, despite Husband-to-Be's compliance with the terms of this agreement and the decision or recommendation of the Beth Din of America, Wife-to-Be refuses to appear upon due notice before the Beth Din of America or in the event that Wife-to-Be fails to abide by the decision or recommendation of the Beth Din of America. Furthermore, Wife-to-Be waives her right to collect any portion of this support obligation attributable to the period preceding the date of her reasonable attempt to provide written notification to Husband-to-Be that she intends to collect the above sum. Said written notification must include Wife-to-Be's notarized signature. This support obligation under Jewish law is independent of any civil or state law obligation for spousal support, or any civil or state law imposed order for spousal support, and shall be determined only by the Beth Din of America.

- IV. Opportunity for Consultation. Each of the parties acknowledges that he or she has been given the opportunity prior to signing this Agreement to consult with his or her own rabbinic advisor and legal advisor. Each of the parties further acknowledges that he or she has been fully informed of the terms and basic effect of this Agreement as well as the rights and obligations he or she may be giving up by signing this Agreement. Each of the parties expressly waives, in connection with this Agreement, (i) any right to consult with his or her legal counsel to the extent they have not done so and (ii) any right to disclosure of the property or financial obligations of the other party beyond any disclosures that have been provided. The obligations and conditions contained herein are executed according to all legal and halakhic requirements.
- V. Governing Law. The decision of the Beth Din of America shall be made in accordance with Jewish law (*halakha*) or Beth Din ordered settlement in which the relative equities of the parties' claims are considered in accordance with principles of Jewish law (*peshara krova la-din*), except as specifically provided otherwise in this Agreement.
- VI. Rules, Default Judgment and Costs. The parties agree to appear in person before the Beth Din of America, at a location mutually convenient to the arbitrators and the parties, at the demand of the other party, to cooperate with the adjudication of the Beth Din of America in every way and manner, and to abide by the published Rules and Procedures of the Beth Din of America (available at www.bethdin.org), which are in effect at the time of the arbitration. If either party fails to appear before the Beth Din of America upon reasonable notice, the Beth Din of America may issue its decision despite the defaulting party's failure to appear, and may impose costs and other penalties as legally permitted. Both parties obligate themselves to pay for the services of the Beth Din of America. Failure of either party to perform his or her obligations under this Agreement shall make that party liable for all costs, including reasonable attorney's fees, incurred by one side in order to obtain the other party's performance of the terms of this Agreement.
- VII. Jurisdiction; Enforceability. By execution and delivery of this Agreement, each party consents, for itself and in respect of its property, to the exclusive jurisdiction of the Beth Din of America with respect to the issues set forth in paragraph I. Each of the parties agrees that he or she will not commence any action or proceeding relating to such issues in any court, rabbinical court or arbitration forum other than the Beth Din of America. This Agreement constitutes a fully enforceable arbitration agreement, and any decision issued pursuant to this Agreement shall be fully enforceable in secular court. Should any provision of this Agreement be deemed unenforceable, all other provisions shall continue to be enforceable to the maximum extent permitted by applicable law. As a matter of Jewish law, the parties agree that to effectuate this Agreement they accept now (through the Jewish law mechanism of *kim li*) whatever minority views determined by the Beth Din of America are needed to effectuate the obligations, procedures and jurisdictional mandates contained in this Agreement.
- VIII. Counterparts. This Agreement may be signed in one or more duplicates, each one of which shall be considered an original.

In witness of all the above, the Husband-to-Be and Wife-to-Be have entered into this Agreement.

Signature of Husband-to-Be _____ Signature of Wife-to-Be _____
Signature of Witness _____ Signature of Witness _____
Signature of Witness _____ Signature of Witness _____

Differences between Beis Din and Civil Court

- When do you go to the Beis Din?
- When do you go to Civil Court?

ISSUE	BEIS DIN	SUPREME COURT	FAMILY COURT
ORDER OF PROTECTION	✘	✔	✔
CUSTODY/ VISITATION PARENTING TIME	✔ (SUBJECT TO SUPREME OR FAMILY COURT REVIEW BASED ON 'BEST INTEREST')	✔ (TYPICALLY WITHIN CONTEXT OF DIVORCE)	✔
CHILD SUPPORT	✔	✔ (TYPICALLY WITHIN CONTEXT OF DIVORCE)	✔
SPOUSAL SUPPORT / TEMPORARY MAINTENANCE	✔	✔ (TYPICALLY WITHIN CONTEXT OF DIVORCE)	✔ (REFERRED TO AS SPOUSAL SUPPORT)
EQUITABLE DISTRIBUTION OF PROPERTY OR DEBT	✔	✔ (TYPICALLY WITHIN CONTEXT OF DIVORCE)	✘
DIVORCE	✘	✔	✘
GET (RELIGIOUS DIVORCE)	✔	✘	✘

Beis Din: Pros

- Religiously competent
- Flexibility
- Problem solving approach
- Potentially cheaper
- Better equipped to address the Get: not bound by the constitutional limitations as a civil court

Beis Din: Cons

- Requires careful selection
- Need both parties consent to engage with the forum
- Flexibility lends itself to abuse
- Lack of oversight or recourse
- Issues enforcement of temporary orders
- Custody and child support may not be binding
- Lack of resources
 - Attorney for the Child (AfC), forensic, supervisor
- Lack of proper safeguards for domestic violence survivors and order of protection remedies
- Parties generally need civil court to some degree
 - Will still need the civil divorce to do grounds for a civil marriage

Are arbitration
agreements
enforceable?

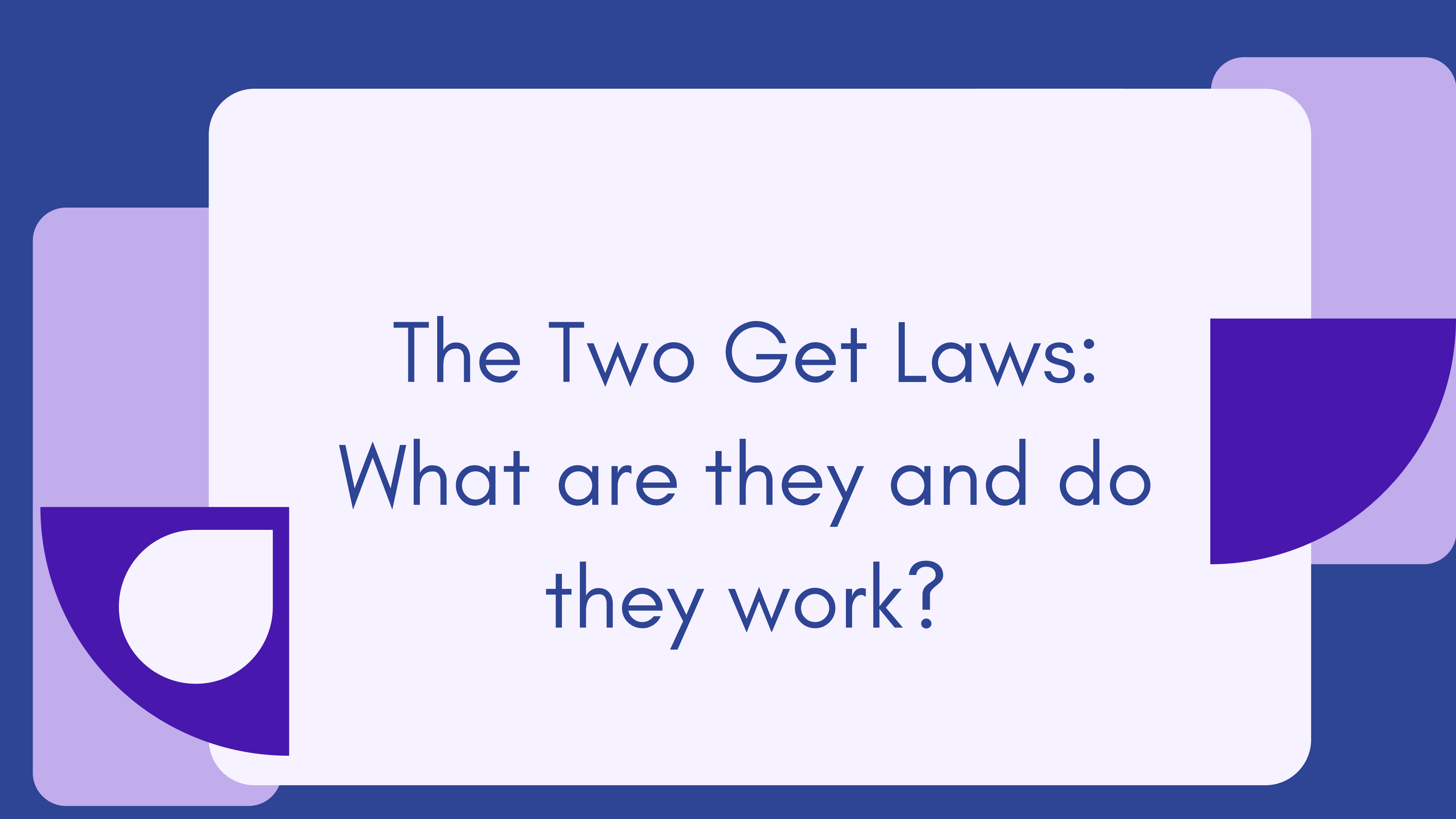
Clauses to arbitrate in a rabbinical tribunal are enforceable under contract theory

- Avitzur V. Avitzur, 58 N.Y.2d 108 (1983)

"Such a forum may properly address certain issues arising under a separation agreement, for example CS and spousal maintenance. However, when circumstances require determining which living arrangements are in the best interests of children, courts alone must undertake the task."

- Glauber v. Glauber, 192 A.D.2d 94 (2nd Dept. 1993)

- **“An award may be vacated on public policy grounds if it fails to comply with the CSSA”**
- **Can throw out other issues if they are so “intertwined” with the support issues that they can not stand on their own merits**
 - Hirsch v. Hirsch, 4 A.D.3d 451 (2nd dept. 2004)

The background is a dark blue color. On the left side, there is a light purple rounded rectangle. On the right side, there is a light purple rounded rectangle and a dark purple rounded rectangle. In the bottom left corner, there is a dark purple shape that looks like a stylized 'C' or a partial circle. The text is centered in the white rounded rectangle.

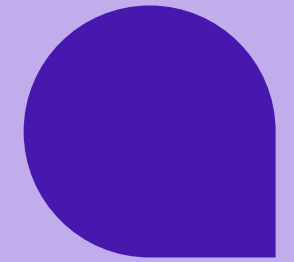
The Two Get Laws:
What are they and do
they work?

- **“Any party to a marriage defined in subdivision one of this section who commences a proceeding to annul the marriage or for a divorce must allege, in his or her verified complaint that, to the best of his or her knowledge, that he or she has taken or that he or she will take, prior to the entry of final judgment, all steps solely within his or her power to remove any barrier to the defendant’s remarriage following the annulment or divorce”**
 - DRL § 253 Removal of Barriers

- **The “court shall, where appropriate, consider the effect of a barrier to remarriage” in the disposition of property and post-divorce maintenance awards**

- DRL § 263(B)(5)(h) and DRL §236(b)(6)(o)

Limitations to the Get Law



1. Cases where the Agunah is the Plaintiff
2. Cases where there the parties are low income or do not own assets
3. Constitutional concerns about the Get laws – challenges in court and can lead to expensive litigation

- Why is community support vital?
- What can we do as a community?

Contact us

Sarah' s Voice: Free Legal Services

Call/ Text: (347) 592-2124

Email: legalintake@shalomtaskforce.org

Shalom Task Force Confidential Hotline

(718) 337-3700

STF Hotline Confidential Whatsapp/Text Chat Line

(888) 883-2323

For more information visit:

<https://shalomtaskforce.org/>

