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REFORM MARRIAGES IN CONTEMPORARY HALAKHIC RESPONSA

I. INTRODUCTION

Starting with the early part of the nineteenth century, significant religious differences emerged between the Orthodox and the Reform communities and have continued to grow to this very day, with no substantial amelioration. From the very beginning of the encounter the tensions were rooted in fundamental, religious antinomies. Not only were important religious beliefs at stake, but—more pertinently—central halakhic principles and practices into which the new credos had overflowed and crystallized. This schism has taken a heavy toll throughout the Jewish world, on a personal, institutional and movemental dimension.

For illustration, Orthodoxy has always held fast to its pivotal article of faith in a direct Divine Revelation, manifest at Israel's birth as a faith-people at the foot of Sinai and continuing its vital expression, throughout its experience as a civilization, by means of both the Written and Oral Laws. Alongside stood the derivative and concomitant doctrine of the binding power of the Halakhah upon all of the Jewish people, for all human time, both as a source and as a process for Jewish living. Reform, on the other hand, officially repudiated these and other cardinal *ani ma'amins* as well as their basic laws and commandments. The result, therefore, was that in an area like family relations—jugular to both camps—a chasm developed which became nigh unbridgeable. The *get* as the indispensable socio-legal instrument for the termination of the Jewish marriage bond was virtually abro-

gated, and the secular divorce decree accepted as its all-sufficient replacement.¹ This radical change was not only totally antithetical to the age-long normative tradition² but generated wrenching doubts regarding the legitimacy/illegitimacy of children born to a woman who had remarried without a Jewish *get*.

The number of such cases has recently increased, particularly in the United States, and has reached aggravated proportions with the widespread erosion of tradition, the weakening of the family structure, and the escalating incidence of divorce and singleness in the Jewish community. In addition, the constraints in the legal areas of Church-State relations which caused the secular courts to hesitate in assuming any cooperative responsibility in the issuance of a Jewish *get* simultaneously with or, at least, right after the civil divorce decree,³ rendered the Orthodox rabbinate powerless when Jewish husbands,⁴ either out of rancor or for other personal interests, all too frequently refused to issue a Jewish writ of divorce. In many cases, the husbands dropped out of sight completely. In any event, their actions created the tragic plight of the *agunah*, the abandoned wife, who for lack of a *get* was prohibited by Jewish law to marry again.

In many of these instances the original wedding ceremony was first solemnized by a Reform rabbi⁵ in accordance with Reform tenets and practices. Inquiries, therefore, were addressed to eminent halakhic decisors by local religious leaders from various parts of the world about such marriages: if it could be demonstrated that the ceremonies had not been conducted in compliance with Jewish law, should the marriages not be voided? An affirmative verdict would obviate the need for a Jewish divorce, allow the parties to remarry and eliminate concern for the legitimacy of the offspring in the event of a second marriage.

This article will survey the contemporary halakhic responsa on this crucial problem, placing primary emphasis on the current writings on the subject already published by some of the leading authorities of the generation. The analysis will focus on the legal ideas and principles which are at stake in the Jewish tradition and, in addition, summarize the various conclusions presented to the rabbinic interlocutors in the light of the diverse, particular situations they had placed before their halakhic mentors. To do this task effectively, a preliminary statement has been included on the nature of halakhic marriages.

II. A PROLOGUE TO JEWISH MARRIAGE

A. *The Religio-Legal Status of Kiddushin*

It is well-known that the traditional marriage service is actually made up of two distinct, formal ceremonies. In ancient times, they were held at different times, sometimes as much as twelve months apart.⁶ The distinction is reflected in the retention of their own separate, liturgical character. The first part, known as *erusin* or *kiddushin*, joins the couple together as bride and groom but only in betrothal; the second, known as *nissu'in* or *huppah*,^{6a} unites them in complete marriage as husband and wife. For historic and pragmatic reasons,⁷ the two aspects of the union were telescoped by the Rabbis to take place in immediate sequence, at one single celebration. The marriage cannot be terminated except by death or divorce.

It must be remembered that the *erusin*, while precedent to⁸ and interdependent with the *nissu'in*, is juridically and structurally as well an autonomous religio-legal institution.⁹ Its roots are deeply embedded in scripture and rabbinic sources and, like *huppah*, it possesses the power to bind the couple in an enduring covenant, so that only death or a formal Jewish writ of divorce may sunder that union.¹⁰ Since *kiddushin* creates the marriage bond which requires dissolution, our question about the efficacy of Reform marriages must focus on the act of *kiddushin*. What constitutes *kiddushin*?

B. *Building Blocks for Kiddushin or Ma'aseh Kiddushin*

In practical terms, *kiddushin* as the primary state¹¹ of Jewish marriage can be normally and normatively constituted through the presence of five halakhic elements, which are made up of a number of vital, deliberate thoughts and acts. Each of them plays out its own distinctive role in the drama of betrothal.

At the helm stands *kavanah*, intention. But intention for what? Two divergent directions emerge which, in the context of our subject, can briefly be delineated as follows: According to one authority,¹² the intent of the couple must be for at least the most minimal and natural characteristics of the marital experience. That is all tradition can judiciously call for on such an occasion. Consequently, bride and groom must consciously have in mind no less than a desire to join together in intimate relationships as husband and wife and therein begin forging a permanent and life-long bond of marriage. That decision, however, must also include the stipulation that the wife shall be exclusively related to her husband and prohibited to all others.¹³ From this intent of *leshem ishut* will then flow all other authority

which will bestow legitimacy and direction upon the formal ceremony and simultaneously form the foundation of the *kiddushin*.

The other view finds the natural standard utterly inadequate.¹⁴ That would not match the high expectations set for the Jewish people at Sinai. Consequently, the minimal approach is deemed invalid, rendering that *kiddushin* null and void.¹⁵ What, then, shall be the normative canon for *kavanah*? It must be *lekiddushei Torah*¹⁶ or *leshem kiddushin*¹⁷ or *lekiddushei mitsvat Torah*.¹⁸ These interchangeable terminologies connote a conscious awareness that the ceremony must be *kedin*, in faithful fulfillment of the hallowed imperatives of Jewish law and in replication of the Torah model of *kiddushin*. This is what will provide the uniquely religious and Jewish dimension, rather than the universal, natural pattern of pre-Sinaitic marriage.¹⁹ For without that particular dimension, an essential linchpin would be removed from the infrastructure of the *ma'aseh kiddushin*.

However, the intention to marry must be visibly objectified, in order both to articulate as well as to inculcate the core ideas of that *kavanah*.²⁰ Jewish tradition, therefore, devised two more patterns of action to achieve that tangibility. One of them was the *amirah*, an official verbal declaration of marital *kavanah*²¹ to be made directly by the groom to his bride in a formal and public style. Several alternative formulae are proposed and discussed in the Talmud²² and Codes,²³ but the one which was conventionally utilized was the "*harei at mekuddeshet li betaba'at zo, kedat Moshe ve Yisrael*."²⁴ The other act, serving as a complementary mode of concretization of this marital intention and as a demonstration of its correctness, was the *netinah*, giving, initiated again by the groom²⁵ and complemented by the parallel *kabbalah*, receipt, by the bride.²⁶ These sequential acts of "give and take" involve an object of acknowledged worth,²⁷ traditionally a ring,²⁸ which the groom places on the index finger²⁹ of the bride's right hand³⁰ while pronouncing aloud the aforementioned *amirah*.³¹

Let us stress, in the face of widespread misconception, that halakhically this presentation is not intended to represent a gift or token or symbol. That would nullify the whole act. The aim of the Halakhah is to constitute a mode of acquisition.³² a Jewish legal *kinyan*, and thereby express the couple's *gemirut* and *semikhut da'at*,³³ that is, a definitive articulation and demonstration of the decisiveness of the *kavanah* to form the marriage bond.^{34,35}

But not only must these facets of *kavanah* be shared between bride and groom. Normally, the Halakhah also demands a mutual quality of *ratson*—a fourth element, involving the couple's voluntary assent to all parts of the *erusin*.³⁶ This includes the freely willed consent to the giving and receiving of the ring of *kiddushin* and the agreement to the *kinyan* it constitutes.³⁷ The comprehensive nature of this prin-

ciple of volition is undoubtedly intended to build up an ambience of partnership and cooperation throughout the service and beyond.

Finally, a Jewish marriage must be witnessed by at least two³⁸ qualified³⁹ *edim*, whose responsibility is two-fold. When necessary, they must be in a position to testify before a Jewish Court as *edei re'ayah*,⁴⁰ witnesses who can help establish the facts and certify the nature and degree of compliance with the prerequisites of Jewish marriage law. Yet, even more critical is their role as *edei kiyyum*,⁴¹ witnesses who by their very presence and participation at the ceremony constitute the validity of the *ma'aseh kiddushin*.^{41a} In other words, the absence of such competent witnesses would, in and of itself, nullify the marriage, even if the other elements of the *erusin* had been fulfilled perfectly.⁴² In a real sense, *edim* are the central thread of the entire event. They must, therefore, be present throughout the service and actively observe not only the presence of the bride and groom (and be seen by them too⁴³) but all of the elements of *kiddushin*.⁴⁴

In recapitulation, there are five crucial elements in the legal-religious make-up of the *erusin*. They are *kavanah*, *amirah*, *netinah-kabbalah*, *ratson*, and *edim*. In concert, they construct what is denominated in the sources as the *ma'aseh kiddushin*—the building blocks of an official Jewish marriage.

III. GROUNDS FOR DECLARING A REFORM MARRIAGE VOID

A review of the available responsa indicates that the positions taken on Reform marriages can be subsumed under three categories. Those of the first school of thought we will designate as the *mekilim*, tending toward the more lenient ruling. They are best exemplified by the *teshuvot*⁴⁵ published by the internationally-renowned decisor, Rabbi Moses Feinstein.⁴⁶ His unequivocal conclusion is that, at this stage of the history of the Reform movement, it can be clearly demonstrated that a marriage solemnized by a Reform rabbi can, *ab initio*, be declared null and void, whereby the wife can be freed to remarry without any *get*. In fact, this status can now be considered a legal presumption upon whose basis one can act judicially unless it is contradicted by evidence. To be sure, each case still calls for its own investigation in order to establish the facts for the Bet Din, but as the result of the presumption, the burden of proof now devolves on those who would affirm the validity of the marriage.

This rather definitive stance is based on several religio-legal grounds. In the first place, the rabbi who officially reads the wedding service establishes, by his very position, specific theological and

halakhic givens which, in turn, become the framework of faith principles and operational norms for the occasion. Consequently, at a Reform ceremony, it may be reasonably assumed that the officiating Reform rabbis will not be governed by, or bound to, all the required elements of the traditional *kiddushin*. The ceremony will not necessarily accord with *dinei Torah*, but with styles and standards adopted by the Reform rabbis, whose central convictions regarding Jewish Halakhah are generally antinomian or, at least, anomian. They could, by and large, hardly be expected to make sure that the ceremony aims at a scrupulous implementation of the legal requirements of *kiddushin*.⁴⁷ This presupposition in terms of law and theory has, in fact, been buttressed for Rabbi Feinstein and his colleagues by the cumulative empirical data gathered over the years and recorded in their writings.

Accordingly, the individual Reform rabbi is charged with arbitrarily introducing into the marriage ceremony forms that stem from alien sources or are personally conjured up by one's own imagination without concern for their halakhic consequences. They are then integrated into the actual service as if legitimately part of the *kiddushin*.⁴⁸ So, for example, the double-ring ceremony—nigh-universal to the Reform community—in effect nullifies the significance of the critical act of *kinyan*, converting it into a merely celebrative exchange of marital gifts in honor of the union.⁴⁹ The result, then, is that the intention of relating this element to the tradition's primary objective of *asiyyat kiddushin*, namely, of constituting a religio-legal dimension of contractual *kiddushei Torah*, is utterly vitiated.⁵⁰ For, at best, the rings as indicated are reduced to "tokens of union."⁵¹ Similarly, there is earnest concern about the Reform rabbis' disregard for the Halakhah's insistence that the ring be the groom's to be presented for the first time at the *huppah*—and not be a borrowed one, or one already given to the bride on some previous occasion.⁵²

An identical criticism has been leveled regarding the element of *amirah*. Within a celebrative framework, the important words spoken by the couple become little more than formal responses to equally formal questions posed by the rabbi. The couple may perceive in a question-answer pattern, culminating in the declaration by the rabbi "... I, therefore, declare you ... and you ... to be husband and wife,"⁵³ the constitution of their actual marriage. Yet, it is in truth a far cry from the *amirah* ordained for the *kiddushin*. It may serve as *amirah* for *ishut*, but, as noted above, that would function for Rabbi Feinstein only to invalidate the ceremony—even if proper witnesses were present. In short, it is not *kiddushei Torah*—not for Rabbi Feinstein.⁵⁴

Finally, the most serious breach is the absence of "kosher" witnesses—a grievous omission, almost universally imputed to the

Reform Rabbinate.⁵⁵ Conventionally, the officiant Reform Rabbi will even designate himself for the role, despite the fact that neither in terms of required Jewish beliefs nor of obligatory Jewish practices can he halakhically qualify. The public desecration of sacred Jewish laws including those of the Sabbath, of Family Purity, of Dietary Practice and the like, as well as the repudiation of the fundamental Judaic principles of the divine origin of the Written and Oral Torahs along with the derivative, binding authority of the Sages—all of these are grounds for outright disqualifications as a witness *mide'oraita*—Toraitically.⁵⁶ Moreover, because of the Reform movement's declared corporate articles of faith and their adherents' public profanation of cardinal commandments and canons, they can be legally ranked as *muhzakim u'mefursamim* (established and publicized transgressors). This creates a presumptive status that permits dispensing with the usual, formal need to obtain witnesses who must first testify to these violations in the presence of the defendant and before the Bet Din before the actual disqualification takes effect.⁵⁷ Not so with the publicized transgressors! Consequently, every ceremony with a Reform participant as an official witness runs the risk of being invalidated as a *kiddushin beli edim*.⁵⁸

Where individuals not identifiably Reform are in attendance and have, or may have, served as the witnesses, a careful inquiry would have to be made into the entire list of those present in order to examine the possibility of their competence to function as "kosher" witnesses.⁵⁹ Different legal procedures would, of course, apply to different categories of violations of Jewish Law in order to determine the witnesses' qualifications.⁶⁰ In practice, then, should two religiously acceptable witnesses be identified after testimony and examination before the Bet Din, and should it be certified that they had actually participated in the ceremony and had personally heard and seen the total *ma'aseh kiddushin*, the marriage may be declared valid so as to require a *get* for the dissolution of the union.⁶¹ If, however, no such conclusion can be reached either because of doubt or because the passing of time precludes the availability of important evidence, then Rabbi Feinstein will stand by the presumption that none were effectively present⁶²—especially when this presumption is buttressed by the personal statement of the involved wife.⁶³

Two additional problems, however, must be treated by Rabbi Feinstein. One of them involves the Talmudic problem of *kol*—the rumors and reports generated by such a public event as a wedding, leading to a reputation among friends and the community at large that the couple are truly married.⁶⁴ The other deals with the question of their actually having lived together, openly, as husband and wife. This will raise the halakhic issue of whether their presumed cohabita-

tion ought not to be viewed as being tantamount to a new *kiddushin*, contracted through the ancient mode of *biah*.⁶⁵ Either factor could create the status of requiring a *get*, despite the halakhic nullity of the original ceremony.

Rabbi Feinstein does not seem overly concerned with the question of *kol*.⁶⁶ Even if we were to abide by the stricter view recorded in the Codes⁶⁷ that such hearsay, even when subsequently demonstrated as groundless, may not be set aside other than by a writ of divorcement even when subsequently demonstrated as groundless, it would not apply to our case. Whatever the report, it would also be bound to include the datum that upon further investigation the rabbis had discovered that the marriage had been conducted by a Reform rabbi and had consequently disqualified it. Moreover, there are enough reliable authorities, particularly in an instance of *agunah* and the like, who subscribe to the more lenient decision that we can disqualify the *kol*⁶⁸ since the prohibition is basically one of rabbinic provenance.⁶⁹

The second concern is confronted more seriously. But Rabbi Feinstein points out that several important conditions must be posited before Halakhah can regard cohabitation as grounds for a personal status of marriage. First, the couple would have to share the same residence, in a public fashion as husband and wife, for a considerable length of time. It is thus that people in the area would be able to become acquainted with them and to acknowledge their status.⁷⁰ Secondly, the residence would have to be located in a Jewish neighborhood with an ample, representative group of observant, religious Jews who could potentially become competent witnesses.⁷¹ In this way, the prerequisite of *edim* (witnesses) could also be met since the Bet Din would take judicial notice (*anan sahadei*)⁷² that at least two of the “kosher” witnesses in that community knew about the couple firsthand and were able to confirm their husband-wife relationship. This would also accord with the Rabbinic *hazakah* of “*hen hen edei yihud, hen hen edei biah*,” (the witnesses simultaneously testify to the couple’s marital affinity and marital cohabitation).⁷³ Thirdly, the Bet Din would need to be able to make a general presumption about the community that “*ein adam oseh be’ilato be’ilat zenut*” (an individual can be counted on not to have performed the act of coition just for wanton or lawless indulgence).⁷⁴ Finally, we would have to take for granted that the couple had been aware that the Reform marriage was not valid and, therefore, the groom had subsequently intended the cohabitation to serve as the implementation of his *kinyan*, in order to establish with her a new *kiddushin*.⁷⁵ Without all of these vital factors, one would be hard-put to assert the legitimacy of any claim to their personal Jewish status as husband and wife.

In the case of a Reform ceremony, Rabbi Feinstein vehemently

challenges the possibility of applying the latter *hazakot* even when the first two conditions have been met. Starting with the last point, it is reasonable to assume that those who selected a Reform rabbi for the solemnization of their marriage are clearly of the opinion that they have been lawfully joined together. Why, then, should they intend to constitute a new marriage? Their subsequent, conjugal relationships would naturally be subsumed in their mind under the hallowing authority of the original ceremony—which the halakhah cannot sustain.⁷⁶ No presumption, therefore, of a renewed *kiddushin* can be legally warranted.⁷⁷ Secondly, the nature of the Reform tradition leads us to presuppose that the couple, like their Rabbi, does not subscribe to Torah Law and in practice does transgress many halakhic prohibitions. These include those in the area of interpersonal, sexual relations around which tradition has built so many restrictions; for example, the laws of Family Purity (*Niddah*). One can hardly apply the principle of “*ein adam oseh be'ilato be'ilat zenut*” to those who do not exhibit such a commitment in their observance of the crucial Torah commandments dealing with family relations.⁷⁸ This is especially true in our times of permissiveness and even license in premarital, marital and extra-marital relations.⁷⁹ Under the above-mentioned circumstances, such general community presumptions can hardly be justified. Accordingly, it cannot be assumed that the critical ingredient of *kavanah* is present. For, while the couple may desire to live together as husband and wife, their intention of *leshem ishut* is simply not adequate. Only *leshem kiddushei Torah* will do.⁸⁰

In summary, Rabbi Feinstein and his school of thought have espoused the cause of contravening the status of Reform marriage with critical and stringent puissance. If a rigorous investigation fails to prove compliance with the Torah norms of a religious marriage, then the decisor is free to declare the marriage void, *ab initio*.^{80a} Yet, despite this strong stance, a preference for a *get*—although only *leravha demilta*, for the sake of comity—emerges in the responsa, especially if and when the potentiality for such a settlement of the case is within a rabbi's reach.⁸¹

What may, however, be less apparent is that this strict approach is not only motivated by a pious and intellectual concern for the integrity of Torah Law. It is also wedded to a passionate preoccupation with the rabbinic legacy of anguish about *iggun* and dire dread of *mamzerut*. When practical circumstances make it nearly impossible to achieve reconciliation or divorce, an abandoned wife faces an imminent fate of lifelong singlehood, or the children of a second marriage a lengthened shadow of life-long illegitimacy. Every available instrument of Torah and all rabbinic precedents, of principle and presumption, must be put at their service in order to liberate the

victims from that potential fate—even *lekhat'hila*.⁸² At such moments, caution or precaution is no religious virtue.

IV. REFORM MARRIAGES MAY REQUIRE A *GET*

The second protagonist in the disputation among scholars on the issue of Reform marriage is Rabbi Joseph Elijah Henkin.⁸³ His position can clearly be designated that of the *mahmirim* (the stringent ones), for as the heading of this section intimates, it is his judgment that the circumstances of the Reform ceremony can, in and of themselves, provide no exemption from a Jewish divorce.

The basis for the strict decision goes right back to the premises and definitions of the elements of the *kiddushin* itself. Vigorous exception is taken to Rabbi Feinstein's interpretations of the nature and quality of these elements and to his comprehensive presumption regarding the root invalidity of a Reform ceremony. On the contrary, insists Rabbi Henkin, one has a right—unless patent evidence is adduced—to assume a *hezkat kashrut* (an initial presumption of acceptability) for all Jewish couples who claim to be living together as husband and wife.⁸⁴ This is the starting-point from which we are to proceed.

These and other views of Rabbi Henkin may, at first blush, seem radical, but they have been grounded by their proponent in the primary sources of the Bible and Rabbinic literature. That is evident at the very outset as he begins to redefine some basic halakhic ingredients which are universally accepted as the traditional building blocks of Jewish marriage.

Rabbi Henkin first tackles the vital element of *kavanah*. He avers sweepingly that there is no source either in the Torah,⁸⁵ the Talmud⁸⁶ or among the *rishonim*⁸⁷ that the *kavanah* of the bride and groom must be for a "*kiddushin al pi Toratenu hakedoshah*"⁸⁸ or, more specifically, "*kedat Moshe veYisrael*."⁸⁹ The reason for this absence is simply that no intention is required for a *mitsvah* or for *kedushah*⁹⁰ but only for *ishut* ("husband-wife-ness"),⁹¹ which, he insists, is the very essence of *kiddushin*⁹² through which marriage is contracted.⁹³ This premise finds a strong buttress in certain scriptural texts, by means of which Rabbi Henkin attempts to demonstrate that the verb *lakah* is repeatedly and consistently utilized in the context of "to take home in marriage." This holds true whether applied to Israelites or the "Nations of the World," to the pre-Sinaitic or the post-Sinaitic period, and even to a legal case-study of adultery.⁹⁴ In all these instances, the term connotes to take a woman home for matrimonial purposes (*ishut*) and there to live with her as husband

and wife.⁹⁵ That minimal and basic designation is never lost or displaced.⁹⁶ This sufficiency of *ishut* can, also, be readily documented and deduced from the various formulae of betrothal, cumulatively cited in the Oral Tradition.⁹⁷ A good number of them are pre-Sinaitic.⁹⁸ None of them make any reference to the “Law of Moses and Israel”—not even those which do allude to *kiddushin*—obviously intimating that the omission is no impediment to *erusin*.⁹⁹ Therefore, Rabbi Henkin asserts that the Torah’s object at Sinai was only to add a more demanding discipline by imposing moral and marital obligations even if the *erusin* resulted from the alternative forms of *kinyan*, namely *keseif* or *shtar*.^{100,101} But, it never intended to displace or disqualify the ancient, “primitive” mode of *ishut*, through *biah* alone.¹⁰² One could, therefore, extrapolate that the combination of the two modes of betrothal, namely, intention for *ishut* and *kinyan biah*, would certainly make a *get* necessary for the dissolution of the union.¹⁰³

Based on these emphases, we can summarize Rabbi Henkin’s first point on *kavanat ishut* as follows: If the mutual intention of the couple was patently matrimonial, and the correlative implication was clearly that her relationship as wife was restricted to her husband alone, since it was he who “sanctified” her—even without any additional *kavanah* of *kedat Moshe veYisrael*—then, if carried out in the presence of Jewish witnesses, the bride would, for all intents and purposes, be considered a married woman. The termination of such a union would be possible only in the event of death or divorce. Obviously, these minimalistic requisites would apply to a Reform wedding, as well, and no mere declaration of nullification could void it. A *get* would be an inescapable must.¹⁰⁴

Additional differences divide Rabbi Henkin’s position from the lenient one. The reader will recall that a key linchpin in Rabbi Feinstein’s reasoning was the central role of the officiant rabbi subtly played by fashioning, through his very presence, the faith precepts and religious ambience of the occasion.¹⁰⁵ Here, Rabbi Henkin is extraordinarily abrupt. The significance attached to the officiant is curtly dismissed with the words: “Is there really any need for *mesadder kiddushin*? Should a Jew say to a woman, in the presence of witnesses, ‘be thou mine,’ does she not become an *eshet ish* (married woman)?”¹⁰⁶ In other words, why make such a fuss over the rabbi, who is in no way an integral part of the *kiddushin*? In almost the same breath, he also challenges, “Who even knows what Reform is?”—which is a follow-up on a prior charge that the designation has become, for the overly pious, a catch-all for any kind of Jews who are not approved.¹⁰⁷ In short, Rabbi Henkin refuses to accept the fundamental schism which Rabbi Feinstein makes between a Reform marriage and one “*al pi Torah*.”

Now, to a question raised earlier. Let us suppose that the Reform ceremony, by itself, is invalid. However, would the couple's living together subsequently as husband and wife for a considerable time—say thirty days or more¹⁰⁸—make an intrinsic difference in the personal marriage status? Rabbi Feinstein had rejected that possibility, primarily because there had been no renewed *kiddushin*. Total reliance had been vested in the original invalid wedding ceremony which the couple continued to view as authoritative.¹⁰⁹ Since the foundation collapsed, as the Rabbis put it, so would the structure. Where does Rabbi Henkin stand on this issue?¹¹⁰

The answer seems self-evident. Since, as stated, the central concern now is *ishut*, the principle of “*ada'ata dekiddushin rishonim ba'al*”¹¹¹ is not relevant. After all, the couple do demonstrably intend to continue the very relationship of marriage that they first attempted to establish in their prior ceremony, albeit Reform. Therefore, that fact remains a powerful lever for legitimation. Basing himself on a famous Talmudic disagreement between the Babylonian Amoraim, Rav and Samuel, regarding a couple who did cohabit after a disqualified marriage—the final decision being in favor of Rav that it is then validated¹¹²—Rabbi Henkin bolsters his conclusion—a conclusion totally unacceptable to Rabbi Feinstein.¹¹³ For, in our instance too, although the Reform marriage is, in and of itself, invalid, it does retain the power of establishing a legal claim upon the subsequent, sustaining quality of husband-wife cohabitation. It is as if the original ceremony included an implied condition by the couple that should that ceremony, for whatever reason, not turn out to be valid, then the subsequent acts of coition were to serve in its stead as a qualifying *kinyan biah*.¹¹⁴ Nor was there any need to have that intention expressly in mind at any precise moment of cohabitation, for as Rabbi Henkin underscores in italics—as if tongue in cheek—“*bish'at biah afilu ha-kesherim ein hoshvim kelum*.”¹¹⁵ The intention and condition would “be *hal*” (take effect) whenever appropriate.

In fact, Rabbi Henkin emphasizes, in such a case of *ishut* the presence of witnesses is no longer a formal prerequisite. A presumptive equivalent will do, for the decision in such circumstances is legally transferred to the judicial responsibility of the sages of the Bet Din.¹¹⁹ Since the couple are living in a settled Jewish neighborhood,¹²⁰ their juridical assessment can be—à la Talmudic presumption—“*hen hen edei yihud, hen hen edei biah*.”¹²¹ This is especially applicable to this kind of setting where all the evidence points to their “husband-wife-ness,” which could and would certainly be corroborated by the personal testimony of the couple.¹²² Where the factor of *ishut* is so incontrovertible as a public datum, then “*davar hagaluy lakol keyesh edim damya*—a matter which is apparent to everyone, may

be comparable to the presence of actual witnesses."¹²³ Here, we have a *hazakah* which can be nullified only by a *get*.¹²⁴

What about the second basis of Rabbi Feinstein's repudiation of the post-ceremony co-residence as a form of re-marriage? In dealing with those who transgress the Torah laws, especially of sexual relations, he could lend little credence to the assumption that the couple purposely renewed "their vows," in accordance with *kiddushei Torah*, through their cohabitation ("*ein adam oseh be'ilato be'ilat zenut*").¹²⁵

Rabbi Henkin's response is again firmly rooted in his definition of a binding Jewish marriage in terms of *ishut*. Granted, one can appreciate that the couple's religious record may be of great significance, when the issue to be determined is whether or not the couple in fact intended that their marriage bond be in accordance with prescribed Torah law—as Rabbi Feinstein contends. However, argues Rabbi Henkin, the couple's level of observance is obviously of less importance when that which is required is only *kavanah le'ishut*. After all, where the man and woman clearly exhibit an intention that their relationship be one of exclusive "husband-wife-ness," then their own, personal religiosity can in no way affect that bond of *ishut*. Religious observance and sexual conduct can admittedly be decisive when there is some doubt about the original intention for *ishut*; many such cases are to be found in the Talmudic and in the post-Talmudic halakhic literature.¹²⁶ However, where *kavanah* for *ishut* is unequivocally manifest—as in our case of a Reform marriage—then the couple's personal religious commitment becomes almost irrelevant. Only an actual bill of divorcement can sever those marital ties.¹²⁷

One additional observation. A fair reading of the writings of Rabbi Henkin ought to preclude anyone from concluding that he was not as sensitive to the needs and cries of the *agunah* as his revered colleagues. As a matter of fact, he personally made a valiant attempt to have a world conference called on the subject with the rabbinic leaders of his day, before whom he was already prepared to submit an earnest, worked-out proposal for their study and consideration. Until then, he preferred to hold his ground because he saw no other way out, *al pi din*.¹²⁸ Moreover, he honestly felt that any proffered remedy would be more destructive religiously than constructive. The problem of *agunot* had so gotten out of hand that, in the hope of liberation, many upstanding women would deliberately suborn or perjure themselves by pleading that their wedding was a Reform one. There was also an even greater danger. Potentially, lenient halakhic verdicts might, in such chaotic times, lend unwitting encouragement to individuals not to marry *kedat Moshe veYisrael* in order to obviate a more grievous burden in the event of some tragic future abandonment. The best strategy, under the circumstances, seemed to be the tested

course of the tradition whose foundations were essentially strong.¹²⁹ Otherwise, one would be mending the fences for the *perutsot* (the wanton ones) at the dire expense of the *tsenu'ot* (the modest ones).¹³⁰

V. CASE-BY-CASE DETERMINATION

The third division, consisting of a majority of the decisors dealing with our theme, defies facile definition as a coherent school of thought. They can be identified neither with the school best represented by Rabbi Feinstein who presumes¹³¹ that a Reform ceremony is *ab initio* adjudged as invalid¹³² unless proved otherwise, nor with that of Rabbi Henkin who maintains the opposing position granting a Reform ceremony validity as *ishut*. Instead, they all start from the premise that each case must be reviewed anew, and in its own terms, by means of a careful evaluation of the central *ma'aseh kiddushin*. Only by establishing whether these binding building blocks have been set in their proper place can one determine the final, judicial verdict. The absence of such data leaves that case in a state of *safek*, whose doubtfulness can be eliminated only by a *get misafek*, even in the face of *iggun*, since what is at stake is a grave matter of *eshet ish*.¹³³

What are the factors taken into consideration by the various *posekim* in their respective decisions? It seems obvious that of all the necessary elements, the primary one to be adduced for the above objective is *edim*. It alone can serve as a basic resource for the kind of information the Bet Din might need in its deliberations and investigations, and, more significantly, for the establishment of the constitutive factor of *edei kiyyum*—indispensable by Jewish law for both *kiddushin* and *gittin*. No wonder, then, that the preponderance of legal discussion revolves around this issue.

In that context, the question is raised a number of times whether, apart from blood relatives who are automatically and universally ineligible as witnesses for marriage,¹³⁵ a transgressor of Jewish law and tradition¹³⁵ can actually be disqualified for *edut erusin*, absent certain additional conditions. Some authorities,¹³⁶ for example, assert that a transgressor is disqualified only when the witness is himself legitimately *hashud* (suspected) of violating the same standard about which he is testifying.¹³⁷ Other *posekim* ponder whether a forewarning of the transgressor that his action constitutes a violation of the law is required.¹³⁸ A third group suggests that he may have to be informed in advance that his violation would disqualify his testimony.¹³⁹ Moreover, the Halakhah may demand that a witness be invalidated only after formal testimony and charges have been lodged before a Bet Din against him, and in his presence, by two other competent

witnesses.¹⁴⁰ Similarly, if a Sabbath desecrator is involved, we may need to make sure that he had been aware it was the Sabbath and equally appreciative of its significance as a hallowed day upon which his particular act is prohibited.¹⁴¹

Yet despite these misgivings, the overwhelming consensus is that the Reform are excepted from these precautionary guidelines.¹⁴² They fall into the special, legal category of the *mumar*, the heretical one, who in matters of cardinal Jewish beliefs and practices has departed radically from the paths of Torah. Consequently, as a *muhzak umefursam*,¹⁴³ he can be legally presumed a defiant violator of Jewish law and, therefore, be declared invalid as a Jewish witness.¹⁴⁴ In particular, a Reform ceremony in which the Reform rabbi participates as a formal witness can be readily declared null and void as a *kiddushin beli edim*—a wedding without the requisite two “kosher” witnesses.¹⁴⁵

One question does continue to vex the scholars on this issue. Need one be concerned about the possibility that the passage of intervening years, from the marriage ceremony until the case was actually brought to the attention of the Bet Din for its adjudication, may have obscured the presence of some qualified Jewish witnesses who were in attendance at the wedding? Might the Bet Din not then be compelled, because of this reasonable *safek*, to call for at least a *get misafek*?

This problem might have special relevancy if the only testimony available regarding the *erusin* or witnesses participatory in its certification came from the plaintiff-wife or other blood-relatives. For then the second problem halakhically is whether we can even accept and build upon information provided by those normally not valid as witnesses for *kiddushin*.¹⁴⁶

Dealing with the latter problem first, one will find a sharp division among the decisors. One position assumes that unqualified witnesses had most likely been selected by the Reform rabbi for the very reason that such a ceremony is undeniably guided and structured by him in his official role. Consequently, his own proclivity for radical religious tenets and practices would presume an indifference to any rigorous requirement for only “kosher” witnesses. In short, where there is an unreliable *mesadder kiddushin*, one can accept the testimony of these otherwise unacceptable witnesses,¹⁴⁷ since their testimony is only confirming the prior legal presumption.

The second position professes great hesitancy¹⁴⁸ and even refusal to act on the testimony of such invalid witnesses.¹⁴⁹ They might, however, relent if the case also involved an extreme act of halakhic deviation, whose occurrence might justify a conclusion that the use of defective witnesses was also a reasonable possibility.¹⁵⁰

Returning to the former problem, namely whether or not two valid Jewish witnesses might actually have been present at the Reform

wedding and have seen the ceremony, including the *netinah*, we will first have to engage a number of ancillary issues. The basic one involves the halakhic principle of “*nimtsa ehad mehen karov o pasul, edutan betelah*—should one of the witnesses be found to be a blood relative or otherwise disqualifiable, then the entire set of witnesses are deemed invalid.”¹⁵¹ This principle becomes immediately relevant because at the marriage there were undoubtedly present, along with the putative legitimate witnesses, close members of the family as well as invited friends who had observed the ceremony yet were definitely ineligible to serve as Jewish witnesses. How would this aforementioned principle affect them? Would Jewish law regard them as a single group of possible witnesses and based on this principle disqualify all of them? In that event, the *kiddushin* would be invalid, since legally there were no witnesses. Or would the valid witnesses still retain their distinctive integrity and validate the marriage, thus making a *get* mandatory, or in our speculative framework, at least a *get misafek*?

Two lines of thought are examined by the *posekim*, each of which can lead to alternative decisions on the need or non-need of a Jewish divorce to terminate a Reform marriage. The first of these confronts the debate among both the *rishonim* and *aharonim* whether, for various halakhic reasons, the principle of *nimtsa* applies, in essence, only to the judicial proceedings of the rabbinical tribunal and not, say, to the constitutive aspect of marriage or divorce.¹⁵² If the principle does extend to witnesses at a wedding, then its power would invalidate even the “kosher” *edim*, thus invalidating the *kiddushin*. If, on the other hand, the private wedding is exempted, then the *kiddushin* can be validated by the *edim kesherim* that may have been present, and, as pointed out a *get*, at least *mehumrah*, would be obligatory.¹⁵³

A second option stems from a unique and daring ruling by Rabbi Moses Sofer¹⁵⁴ that the observant Jews at a traditional wedding can be collectively considered as the acceptable witnesses of the *kiddushin* even though they may not have actually seen the implementation of all the elements. In addition, in such a framework, the presence of non-traditional observers cannot by means of “*nimtsa . . .*” nullify the validity of the “kosher” witnesses. This stance is predicated on a presumption,¹⁵⁵ taken *ex-officio* by the court¹⁵⁶ and shared by all present at the wedding, that a ceremony conducted under the guidance of an authoritative *mesadder kiddushin* would most likely be carried out *kedat ukedin*, in complete accord with Jewish law. The presumption replaces the need for formal evidence. Moreover, in this instance of *anan sahadei*, the legitimate *edim* transcend the potentially negative effects of the participation of the “non-kosher” witnesses and retain their own autonomy. In fact, the implicit wishes of the bride and groom can rightfully be assumed to be for the selection of the former,

who alone can legitimate the union they desire, and not for the latter who cannot, thus constituting a kind of implied designation as the selected *edim* for the occasion.

Hatam Sofer's views, however, are not unanimously accepted. Several scholars readily refer to eminent authorities to refute the position on principle.¹⁵⁷ Other *posekim* consider subscribing to it only when a bona fide *mesadder kiddushin* is in charge. Then the legal presumption of *anan sahadei* would be buttressed by the prior knowledge that the rabbi had assuredly exercised strict caution in complying with the Halakhah. With a Reform rabbi, all that one can take for granted is that a marriage took place, but not that it had the quality of *kiddushei Torah*, for the demands of tradition could readily have been violated.¹⁵⁸ Indeed, in such a setting, an opposite *anan sahadei* seems more reasonable, namely, that the Reform rabbi had hardly observed the key elements, if at all.¹⁵⁹ Yet, there are decisors who inquire whether the principle of *anan sahadei* can still not be universalized to cover even a Reform ceremony. After all, it is possible that the Reform rabbi had incidentally performed the ceremony *kadin*, with the full cognizance of valid *edim*. In that case would not a *get misafek* be required?¹⁶⁰

One more major question remains.¹⁶¹ What is the halakhic status of "*daru yahad*," namely, if the couple, after their nuptial union by a Reform rabbi, had lived together publicly for a substantial time as husband and wife? Would that situation constitute a new personal status of marriage?¹⁶²

As was clarified above at some length, the two most relevant considerations were, first, whether we could apply the legal presumption that "*ein adam oseh be'ilato be'ilat zenut*—a person will not perform an act of coition merely for wanton indulgence," and second, whether the couple had deliberately contemplated and intended their cohabitation after the ceremony as a new act of *kiddushin*. The *posekim*¹⁶⁴—with rare exception¹⁶⁵—concur with the conclusion of Rabbi Feinstein and his colleagues¹⁶⁶ that *daru yahad*, in our context, creates no new marital status. They argue that the "coition" presumption is not tenable in modern times, nor in relation to a Reform wedding.¹⁶⁷ Similarly, they claim that it is unreasonable to draw any conclusions regarding a new *kiddushin* since the couple presumes to be acting on the religious validity of the original *kiddushin*.¹⁶⁸ Consequently, there is no basis for a *get*.¹⁶⁹

One might briefly summarize this section as follows: if the investigation by the Bet Din establishes with some measure of certitude that no "kosher" witnesses were in attendance at the Reform wedding, then the consensus would in all likelihood be that no *get* is necessary. However, if there are some indications that proper *edim* were

present,¹⁷⁰ then while some scholars would still not require a *get* in the face of *iggun*,¹⁷¹ other decisors might, *mehumra* or *misafek*, call for a Jewish writ of divorce.¹⁷²

VI. THE REFORM PERCEPTION OF THE ORTHODOX ATTITUDE TO REFORM MARRIAGE

The reader might be curious to ascertain the attitude of Reform scholars to the expressed views of Orthodox *posekim* on the status of Reform marriages.¹⁷³ The most reliable resource for this is undoubtedly the writings of Dr. Solomon B. Freehof, who for several decades has served as the halakhic mentor of the Reform movement¹⁷⁴ in its gropings for a possible, indigenous accommodation to the legal tradition of Jewish law.

The first responsum written by Dr. Freehof on this topic bears the polemical title, "Orthodox Aspersions Against Reform Marriages."¹⁷⁵ It came in response to a communication from a colleague in England who complained about the attacks, stemming from some Orthodox authorities, against marriages conducted by Reform rabbis and the threatening intimations regarding their validity. Dr. Freehof's avowed purpose was, as stated at the outset, to probe the question: "Is such a declaration of invalidity justified by the Halakhah itself?"

After reviewing the distinction between the "required" and the "indispensable" facets of Orthodox marriages, he settles for what he denominates as the "majority of opinion"¹⁷⁶—a position which is attributed to a number of scholars of the past and is most recently exemplified by Rabbi Henkin.¹⁷⁷ Fundamentally, it is that "if a man takes a woman for the purpose of marriage and they just live together (under that intention) this is an absolutely valid marriage. Their physical relationship (known in the Jewish neighborhood)¹⁷⁸ makes the marriage as valid as if there were all the necessary witnesses." Accordingly, even if the Reform or Liberal ceremonies lack the prerequisites which Orthodox law considers necessary, "kosher witnesses . . . a properly written ketubah and so forth, nevertheless none of these defects can possibly invalidate the marriage, for the couple live together as man and wife in the knowledge of the community. . . . In that case the wedding ceremony may be objected to by the Orthodox, but the marriage itself is absolutely valid according to Orthodox law."¹⁷⁹ Dr. Freehof concludes: "This being the case, any Orthodox official who casts doubt on the validity of such a marriage is not only callous to human considerations, but ignores the main development and tendency of Orthodox law."¹⁸⁰

In a second responsum,¹⁸¹ however, which deals with a Russian civil marriage where the wife has been abandoned as an *agunah* and

wants to remarry, Dr. Freehof draws on the judgment of Rabbi Moses Feinstein¹⁸² that a marriage solemnized by a Reform rabbi can be declared invalid, and a *get* may become dispensable.¹⁸³ Dr. Freehof extrapolates *a fortiori*: If Rabbi Feinstein “declared a Reform marriage conducted with all solemnity as invalid in order to perform the mitzvah of freeing an *agunah*, how much the more may we do so in regard to a Russian civil marriage.”¹⁸⁴

What has Dr. Freehof done? If the decisions he quotes are to be appropriated as the authoritative ones, then two serious results must follow. First, a Reform marriage, when consummated by cohabitation as indicated, cannot be terminated except by death or divorce, even when an *agunah* is involved.¹⁸⁵ This is made explicit by Rabbi Henkin not only by his own acknowledgment of the gravity of his ruling, that in all integrity he cannot abandon, but also in his proposal of a new halakhic instrument by means of which he had hoped to ameliorate the whole *agunah* problem.¹⁸⁶ Second, when these same principles are applied to the Russian civil marriage,¹⁸⁷ then—apart from the other major factors impinging on this particular case—they would also compel a *get*, since the living together as husband and wife, as prescribed, would again serve as a consummation of the union. Rabbi Henkin would unquestionably be a *mahmir*. On the other hand, if we rely on the views of Rabbi Feinstein, the *agunah* could be liberated from the civil ceremony¹⁸⁸ marriage, since, in his opinion, it does not constitute *kiddushei Torah*. Nor would cohabitation be effective. If so, the same halakhic thinking would also apply to a Reform marriage and lead to its outright invalidation.

To enjoy the best of two halakhic worlds, when they stand in clear inconsistency, creates a process of selectivity and flexibility which renders Jewish law invertebrate.¹⁸⁹ It is the harsh dilemma of the authentic *homo religiosus* to find at times that the revealed imperative of the Divine Will appears to stand against the moral and spiritual imperative of the human perception and will, producing the agonizing yet challenging burden of command and demand so frequently imposed upon the Torah decisor. That inherent tension must be confronted, to be hopefully and legitimately resolved; we dare not, however, arbitrarily dissolve it.

VII. EPILOGUE

Even a cursory recapitulation of the views of the scholars referred to in this article will leave the reader with an unequivocal impression that the halakhic gap between the religious leadership of the Orthodox community and of the Reform has become chasmal. There seems to be little confidence by the former that, in the essential areas of Jewish

belief and observance, the Reform Rabbinate in general has demonstrated any significant intention of drawing its constituency closer to the tenets and traditions of normative Jewish law.

This lack of confidence has some of its deepest roots in the ongoing and seemingly undiminishing trend among large segments of the Reform adherents to engage in and countenance mixed marriages and, more strikingly, of Reform rabbis to officiate at them. Causing equal frustration is the persistent practice by Reform to conduct conversions *shelo kahalakhah*, without compliance with the prescribed dictums of tradition.¹⁹⁰ What is potentially even more divisive is the recent adoption, by a majority vote of those participating in the 1983 Annual Meeting of the Central Conference of American Rabbis, of a resolution to recognize the validity of the principle of patrilineal descent. In effect, this radical defiance of several millenia of Jewish law declares, by a “mere” act of redefinition, that any marriage between Jew and Gentile can be a bona fide basis for a Jewish family.

The gravity of these decisions dare not be underestimated. The Jewish family has always constituted the cornerstone and touchstone of Jewish continuity since it serves as the key transmission-belt of Israel’s sacred heritage. Consequently, even beyond the bludgeoning blows of religious heresy or dissent, a move to breach the authenticity, integrity and sanctity of the family has always been adjudged a life-and-death threat to the uniqueness and unified character of Judaism and the Jewish people. Moreover, such peril-laden acts can only confirm the positions of the authorities cited in this paper that the marriage ceremony of a Reform rabbi must necessarily be subject to special halakhic scrutiny and stricture.

Yet, one cannot overlook the alternative signals, that the Reform community has, in more recent years, been undergoing a positive change. In the words of Dr. Freehof,¹⁹¹ “Today, there is greater interest than in the past in the Halakha and therefore a greater desire to conform to it as much as possible.” If so, that trend can be strengthened by taking heed of the counsel of Professor Jakob J. Petuchowski of Hebrew Union College, contained in an ordination message addressed to younger colleagues-to-be: “As Reform rabbis, we also find it very easy to be swayed by momentary impulses, to disregard the accumulated wisdom of the past. And sometimes our kind of problem-solving may indeed bring relief to people for whom we care, and yet create unspeakable heartaches for generations still unborn, and further unbridgeable rifts within the faith community of Israel.”¹⁹² The pertinence of this caveat rings out with extraordinary relevancy and poignancy.

NOTES

1. *Rabbi's Manual* (Philadelphia, Penna.: Central Conference of American Rabbis, 1961), p. 137. The requirement of *get* for dissolution of a marriage was abolished by Reform Judaism in a resolution adopted at the Philadelphia Conference of 1869. For additional information and sources see: J. David Bleich, "Jewish Divorce: Judicial Misconceptions and Possible Means of Civil Enforcement" *Connecticut Law Review*, 16 (1984), 201 at 232, n. 96.
2. Rabbi Moses Feinstein, *Responsa Iggerot Moshe* (henceforth *Iggerot*), *Even Ha'ezer* (henceforth *E.H.*), I, sec. 115: "*Velakhen benitgarsha be'arkaot she'eina kelum muteret leba'aloh belo kiddushin aherim.*" See also, *inter alia*: *ibid.*, sec. 53, III, sec. 50 and *Yoreh De'ah*, II sec. 44; Rabbi Isaac Halevy Herzog, *Responsa Hekhal Yitshak*, *E.H.*, II sec. 32, no. 1 (end); Rabbi Yechiel Ya'akov Weinberg, *Responsa Seridei Esh*, II, secs. 29, 124, 134.
3. For an excellent summary of the American case-law on the subject see: Bernard J. Meislin, "Pursuit of the Wife's Right to a 'Get' in United States and Canadian Courts," *The Jewish Law Annual*, 4 (1981), 250–271. On February 15, 1983, the New York State Court of Appeals ruled—by a mere four-to-three majority—that there was no Constitutional barrier to the enforcement of an antenuptial agreement requiring each party to appear before a certain rabbinical tribunal, should the other so opt, so that a Jewish divorce could be considered; see *Avitzur v. Avitzur*, 58 N.Y. 2d 108, 446 N.E. 2d 136, 459 N.Y.S. 2d 572. The United States Supreme Court has declined to review this decision —U.S.—, 104 S. Ct. 76 (1983). Furthermore, a new law went into effect in New York State on August 10, 1983, which provides that a party seeking an annulment or divorce (or both parties where a divorce is uncontested) must submit a sworn statement to the Court that he or she has taken all steps in his or her power to remove all barriers to the other party's remarriage. Such an affidavit, which covers religious restrictions as well as others, is required *only* where the marriage which is to be ended by an order of annulment or divorce was originally solemnized by a religious ceremony. The court which is asked to issue the annulment or divorce is given no authority to investigate the truth or falsity of the sworn declaration, but that declaration, if knowingly false, is criminally punishable as any other false affidavit would be. The constitutionality of this law is the subject of much debate and awaits determination by the courts. In any event, this statute will only alleviate the *agunah* situation in those cases where the husband is the one seeking the secular annulment or divorce. Should, however, the wife initiate the dissolution proceedings, the above legislation will be of little help; the husband can still refuse with impunity to grant a *get*. Unfortunately, it is the latter pattern which is the more common. Moreover, in light of the Reform rabbinate's recognition of a civil order of dissolution of marriage as sufficient for divorce, with no *get* required, the husband of a couple married by a Reform rabbi can, under the formulation of this law, declare in good faith that all barriers to remarriage have been removed—this despite the wife's desire for a *get*.
4. In the recent past, the refusal of the wife to participate in the Jewish divorce proceedings, even after obtaining a civil decree, has also begun to be a familiar phenomenon in contemporary responsa. See: *Iggerot*, *E.H.*, I, sec. 115, and II, sec. 2; Rabbi Yitshak Isaac Liebes, *Responsa Bet Avi*, II, sec. 133.
5. Henceforth, all references to Reform marriages will denote a ceremony in which a Reform rabbi has served as the officiant, operating, of course, according to Reform doctrines and practices.
6. *M. Ket.* 5:2.
- 6a. See Rabbi Jehiel Michael Epstein, *Arukh Hashulhan*, *E.H.* 55:13–14.
7. See at length: Ze'ev W. Falk, *Jewish Matrimonial Law in the Middle Ages* (London: Oxford University Press, 1966), pp. 35–85.
8. See Maimonides, *Hilkhot Ishut* 1:1; *Sefer HaHinnukh*, Commandment 552 (ed. Chavel, Commandment 539, p. 660); Joseph Elijah Henkin, *Perushei Ivra*, sec. 4, no. 17. See also: *Arukh Hashulhan*, *E.H.* 55:10.

9. See: *Arukh Hashulhan*, E.H. 26:2.
10. Maimonides, *Hilkhot Ishut* 1:3; Rabbi Joseph Karo, *Shulhan Arukh*, (henceforth *Sh. Ar.*), E.H. 26:3.
11. The right to sexual relations was traditionally deferred by the Sages until after the *huppah*. See: *Kallah* 1:1 (ed. Higger, p. 123); *Kallah Rabbati* 1:1 (ed. Higger, p. 169); *Sh. Ar.* and *Rema*, E.H. 55:1. See also: Rabbi Judah Loew of Prague, *Tiferet Yisrael*, chap. 40. Most financial rights and obligations arising out of the matrimonial relationship were also deferred until that time. See: *Sh. Ar.*, E.H. 55:4–6, 56:3, 61:1 and commentaries, *ad loc.*, for details.
12. For the purpose of our theme, “Reform Marriages, etc.,” we are limiting ourselves primarily to the position of Rabbi Joseph Elijah Henkin who introduced this view into the topic. See his *Perushei Ivra*, sec. 4, nos. 1, 5. For the significance of marital *kavanah* beyond our immediate question see: Getsel Ellinson, *Nissu'in Shelo Kedat Moshe VeYisrael (Non-Halachic Marriage)* (Tel-Aviv: Dvir Publishing House, 1975), pp. 129–153.
13. *Ibid.* See also: Tosafot, *Kidd.* 2b, s.v. *De'asar*. In the 11th Century, Rabbi Gershom ben Judah enacted a ban on all polygamous marriages in the Ashkenazi community. See: *Sh. Ar.*, E.H., 1:10 and *Otsar Haposekim*, *ad loc.*; Benzion Schereschewsky, *Dinei Mishpahah (Family Law)* (Jerusalem: Rubin Mass, 1974), pp. 66–80. For the historical background to the ban see: Falk, *supra* (note 7), pp. 1–34. As to the precise language of the ban as well as to its impact outside the Ashkenazi community, see most recently: Shlomoh Zalman Havlin, “The Takkanot of Rabbenu Gershom Ma’or Hagola in Family Law in Spain and Provence (in the Light of Manuscripts of Responsa of RASHBA and R. Isaac de-Molina), *Shenaton Ha-Mishpat Ha-Ivri*, 2, (1975), 200–257, and the sources cited therein. In 1950, the Chief Rabbinate of Israel enacted a prohibition for any Jew in Israel to marry a second spouse while still married to the first, regardless of his original community. The text of the enactment can be found in Schereschewsky, *ibid.*, pp. 568–569.
14. *Iggerot*, E.H., I, secs. 74, 76, 77, II, sec. 19 and III, secs. 6, 23, 25. Within the context of this issue, Rabbi Feinstein was the first to utilize this definition of *kiddushei Torah*. Cf. *supra*, n. 12.
15. *Ibid.*
16. *Ibid.*, I, sec. 74, 76.
17. *Ibid.*, I, secs. 74–77 and III, secs. 23, 25.
18. *Ibid.*, I, sec. 77 and III, sec. 23. See also the responsum of Rabbi Feinstein to Rabbi Sholom Rivkin published in Rabbi Gedalia Felder’s *Nahalat Tsvi*, II, 240. Note that in *Iggerot*, E.H. II, sec. 19, Rabbi Feinstein even suggests an inverse equation to the effect that: “those who would irresponsibly and deliberately disdain to ‘sanctify’ the *kiddushin* in accordance with Torah law leave little doubt whether they had a *kavanah*.”
19. See: Maimonides, *Hilkhot Ishut* 1:1.
20. See: Rabbi Yehezkel Abramsky, *Dinei Mammonot* (B’nei Brak: Netsah, 2nd ed., 1969), pp. 9–11; Shalom Albeck, *Dinei Hamamonot Batalmud* (Tel-Aviv: D’vir Co., 1976), pp. 119, 134.
21. Maimonides, *Hilkhot Ishut* 3:1; *Sh. Ar.*, E.H. 27:3.
22. *Kidd.*, 5b–6a.
23. Maimonides, *supra* (note 21); *Sh. Ar.*, *supra* (note 21) 27:1 ff.
24. *Ba’er Heitev*, E.H. 27:3; *Arukh Hashulhan*, E.H. 27:1. It might be added at this point, that an earnest conversation by the couple on their mutual, matrimonial intention, if held close to the act of *kiddushin* (with all of its accoutrements), might, in precise circumstances, be legally considered as an accepted substitute for the formal *amirah*. See: *Kidd.* 6a, Maimonides, *ibid.*, 3:8; *Sh. Ar.*, *ibid.*, 27:1.
25. *Kidd.* 5b. *Sh. Ar.*, E.H. 27:1, 7. Cf. *Kidd.* 7a, *Sh. Ar.*, E.H. 27:9.
26. The woman, as well, must actively and intentionally perform a *kinyan*. See: Rabbi Simeon Judah Shkop, *Sha’arei Yoshier*, Gate 7, chap. 12 and *Hiddushei Rabbi Shimon Yehudah Hakohen*, *Kidd.*, sec. 1; Rabbi Elijah Baruch Kamai, “*Bedivrei Da’at Ha’ishah Bekinyanim U’bedin Kavanat Kinyan*,” *Sefer Hazikkaron Lemaran Rabbi Hayyim Shmuelovitch Zt”l*, ed. Rabbi Joseph Buxbaum (Jerusalem: Moriah, 1980), pp. 380–385. See also: Rabbi Shmuel Halevy Wosner, *Responsa Shevet Halevy*, IV, E.H., sec. 170, nos. 8–10.

27. *M. Kidd.* 1:1; *Sh. Ar.*, *E.H.* 27:1. This mode is known in Rabbinic literature as *kinyan kesef*. See *infra* note 34.
28. *Rema*, *E.H.* 27:1 and *Otsar Haposekim*, *ad. loc.*, no. 8.1.
29. *Arukh Hashulhan*, *E.H.* 27:4; *Otsar Haposekim*, *ibid.*, no. 8.3.
30. *Arukh Hashulhan*, *ibid.*; *Otsar Haposekim*, *ibid.*, no. 8.2.
31. *Sh. Ar.*, *E.H.* 27:1 and *Otsar Haposekim*, *ad. loc.* no. 4.1.
32. It is important to stress that while a mode of acquisition—a *kinyan*—is utilized to articulate and inculcate the couple's *gemirut* and *semikhut da'at* regarding the mutual marital obligations, there is no acquisition by the man of the woman's person. See at length: Rabbi Koppel Kahane, *Theory of Marriage in Jewish Law* (Leiden: Brill, 1966), esp. pp. 28 ff., and *Birkat Kohen* (Jerusalem: Mossad Harav Kook, 1972), pp. 101–123 and the sources cited in these works; Albeck, *supra* (note 20), pp. 392–397. As to the usage of *kinyan* in other non-acquisition contracts, i.e. contracts creating *in personam* obligations only, see: Sinai Deutsch, "Mental Consensus ('Gmirat Da'at') and Intention to Create Legal Relations in Jewish, English and Israeli Contract Law," *Shenaton Ha-Mishpat Ha-Ivri*, 6–7 (1979–1980), 71 at 88–90. This point was misunderstood by Judith R. Wegner in her recent article, "The Status of Women in Jewish and Islamic Marriage and Divorce Law," *Harvard Women's Law Journal*, 5 (1982), 1–33.
33. See: Rabbi Isaac Herzog, *The Law of Obligations*, Vol. II of *The Main Institutions of Jewish Law* (London–New York: The Soncino Press Limited, 1967), p. 107.
34. The couple must not only intend to perform a *kinyan* but also recognize the *kinyan* as an act of matrimony. Furthermore, this matrimonial intention must be clearly manifested through speech or action. See: Rabbi Baruch Dov Leibowitz, *Birkat Shemuel, Kidd.*, sec. 1, no. 1 and sec. 2, in the name of his teacher Rabbi Hayyim Soloveichik.
35. An identically valid *kinyan* can, theoretically—and on rare occasions also practically—be effectuated either by means of a *shtar* (a formal marriage document) or by means of *bi'ah* (an act of marital coitus), each of them respectively accompanied by an appropriate *amirah*. Historically, however, the former fell into complete desuetude, and the latter was strongly opposed on moral grounds by the Sages as far back as Talmudic days (*Yeb.* 52a; *Kidd.* 12b). See: *Sh. Ar.*, *E.H.*, 26:4, 32:1–2 and 33:1. Ellinson, *supra* (note 12), pp. 99–114 and Schereschewsky, *supra* (note 13), pp. 31–110 are recommended for supplementary source reading.
36. See: *Kidd.* 2b; *B.B.* 48b; *Sh. Ar.*, *E.H.* 42:1 and commentaries *ad loc.*
37. In all these matters, the bride communicates her consensual accord by her free-willed although wordless acceptance of the ring. See: *Rema*, *E.H.*, 42:1 and *Otsar Haposekim*, *ad loc.* no. 13:1; *Sha'arei Yosher*, *supra* (note 26), s.v. *Vehinneh al kol*. See also: *Sh. Ar.* and *Rema*, *E.H.*, 28:4–5 and *Otsar Haposekim*, *ad loc.*
38. *Kidd.* 65a–b; *Sh. Ar.*, 42:2.
39. *Sanh.* 26b; *Sh. Ar.*, 42:5.
40. *Kidd.* 65b: Rabbi Moses Sofer, *Responsa Hatam Sofer*, *E.H.*, I, sec. 100; *Sha'arei Yosher*, *supra* (note 26), s.v. *Vehinneh al kol*. *Edei re'ayah* are also referred to in the rabbinic literature as *edei birrur*.
41. Occasionally called *edei pe'ulah*. While the distinction between *edei re'ayah* and *edei kiyyum* has its roots, of course, in the Talmud (see: *Kidd.* 65a–b) and the *rishonim* (see for example: *Tosafot*, *Ket.* 9a, s.v. *U'mi*; Ritva, *Kidd.* 43a), we find its clear formulation and terminology in the writings of the *aharonim*. See: *Responsa Hatam Sofer*, *ibid.*; Rabbi Hayyim Soloveichik, *Hiddushei Rabbenu Hayyim Halevi Al HaRambam, Hilkhos Yibbum VaHalitsah*, 4:16; Rabbi Joseph Rozin, *Tsafnat Pa'ane'ah, Deut.*, pp. 5–6 and in *Pirkei Mayo Letorat HaRogachovi*, ed. Moses Solomon Kasher (Jerusalem: Machon Tsafnat Pa'ane'ah, 1966), pp. 90–92; *Iggerot*, *E.H.* I, sec. 82, no. 3; Appeal 42/5728, Supreme Rabbinical Court of Israel, 7 *Piskei-Din Shel Batei Hadin Harabbani'im BeYisrael*, 175 at 178 (1968) (Rabbis Y.S. Elyashiv, B. Zolti, A. Goldschmidt). The extrapolation of the distinction and interaction between *edei re'ayah* and *edei kiyyum* from the talmudic *sugya* in *Kidd.* 65a–b, has been brilliantly assembled in the work of Rabbi Koppel Kahane, *Birkat Kohen*, *supra* (note 32) pp. 5–21. See in addition: *Perushei Ivra*, sec. 2, no. 23.
- 41a. Various explanations have been proffered by the commentators as to why *kiddushin* requires specifically *edei kiyyum*. For an interesting presentation and analysis of these

- explanations see Rabbi Nachum Souer, "*Be'inyan Edei Kiyyum Bekiddushin*," *Nahalat Shemuel*, ed. Joseph Lampert (New York: Touro College, 1978), pp. 72–79.
42. See Appeal 42/5728, *ibid.*: "For the witnesses of *Kiddushin* are *edei kiyyum* and not *edei re'ayah*. That is to say: the presence of witnesses is an integral part of the *kiddushin* and their effect, and if no legally 'kosher' witnesses are present at the *ma'aseh kiddushin*, the *kiddushin* do not take effect even if it be true that a *ma'aseh kiddushin* took place." See also: *Arukh Hashulhan*, E.H. 42:19.
 43. *Sh. Ar. and Rema*, E.H., 42:3. See *Otsar Haposekim*, *ad loc.*, no. 28. Some authorities maintain that the mere knowledge of the *edim*'s presence is insufficient; the couple must actually intend that the witnesses be present for the purpose of their *kiddushin*. See Rabbi Aryeh Leib Heller, *Avnei Millu'im*, sec. 42, nos. 6–7; Rabbi Hayyim Halberstam, *Responsa Divrei Hayyim*, II, sec. 67, Cf., however: *Iggerot*, *supra* (note 41), no. 10; *Responsa Seridei Esh*, sec. 19 (end) who disagree. See also: Rabbi Israel Joshua Trunk, *Responsa Yeshu'ot Malko*, sec. 38.
 44. Rabbi Moses Feinstein maintains that the *edei kiyyum* must witness all essential aspects of the *kiddushin* including such matters as that the ring is indeed worth a *perutah*. See: *Iggerot*, *ibid.*, nos. 3–4. Rabbi Simeon Shkop, however, is of the opinion that only the intentional and volitional aspects of the *kiddushin*—such as the *netinah*, *kabbalah*, and *amirah*—require *edei kiyyum*. See *Sha'arei Yoshel*, *supra* (note 26), s.v. *Vehinneh al kol*. Furthermore, there are even authorities who argue that the *ratson* of the woman, while of course necessary, need not require such witnesses. See *Avnei Milu'im*, sec. 27, no. 6; Rabbi Joseph Ber Soloveichik, *Responsa Bet Halevi*, III, sec. 16. Cf., however: Rabbi Hayyim Volozhiner, *Responsa Hut Hameshulash*, sec. 1, no. 2; *Sha'arei Yoshel*, *supra* (note 26); *Iggerot*, *ibid.*, no. 3, who take strong issue. This also appears to be the position of Rabbi Meir Simhah of Dvinsk, *Or Same'ah*, *Hilkhos Ishut* 9:16. Finally, certain noted scholars contend that only *kiddushin* requires such witnesses; *nissu'in* does not. See: *Arukh Hashulhan*, E.H. 55:5, 14; Rabbi Hayyim Soloveichik as cited by his grandson, Rabbi Joseph B. Soloveichik. "*Mah Dodekh Midod*," *Besod Hayahid Vehayahad (In Aloneness, In Togetherness)*, ed. Pinchas H. Peli (Jerusalem: Orot Publishers, 1976), p. 188 at 215.
 45. *Iggerot*, E.H., I, sec. 76, 77 and III, secs. 23, 25; *Nahalat Tsvi*, *supra* (note 18). See also: *Iggerot*, E.H., I, sec. 85 (end.)
 46. A leading decisor of the American Orthodox Rabbinate and Rosh Yeshiva of Yeshivat Tiferet Yerushalayim, New York City. Born: 1895. Joining him are such scholars of the caliber of Rabbi Samuel T. Stern, *Responsa Hashavit*, V., E.H., sec. 3; Rabbi Menashe Klein, *Responsa Mishneh Halakhos*, VII, sec. 214 and IX, sec. 278. See also *infra* Part V for others who concur with Rabbi Feinstein's conclusions, if not necessarily with his line of argument.
 47. *Iggerot*, E.H., III, sec. 23.
 48. *Ibid.*, I, sec. 76: "... *sheharei kol rabbai mehareformer oseh eizeh ma'aseh shebodeh milibo ve'omer shezeh kiddushin*"; *ibid.*, I, sec. 77: "... *vekhen harbeh divrei hevel she-lamdu midarkei hagoyim vegam yadu'a shekol ehad mehem mevadeh ofanim hadashim*."
 49. *Ibid.*, sec. 77 and III, sec. 25.
 50. Cf. *ibid.*, III, sec. 18 as well as E.G. Ellinson, *Eser Teshuvot Be'inyanim Shonim Shekibalti Mimaran Moshe Feinstein Shelitah* (Ramat Gan: Department of Talmud, Bar-Ilan University Publication, 1981), sec. 2, where, while vehemently prohibiting, on principle, any use of the double ring, Rabbi Feinstein draws a legal difference between its occurrence in an Orthodox wedding and a Reform one. In the former, the essential *kinyan* is performed and completed with the transmission of the first ring from groom to bride. The second ring, usually introduced at the request of the bride, is only supplementary and may, therefore be considered superfluous and, *ex post facto*, not disqualifying. In the latter, however, the double ring ceremony is by doctrine a unified form. The exchange is reciprocal and, therefore, not completed until both rings are totally transferred. And this is the very factor which is invalidating, converting the *kinyan* into a token exchange. See *infra*, note 51. For a relevant and edifying contrast with marriage procedures of "sanctification" under Roman, Early Christian and Jewish Law, see David Daube, "Historical Aspects of Informal Marriage," *Revue Internationale des Droits de l'Antiquité*, 3^{ème} Series, 25 (1978), 97 and 102.

51. *Rabbi's Manual*, *supra* (note 1), p. 30.
52. *Iggerot, E.H.*, I, sec. 77.
53. *Rabbi's Manual*, *supra* (note 2), pp. 30–33.
54. *Iggerot, E.H.*, III, sec. 25. See also and compare: Rabbi Aryeh Leib Grossnass, *Responsa Lev Aryeh*, I, sec. 31, chap. 6. Moreover, it can be noted that the standard formula of a Reform ceremony reads: “Be thou consecrated unto me as my wife (as my husband) according to the law of God and the faith of Israel” (*Rabbi's Manual supra* [note 1], pp. 27, 31). This is a marked deviation from the traditional intent to marry *kedat Moshe veYisrael*—in accordance with the Laws of “Torat Moshe” and the traditions of Israel. The substitution of the words “. . . the law of God and the faith of Israel” unequivocally reflects their repudiation of the Torah’s Divine revelation through Moses. Such a formula can obviously not constitute an *amirah* of *kiddushei Torah*.
55. *Ibid.*, sec. 23.
56. See: Maimonides, *Hilkhot Edut* 10:1–3, 11:10; *Sh. Ar.*, *Hoshen Mishpat* (henceforth *H.M.*) 34:1–2, 22. See also: *Arukh Hashulhan, H.M.* 34:5.
57. *Iggerot, E.H.* I, sec. 77 (end) and III, secs. 3, 23 (beginning). See also *Iggerot, E.H.*, I sec. 82, chap. 11, s.v. *Dehinneh baRambam* ff. Rabbi Stern, *supra* (note 46), concurs.
58. See sources cited in notes 45–46 *supra*.
59. *Iggerot, E.H.* I, sec. 77 (end) and III, sec. 23 (beginning).
60. *Ibid.*, I, sec. 77 (end) and sec. 82, chap. 11; *Eser Teshuvot, supra* (note 50). See also: *Iggerot, E.H.*, I, sec. 86.
61. *Ibid.*, I, sec. 77 (end). Note also, *Iggerot, E.H.*, I, sec. 76, the sharp distinction which Rabbi Feinstein draws, based upon the *Responsa Hatam Sofer* (sec. 100. See text in notes *infra* 154–157), and his legal presumptions of common sense (*umdana mukhahat*) and of judicial notice (*anan sahadei*), between a ceremony performed by an Orthodox or a Reform Rabbi. See as well: *Iggerot, E.H.*, III, sec. 17 (end).
62. *Ibid.*, III, sec. 23: “. . . *demah ya’asu betemple shel reformer anashim keshirim deha assur likanes lesham.*” See also: *Responsa Lev Aryeh, supra* (note 54), no. 4, s.v. *Aval*; Rabbi Isaac Jacob Weiss, *Responsa Minhat Yitshak*, II, sec. 66, no. 14.
63. *Ibid.*
64. *Gitt.* 88b; *Sh. Ar.*, *E.H.*, sec. 46.
65. See note 35 *supra*.
66. *Iggerot, E.H.*, I, sec. 77.
67. *Rema, E.H.* 46:4, second view. See at length: *Otsar Haposekim, ad loc.* no. 28.1.
68. See *Rema, ibid.*, first view.
69. For a full discussion of these various points raised by Rabbi Feinstein regarding *kol*, see: *Otsar Haposekim, ibid.*, nos. 27, 28.2–28.6, 28.9, 28.11.
70. *Iggerot, E.H.*, I, sec. 77, s.v. *Vegam* and III, sec. 33, s.v. *Venishar*.
71. *Ibid.*
72. Literally, “we are the witnesses.” See: Rabbi Asher ben Jehiel, *Responsa HaRosh* 34:1 and 81:1; Haim H. Cohn, “Evidence,” *The Principles of Jewish Law*, ed. Menachem Elon, (Jerusalem: Keter Publishing House Jerusalem Ltd., 1975), p. 599 at 603.
73. *Gitt.* 81b; *Kidd.* 65a–b; Maimonides, *Gerushin* 10:19; *Sh. Ar.*, *E.H.* 149:2.
74. *Yeb.* 107a, *Ket.* 73a, *Gitt.* 81b; Maimonides, *ibid.*; *Sh. Ar.*, *E.H.* 149:5–6.
75. *Ket.* 73b: “*Adam yode’a she’ein kiddushin tofesin bepahot mishaveh perutah, vegamar uba’al leshem kiddushin.*” See also *Ket.* 74a.
76. *Iggerot, E.H.* I, sec. 76 (end): “. . . *ada’ata dekiddushin harishonim ba’al she’einam kelum.*”
77. *Iggerot, E.H.*, I, secs. 76–77 and III, sec. 25; *Nahalat Tsvi, supra* (note 18), pp. 240–241. See also: *Iggerot, E.H.*, I, sec. 85 s.v. *U’mitsad*. Concurring see: *Responsa Hashavit, supra* (note 46); *Responsa Mishneh Halakhot*, VII, sec. 214, s.v. *Ulefi zeh* and IX, sec. 278, chap. 3. In *Iggerot, E.H.*, III, sec. 25, and *Responsa Hashavit, ibid.*, s.v. *Velo*, a vital distinction is made between a civil marriage and a Reform marriage. In the former, one might reasonably assume that all Jews are aware that there is no religious efficacy to a marriage of the *arka’ot*. There might, therefore, be some basis for presuming that the subsequent coition was for *kiddushin*. In a Reform marriage, there is none. See again: *Iggerot, E.H.*, I, sec. 77, s.v. *Vekevan*.
78. *Iggerot, E.H.*, I, secs. 76 (end)–77 and III, sec. 23; *Nahalat Tsvi, ibid.*, p. 240. See also:

Iggerot, E.H., I, sec. 75 and sec. 85, s.v. *Umitsad*. This stance finds its source in the rulings of: Rabbi Isaac ben Sheshet Perfet, *Responsa HaRivash*, sec. 6 (in the name of Rabbi Abraham ben David of Posquières—"Rabad"); Rabbi David ben Solomon Ibn Abi Zimra, *Responsa HaRadvaz*, I, sec. 351; *Sh. Ar., E.H.*, 149:56; Rema *E.H.*, 26:1. For in-depth analyses of this ruling in contemporary halakhic literature see: Rabbi Ovadiah Hadaya, *Responsa Yaskil Avdi*, IV, *E.H.*, sec. 2, comments on par. 1.1, no. 2 (end) and on par. 1.3, as well as VI, *E.H.*, sec. 105, no. 1; Rabbi Moshe Zev Kahn, *Tiferet Moshe*, Part 2, sec. 12, nos. 13–21; Rabbi Ovadiah Yosef, *Responsa Yabia Omer*, IV, *E.H.*, sec. 1, no. 2; Appeal 78/5727, Supreme Rabbinical Court of Israel, 7 *Piskei-Din Shel Batei Hadin Harabbani'im Beyisrael* 35 (1967) (Rabbis Abudi, E. Goldschmidt and Yisraeli).

79. See also: *Responsa Mishneh Halakhot, supra* (note 77).

80. *Iggerot, E.H.*, I, sec. 77, s.v. *Vegam*. See more fully: *Iggerot, E.H.*, I, sec. 74, s.v. *Vehinneh*. For differences on these issues, and others, with Rabbi Joseph E. Henkin, see the next section on the views of the latter.

80a. As for the legal impact of such a declaration upon the financial rights and obligations normally arising out of the marital relationship (e.g. maintenance, support, inheritance etc.). See: Issachar Meir Mazuz, "Civil Marriages and their Consequences," *Sheraton Ha-Mishpat Ha-Ivri*, 3–4 (1976–1977), 233 at pp. 250–270. While this article deals with civil marriages, its analysis and sources are equally correct, *mutatis mutandis*, for Reform marriages.

It should be noted that Rabbi Menashe Klein, *supra* (note 46), agrees with Rabbi Feinstein that a halakhically flawed Reform ceremony renders the marriage void under Torah law. Nonetheless, in *Responsa Mishneh Halakhot*, IX, sec. 278, chap. 2, he maintains that the marriage is still valid under the more universal Noachide Laws incumbent upon all peoples of the world. (For a concise review in English of this system of laws, see Saul Berman, "Noachide Laws," *The Principles of Jewish Law*, ed. Menachem Elon [Jerusalem: Keter Publishing House Jerusalem Ltd., 1975], pp. 708–710.) This status, however, does not require a *get* for its termination; the mere separation of the parties will suffice. See Maimonides, *Hilkhot Melakhim* 9:8 and Radvaz, *ad loc.* A similar analysis was proffered with regard to civil marriages by Rabbi Yechiel Ya'akov Weinberg, *Responsa Seridei Esh*, III, sec. 22, some thirty years earlier. Cf. *Responsa Tsafnat Pa'ane'ah* (Warsaw: 1935–1938; rpt. New York: 1954), secs. 26–27. Obviously unaware of this predecessor's responsum, Rabbi Klein makes no mention of Rabbi Weinberg.

81. *Nahalat Tsvi, supra* (note 18). See also *Responsa Mishneh Halakhot* IX, sec. 278, chap. 3, s.v. *Omnam*, and *Responsa Hashavit, supra* (note 46) (end) who encourage, *if readily possible*, a *get lehumra*—i.e., as a precautionary stringency. The former does so out of concern for those opinions which would view Reform marriages as valid under Torah law. The latter, though, is not concerned with the validity of a Reform marriage but rather with the possibility that the couple repented and, consequently, intended to effect a proper *kiddushin* through *bi'ah*. Should, however, the granting of a *get* risk casting potential aspersions on the legitimacy of the children from a second union Rabbi Feinstein insists that no *get* be considered at all. See *Iggerot, E.H.*, III, sec. 25.

82. *Iggerot, E.H.*, III, sec. 23, s.v. *Velakhen*: "*Velakhen af lekhat'hila haitah muteret lehinasei belo get:*" and sec. 25 (end): "*. . . vehakha sheyesh lahem banim leka gam ma'alah lehahmir kedai shelo yetze kol mamzerut aleihem.*" See also: *Iggerot, E.H.*, II, sec. 19 (end).

83. 1881–1973. Recognized during his lifetime as one of America's leading halakhic authorities. Rabbi Henkin's expertise in matters of Jewish family law was especially held in high regard. A brief biography by a grandson, Rabbi Judah Herzl Henkin, is found in: *Hadarom*, 50 (Nissan 5740), 108–116; *Responsa Benei Banim*, Essays, no. 5; Introd. *Kitvei Hagrya Henkin*, I, n. pag. This latter volume contains, *inter alia*, the republished (1981) "magnum opus" of Rabbi Henkin, *Perushei Ivra* (1925) (henceforth *P.I.*) as well as his collection of articles, *Lev Ivra* (1957) (henceforth *L.I.*). These writings analyze in great detail the principles upon which the stand of their author on the halakhic validity of civil marriages is predicated. (In *L.I.*, see esp. pp. 12–20.) See also: his summary letters to Rabbi Abraham A. Price, in the latter's *Mishnat Avraham*, II, sec. 24 (end) (1950); "*Al devar Nissu'ei Arka'ot,*" *Hapardes*, 31 (December 1957), 11–12 and 33 (June

- 1958), 12–13; “*Leshe’elat Nissu’in Be’arka’ot Shel Goyim*,” *Kol Torah*, 30, nos. 9–10 (1962), 3–5; “*Al Devar Erusei Arka’ot VeNissu’in Ezrahi’im (Haheter Shel “Otsar Haposekim”)*,” *Hapardes*, 41 (March 1967), 5–9. These works also provide the groundwork for his only article on Reform marriage, entitled “*Siddur Kiddushin Al Yedei ‘Rabbanim’ Reformim*” which appeared in *Hapardes*, 37, (April 1963), 5–6 (henceforth “Siddur”).
84. *L.I.*, p. 14. See also: *Kidd.* 66b; Maimonides, *Hilkhot Issurei Biah* 19:17; *Sh. Ar.*, *E.H.*, 2:2.
85. “Siddur,” p. 5.
86. *Ibid.*
87. *P.I.*, sec. 5, no. 9 (p. 106).
88. *Ibid.*
89. “Siddur,” p. 5. The reader is forewarned that Rabbi Henkin repeatedly uses this phrase as a synonym for Rabbi Feinstein’s term “*kiddushei mitsvat Torah*” which for Rabbi Feinstein is the inexpendable motif of *kavanah*. See the text in notes 14–19 *supra*.
90. *L.I.*, p. 13. See his letters in *Mishnat Avraham*, *supra* (note 83), p. 169, where he cites Rivash as the first “mekil” who needs “*kavanat mitsvah ukedushah*.” See note 126 *infra*.
91. “Siddur,” p. 5.
92. *L.I.*, p. 14: “*Ve’ishut vekiddushin hada hu.*”
93. “Siddur,” p. 5: “. . . shedavka al yedei siddur kiddushin na’aset eshet ish.”
94. *Ibid*; *L.I.*, p.15.
95. *Ibid.*
96. *L.I.*, p. 15.
97. See *Kidd.* 5b–6a.
98. E.g., “*Harei at ishti.*” See also: Rashi, *Kidd.*, 6a, s.v. *Meyuhedet* and s.v. *Ezrati, negdati*.
99. “Siddur,” p. 5; *L.I.*, p. 13. See Rema, *E.H.* 27:1, that the utilization of the phrase “*kedat Moshe veYisrael*” in the *kiddushin* formula is only a requirement “*lekhat’hila*.” Its omission, however, in no way flaws the *kiddushin* bond. See at length: Hanokh Albeck, “*Ha’erusin Ushtaroteihem*,” *Kovets Mada’i Lezekher Moshe Schorr*, ed. L. Ginzberg and A. Weiss (New York, 1944), p. 14ff. It is indeed unclear when, in fact, the phrase entered the betrothal (in contrast with the *ketubbah*) formula. See: Rabbi Mordekhai Fogelmann, “*Kedat Moshe veYisrael*,” *Sinai*, 43 (1958), 249–255, reprinted in *Responsa Bet Mordekhai*, sec. 67; Hanokh Albeck, “*Hanissu’in Beyamim Kedumim*,” *Torah Shebe’al-Peh*, 3 (1961), 9 at 13–14; Ze’ev W. Falk, *Mavo Ledinei Yisrael Biyme’i Habayit Hasheni* (Tel-Aviv: Tel-Aviv University, 1971), 11, 272.
100. See text and notes *supra*, notes 25–30.
101. “Siddur,” p. 5. See also Rabbi Price’s response to Rabbi Henkin in *Mishnat Avraham*, *supra* (note 83) at p. 170, that the Torah honored the Jewish woman at Sinai by commanding that she must be betrothed before she can be fully married with *nissu’in*. See: Maimonides, *Hilkot Ishut* 1:1 and *Guide of the Perplexed*, III, chap. 49 (beginning) (ed. Pines, p. 602); *Sefer HaHinnukh*, *supra* (note 8). Nonetheless, the bond of *ishut* can even occur when they cohabit together as husband and wife.
102. *Ibid.*
103. *Ibid.* See: *Tosafot*, *Kidd.* 6a, s.v. *Lo*.
104. “Siddur,” p. 6. It is appropriate to note that Rabbi Henkin is in full accord with Hatam Sofer’s presumption of *anan sahadei* at a public wedding, even in a case where the appointed witnesses were disqualified, as long as there were “kosher” witnesses in the assembled group. See text by notes *infra* 154–157. He disagrees, however, with Rabbi Feinstein’s interpretation, *supra* note 61, that the principle would apply only to an Orthodox wedding, and not to a non-Orthodox one. See: *P.I.* sec. 2, no. 26 and sec. 5, no. 16.
105. See text in note 47 *supra*.
106. “Siddur,” p. 6. In *L.I.*, pp. 12–13, he is even more explicit: “However, in Jewish Law, having a Rabbi officiate at the marriage service is only a directive enacted by the *aharonim* (the later scholars), based upon the text in the *Tractate of Kiddushin* 6b: ‘All who are not conversant with the nature and laws of divorce and marriage ought to have no truck with them.’ But it is not a requirement *sine qua non* for the essential validity of the ceremony.” Note that in reality, this directive finds its roots in the enactments of the *rishonim* (the “early” scholars), see: Abraham Haim Freimann, *Seder Kiddushin Venissu’in Aharei Hatimat Hatalmud Ve’ad Yameinu* (Jerusalem: Mossad Harav Kook, 1964),

pp. 35–36, 40, 45–46, 94–95. Nonetheless, where one contravened these enactments the marriage was still valid. See Freimann, *ibid.*, pp. 35, 95. For an in-depth discussion of the halakhic status of such marriage ceremonies see: *Otsar Haposekim, E.H.*, 49:3, nos. 5.6.2, 6.4; Rabbi Solomon Braun, *She'arim Metsuyanim Bahalakha*, 147:3, no. 11, *Responsa Minhat Yitshak*, VII, sec. 112 (this latter source was communicated to the editors of the *Otsar Haposekim*, and is cited in full in *Otsar Haposekim*, XI, 398–399). In 1950, the Israeli Chief Rabbinate, under the leadership of Rabbis Isaac Halevy Herzog and Ben-Zion Meir Hai Uziel, enacted a special directive which, *inter alia*, prohibited the performance of a marriage service by any person who has not received proper authorization for such by the local Chief Rabbinate. The text of the enactment can be found in Schereschewsky, *supra* (note 13), pp. 570–571. It appears quite clear from the language of this enactment as well, that even should one contravene it, the marriage is in force. That this was, indeed, the design of its drafters is evident from the correspondence which took place among the various Rabbinical authorities involved, immediately prior to their official gathering in Jerusalem on February 5–8, 1950. See: Dr. Isaac Kister, “Takkanot Harabbanut Harashit Le'Erets Yisrael Be'inyanei Ishut,” *Torah Shebe'al-Peh*, 12 (1970), 49 at 52–53. This reading was also adopted by the Israeli Supreme Court (Justice Moshe Silberg writing for the Court) in *Cohen-Buslik v. The Attorney General* (1954) 8 *Piskei Din* 4.

107. *Ibid.* Cf., however, *L.I.*, p. 100, where Rabbi Henkin is extremely critical of the Reform movement, maintaining that “Reform is not religion” and charging that “. . . the Reform fabricates and chooses for itself laws which were never conceived by its ancestors.”
108. *P.I.*, sec. 1, no. 2; *L.I.*, pp. 18, 74.
109. See text on notes 76–77 *supra*.
110. See *Iggerot, E.H.*, I, sec. 85, *s.v. Umitsad*, where Rabbi Feinstein maintains that the principle of “*ada'ata dekidushin rishonim ba'al*” would negate the legal effects of the couple's living together even according to Rabbi Henkin's view of *ishut* as *kiddushin*. See also: *Iggerot, E.H.*, III, sec. 23, *s.v. Venishar*.
111. “They cohabit in reliance upon the former marriage ceremony.” *Ket.* 73b, 74a. See note 75 *supra*.
112. *Ket.* 73a–b. See *L.I.*, p. 14.
113. “Siddur,” pp. 5–6.
114. *Ibid.*; *L.I.*, pp. 14–15.
115. See *P.I.*, sec. 3, no. 20 and Rabbi Henkin's second letter in *Mishnat Avraham, supra* (note 83) at p. 169, where he emphasizes that it is legally presumed that were one to become aware of his flawed marriage-service then he would most certainly intend that his subsequent acts of coition function so as to remedy that flaw.
116. “For, even those who are proper have no such intention in mind during coition.”
117. “Siddur,” p. 6.
118. *L.I.*, pp. 14–15.
119. “Siddur,” p. 6.
120. *Ibid.* See *P.I.*, sec. 5, no. 10.
121. See text and note *supra*, note 73.
122. See Rabbi Henkin's first letter in *Mishnat Avraham, supra* (note 83) at p. 169, where he claims that such an assumption is equal to having made an explicit declaration to that effect.
123. *L.I.*, p. 15. See: Rabbi Meir ben Jekuthiel Hakohen, *Responsa Maimoniyot, Ishut*, sec. 19; *Tosafot, Yeb.* 88a, *s.v. Ata*; Rabbi Samuel ben Uri Shraga Feivush, *Bet Shmuel, E.H.*, sec. 26, no. 1. See also: Rashi, *Ket.* 9a, *s.v. Mipnei*; *Tosafot, Yeb.* 45b, *s.v. Mi* and *Ket.* 9a *s.v. Mipnei*; *Responsa Haradvaz*, IV, sec. 92; Rema, *E.H.*, 149:1.
124. *P.I.*, sec. 5, no. 9; *L.I.*, p. 15. Both sources cite Rabbi Isaiah ben Elijah di Trani (the Younger, “Riaz”) as quoted in Rabbi Joshua Boaz ben Simon Baruch's *Shiltei Hagibborim, Kidd.*, chap. 3, sec. 659, no. 2, to the effect that where a *hazakah* of *ishut* exists one does not need *edei yihud*. Also cited is Rabbi Jacob of Karlin, *Responsa Mishkenot Yaakov, E.H.*, sec. 39. The authorities mustered by Rabbi Henkin pose no real challenge to Rabbi Feinstein's thesis. The cases discussed in those sources all evidence an intention by the couple that their cohabitation be “*leshem kiddushei mitsvat Torah*.” Not so with Reform, maintains Rabbi Feinstein; their cohabitation is at best merely an

inadequate "*leshem ishut*." See: *Iggerot, E.H.*, I, sec. 77, s.v. *Vegam keivan* ff.; text by notes 78–80 *supra*.

125. See text in notes 78–80 *supra*.

126. See *Sh. Ar., E.H.*, sec. 149. One source which, on its face, poses a serious challenge to Rabbi Henkin's argument—and upon which Rabbi Feinstein heavily relies—is a responsum by Rabbi Isaac ben Sheshet Perfet (1326, Barcelona—1407, Algeria) (*Responsa HaRivash*, sec. 6). Rivash concerns himself with the validity of the non-Jewish marriages undergone by many of the Marranos. Rivash maintains that, although intention for *ishut* was manifest in the Church wedding, it was insufficient. What is required is intention "*leshem kiddushin kedat Moshe ve Yisrael*." Furthermore, rules Rivash, their post-ceremony co-residence will not be presumed to serve as a form of marriage, because the religious observance of the Marranos, especially in the area of Family Purity, was indeed wanting.

Rabbi Henkin, however, provides us with a revolutionary interpretation of this important text. An authentic reading of the Responsa of Rivash, argues Rabbi Henkin, must take into account the tragic state of Jewish life in Spain at that period of history. While a good number of Jews were authentic Marranos attempting to observe their faith inconspicuously, many others were quite assimilated. See: *Responsa HaRivash*, sec. 6. Some assented to being married by the Church; others gradually became accustomed to a life of transgression; while still others even converted, with malice aforethought. See: *Responsa HaRivash*, secs. 4, 11. Among these latter groups of *anusim* were large numbers of cooperating and corrupted accomplices, serving as missionaries, agents, provocateurs, informers and just questionable Jews whose lineage was in doubt because of widespread intermarriage. See: *ibid*. Such individuals would hardly qualify to serve as valid witnesses to a Jewish marriage. Consequently, there was serious doubt whether there existed, in the particular community, people who could serve as valid witnesses to the Marrano couple's cohabitation.

More importantly, however, Rabbi Henkin reminds us that the cases which Rivash was called upon to adjudicate were the product of the ineluctable fate Jews faced at the time. The survivors of the Marranos' travail saw no future in that land and were intent on escaping in order to find a place of refuge for the proper observance of their religion. Everyone was conscious of this lot. Consequently, the ties between Jewish men and women were only of a temporary nature—with forethought and deliberations as such. Under these circumstances, Rivash declared their Church weddings void, for they had, as agreed, no intent to contract a permanent marriage. All had entered into only an *ad hoc* arrangement with no *kavanah* even for *ishut* and, therefore, halakhically invalid. Rivash, according to Rabbi Henkin, goes so far as to maintain that the situation described above was so pervasive that unless there was knowledge to the contrary it could be legally presumed that there was no *kavanah* for a permanent *ishut*. Consequently, Rivash required no *get* from most Marrano marriages. On the other hand, if the couple had participated in a Jewish ceremony, although an invalid one because some of the elements—like "kosher" witnesses—had not been observed, then, insists Rabbi Henkin, had they lived together as husband and wife, they too would have needed a *get*, even according to Rivash. See: "Siddur," pp. 5–6; *P.I.*, sec. 5, nos. 10–12; *L.I.*, p. 16.

Finally, it appears that Rabbi Henkin views Rivash's ruling as a type of *hora'at sha'ah*—an emergency ruling—designed to salvage the remnants from *shemad*. Accordingly, Rabbi Henkin writes: "Certainly, many of the things Rivash wrote are not in accordance with the Halakhah." See: Rabbi Henkin's first letter in the *Mishnat Avraham*, *supra* (note 83), at p. 169; Siddur, p. 6 (end).

As a result of this intriguing analysis, Rabbi Henkin argues that under no circumstances can the decree of Rivash serve as a paradigm for other types of marriages, like Reform. Many Reform Jews observe many customs and practices of Judaism and consider themselves part of the community, support institutions of Torah and do want matters of marriage and divorce conducted in accordance with Jewish Law. Consequently, their *hazakah* for *ishut* cannot be impaired, with the result that a Jewish divorce must be obtained. See: *P.I.*, sec. 5, no. 12 (end); Siddur, p. 5 (beginning).

Rabbi Feinstein considers Rabbi Henkin's reading of Rivash's responsum as revisionist, and utterly impossible to accept. See *Iggerot, E.H.*, I, sec. 5. 74, 75.

127. "Siddur," p. 6; *P.I.*, sec. 3, no. 22; *L.I.*, p. 14. One additional problem is left for Rabbi Henkin—the problem of *pillegesh* (concubine). Could not living together serve to establish only the status of concubinage rather than *ishut*? Rabbi Henkin brilliantly resolves this question by clarifying the meaning of *pillegesh* both in form and in content. *Pillegesh* and *ishut* exist at opposite poles. The status of a wife is happily publicized and publicly witnessed. The husband wants the community to be aware of her existence and their relationship. Not so with the concubine. There is no formal promulgation of the fact that they are living together. Actually they both usually try to conceal the situation; at least they do not readily supply the public with the information. See: *L.I.*, pp. 17, 19. A similar difference obtains in terms of official status. The wife has entered into a contract which bespeaks obligations alongside marital rights. Her *zekhuyot* are legal and legally guaranteed. The *pillegesh* halakhically is a *shifhah*, a presumed servant-woman, with no legal claims or guarantees. Her task is only to provide *avdut* (services). See: "Siddur," p. 5; *P.I.*, sec. 4, no. 16; *L.I.*, p. 16–17. Any conjugal obligations are subsumed and subordinated to her general obligation to provide this general service as a servant-woman. See: "Al Devar Nissu'ei Arka'ot," *Hapardes*, 33 (June 1958), at p. 13 (end). See also: Rabbi Henkin's second letter in *Mishnat Avraham*, *supra* (note 83) at p. 169. Consequently, if a man were to take a wife in a marriage, publicize that she is his wife and proclaim that she is so, with all her rights, she could not be a *pillegesh* and would require a *get*. In summary, *ishut* means one thing, and *pillegesh* another. Obviously then, a Reform marriage even by means of cohabitation contains all the ingredients of husband–wife-ness and must be legally dealt with accordingly. See: "Siddur," p. 5; *L.I.*, p. 19.
128. *P.I.*, sec. 5, no. 16.
129. See: Rabbi Henkin's second letter in *Mishnat Avraham*, *supra* (note 83), at p. 170 (end).
130. *P.I.*, sec. 5, no. 16. It is important to note that Rabbi Menashe Klein, *supra* (note 77), reports that Rabbi Henkin himself legitimized the offspring of a marriage where the mother was previously wedded through a civil ceremony and never received a *get*. In doing so, Rabbi Henkin relied on those authorities who maintain that civil marriages are Jewishly invalid, setting aside his own personal view which perceives such unions as requiring a valid bill of divorcement. Inasmuch as the premises for Rabbi Henkin's generally stringent rulings on civil and Reform marriages are similar, as noted in note 83 *supra*, Rabbi Klein seems to assume that Rabbi Henkin would have in practice likewise decided in a lenient fashion had the mother's previous marriage been a Reform one—this despite Rabbi Henkin's theoretical approach to the subject.
131. See text in notes 45–46 and 62–63 *supra*. It must be re-emphasized that this is a "rebuttable presumption," which, as Rabbi Feinstein explicitly and repeatedly insists, does not do away with the initial need for inquiry and findings. Nevertheless, the impact of this presumptive posture is to shift the burden of proof upon those who argue for the validity of the particular ceremony under question. Unless there be incontrovertible proof, say, of the presence of qualified witnesses who can also testify to a valid *netinah*, then the *kiddushin* can be disqualified and the wife permitted to marry again without any Jewish divorce. See, especially, *Iggerot, E.H.*, III, sec. 28.
132. For those who cannot on principle accept this presumption see: Rabbi Moses H. Steinberg, "Siddur Kiddushin Shel Rabbi Reformi Venissu'in Ezrahi'im," *Hadarom*, 29 (Nissan 5729), 52–59, reprinted in *Responsa Mahazeh Avraham, O.H.*, 189a–109b; Rabbi Gedalia Felder, *Nahalat Tsvi*, II, 231–239 and again in his *Tanya Rabatti*, I, 343. These authorities base themselves upon the strong statement of Rabbi Shalom Mordecai ben Moses Schwadron, *Responsa Maharsham*, II, sec. 110. See also the letter by the late Chief Rabbi Issar Judah Untermann to Rabbi Sholom Rivkin in the aforementioned *Nahalat Tsvi*, p. 242. Cf., however, *Responsa Tsits Eliezer*, XV, sec. 52 (end), where Rabbis Eliezer Waldenberg and Ovadiah Yosef were prepared to rely upon Rabbi Feinstein's presumption in a case where there was doubt whether in fact a Jewish (Reform) marriage had taken place at all.
133. See: *Responsa Maharsham, ibid.*: Rabbi Isaac Jacob Weiss, *Responsa Minhat Yitshak*, II, sec. 66 (this responsum originally appeared in Rabbi Aryeh L. Grossnass' *Responsa Lev Aryeh*, I, sec. 31 (pp. 76–79)). All citations, however, will be to the author's own volume, *Responsa Minhat Yitshak*; Rabbi Shelomo Tena, *Birkat Shelomo, E.H.*, sec. 12. For an in-depth treatment of doubt and the doubtful marriage in Jewish Law see: Pinhas

- Shifman, *Safek Kiddushin Bamishpat Hayisraeli* (Doubtful Marriage in Israeli Law) (Jerusalem: The Harry Sacher Institute for Legislative Research and Comparative Law, Hebrew University of Jerusalem Faculty of Law, 1975), pp. 13–105. See also: Rabbi Moses Zev Kahn, *Tiferet Moshe*, I, sec. 47, s.v. *Aval lulei* ff. (pp. 183–184); Hanina Ben-Menahem, “*Ta’anat Kim-Li Likrat Nituh Yurisprudenti* (Towards a Jurisprudential Analysis of the Kim-Li Argument),” *Shenaton Ha-Mishpat Ha-Ivri*, 6–7 (1979–1980), 45–60.
134. *Sh. Ar.*, *H.M.*, sec. 33. See: Rabbi Eliezer Judah Waldenberg, *Responsa Tsits Eliezer*, VIII, sec. 37, no. 1.
 135. See note 56 *supra*.
 136. Authorities cited will be those who have introduced the issue into the framework of our topic, Reform marriages.
 137. *Responsa Minhat Yitshak*, *supra* note 133, nos. 2–3; Rabbi Aryeh Leib Grossnass, *Responsa Lev Aryeh*, I, sec. 31, Addendum, no. 1: *Responsa Tsits Eliezer*, *supra* (note 134), no. 3.
 138. *Responsa Minhat Yitshak*, *ibid.*, nos. 5–6; *Birkat Shelomo*, *supra* (note 133), no. 11.
 139. *Responsa Minhat Yitshak*, *supra* (note 133), no. 4; *Responsa Lev Aryeh*, *supra* (note 137), addendum, no. 5; *Birkat Shelomo*, *ibid.*, no. 12.
 140. *Responsa Lev Aryeh*, *ibid.*, chap. 1; *Responsa Minhat Yitshak*, *ibid.*, no. 6; Rabbi Steinberg, *supra* (note 132); *Birkat Shelomo*, *ibid.*, no. 4. See also: Notes 57 and 60 *supra*.
 141. *Responsa Lev Aryeh*, *ibid.*, chap. 2 and Addendum, no. 2; *Birkat Shelomo*, *ibid.*, no. 12.
 142. The single exception is Rabbi Shelomo Tena, *Birkat Shelomo*, *ibid.*, who is still left with a *safek* (doubt). See also Rabbi Aryeh Leib Grossnass, *Responsa Lev Aryeh*, Addendum, no. 2, s.v. “*Ulefi zeh*,” who, while agreeing in theory with the majority position, expresses some hesitation about acting on this theory *lema’aseh* in a matter as grave as *eshet ish*.
 143. “One whose posture is established by confirming conduct and reputation,” i.e., an established and publicized transgressor. See text in note 57 *supra*.
 144. See note 56 *supra*. One eminent *posek* considers the Reform Community a separate religious sect comparable to the Saducees, Boethusians and Karaites. See *Responsa Minhat Yitshak*, *supra* (note 133), no. 8. See also: *Responsa Minhat Yitshak*, I, sec. 137, no. 5 and III, sec. 40.
 145. *Responsa Maharsham*, III, secs. 110–111; *Responsa Lev Aryeh*, *supra* (note 137), chaps. 1–2 and Addendum, no. 2 (see, however, note 142 *supra*); *Responsa Minhat Yitshak*, *supra* (note 133), nos. 7–8; Rabbi Haim Jacob Israel Berger, “*She’elah Be’isha Shenis’ah Etsel ‘Reform Rabbi*,” *Hapardes*, 34 (June 1960), 31 at p. 33; Rabbi Abraham Zilberberg, *Divrei Avraham*, sec. 42; *Responsa Tsits Eliezer*, *supra* (note 134), nos. 2, 10; Rabbi Steinberg, *supra* (note 132) at p. 53; *Nahalat Tsvi*, II, 233; Rabbi Untermann, *supra* (note 132) at p. 242. See also: text and notes in notes 55–58 *supra*.
 146. See note 134 *supra*.
 147. *Responsa Minhat Yitshak*, *supra* (note 133), no. 18; *Nahalat Tsvi*, II, p. 234. See also: *Iggerot*, *E.H.*, I, no. 85, s.v. *Aval* and III, no. 23 (beginning).
 148. Rabbi Steinberg, *supra* (note 132), nos. 5 and 15, would first require an additional *senif leheter* before relying on relatives.
 149. *Birkat Shelomo*, *supra* (note 133), no. 17, relying on the posture of Maharsham, *supra* (note 132).
 150. Both Rabbis Steinberg, *supra* (note 132), nos. 5 and 15, and Tena, *ibid.*, point to Maharsham, *ibid.*, who would have invalidated the testimony of the wife and blood-relatives in the case before him, except for the concomitant, brutal facts that the husband had converted and then made inordinately cruel demands upon his wife and family as a condition for joining him in his imprisoned exile.
 151. *M. Mak.* 1:8; *Sh. Ar.*, *H.M.* 36:1.
 152. For a summary of this debate see: *Sedei Hemed*, s.v. *Divrei Hakhamin*, sec. 74 (ed. Freidman, IX, 58–60); *Otsar Haposekim*, *E.H.*, sec. 42, no. 25.
 153. *Responsa Minhat Yitshak*, *supra* (note 133), no. 14; *Responsa Tsits Eliezer*, *supra* (note 134), no. 10; Rabbi Steinberg, *supra* (note 132) at p. 53; *Birkat Shelomo*, *supra* (note 133), no. 13 ff. See also: *Responsa Hashavut*, *supra* (note 46), s.v. *Vehinnech bedin*.
 154. *Responsa Hatam Sofer*, *E.H.*, I, sec. 100. Cited also in *Pit’hei Teshuvah*, *E.H.* 42, no. 11.

155. *Umdana demukhah*. See: Cohn. *supra* (note 72) at pp. 602–603.
156. *Anan sahadei*, literally “we (the court) are the witnesses,” i.e., Judicial Notice. See Cohn, *ibid.* at p. 603.
157. *Responsa Lev Aryeh*, *supra* (note 137), chap. 3; *Responsa Tsits Eliezer*, *supra* (note 134), no. 5.
158. *Ibid.* This corresponds to the view of Rabbi Feinstein, see note 61 *supra*.
159. *Responsa Maharsham*, *supra* (note 132) (p. 93); *Responsa Tsits Eliezer*, *ibid.*, no. 10. See also: *Responsa Hashavit*, *supra* (note 46), s.v. *Vehinnech bedin*.
160. *Responsa Minhat Yitshak*, *supra* (note 133), no. 12; *Birkat Shelomo*, *supra* (note 133), nos. 2–8. It is clear that the authorities cited in note 158 *supra* maintain that the principle of *anan sahadei* cannot be applied unless the facts are tenable and not in question, as explicitly stated by Rabbi Grossnass in his reply to Rabbi Weiss, *Responsa Lev Aryeh*, *supra* (note 137) Addendum, no. 2 (end). Furthermore, see *Iggerot*, E.H., I, sec. 82, chap. 3, where Rabbi Feinstein contends that there can be no *edut safek*—no dubious testimony—regarding marriage, even if one should maintain that such testimony is acceptable for *dinei mamonot*—in civil matters.
161. The issue of *kol*—the concern that a communal reputation of marriage was generated by the Reform marriage and might, therefore, demand a *get*; see text in notes 64, 66–67 *supra*.—is raised only by Rabbi Waldenberg, *Responsa Tsits Eliezer*, *supra* (note 134) no. 13. Basing himself on a number of sources, he concludes that this concern is groundless, especially since the fact that it was a Reform marriage would accompany any report. This position corresponds with that of Rabbi Feinstein. See text and notes in notes 66–69 *supra*.

Additional side issues (e.g., *yihud edim*—the effect of the actual designation of witnesses, etc.) were also raised by the various decisors in relationship to each of the preceding considerations. It appeared advisable to leave them to the interested reader’s own pursuit in the original texts.
162. See text in note 65 *supra* and note 35 *supra*.
163. See text in notes 70–75 *supra*.
164. *Responsa Lev Aryeh*, chap. 5; Rabbi Berger, *supra* (note 145), no. 5; *Divrei Avraham*, sec. 42 (pp. 85–86); *Responsa Tsits Eliezer*, *supra* (note 134), no. 12; *Nahalat Tzvi*, pp. 235–236; Rabbi Untermann, *supra* (note 132) at p. 242.
165. Rabbi Steinberg, *supra* (note 132), no. 14 hesitates to render a verdict in a case of *hayu yahad*, particularly, when a *get* might yet be negotiated. Rabbi Tena, *Birkat Shelomo*, *supra* (note 133), nos. 24 and 27, consistently maintains his stance of *safek* regarding both issues. See *infra*.
166. See notes 76–80 *supra*.
167. Rabbi Tena, *Birkat Shelomo*, *supra* (note 133) no. 24, insists that since in the eyes of the bride and groom the Reform rabbi does have a legitimate status as an officiant, this presumption certainly applies to them.
168. *Responsa Maharsham*, III, sec. 111 (p. 93); *Responsa Lev Aryeh*, chap. 5; *Responsa Minhat Yitshak*, *supra* (note 133), no. 16; Rabbi Berger, *supra* (note 145), no. 5; *Divrei Avraham*, sec. 42 (pp. 85–86); *Responsa Tsits Eliezer*, *supra* (note 134), no. 12; *Nahalat Tzvi*, pp. 235–236.
169. Rabbi Tena, *Birkat Shelomo*, *supra* (note 133), no. 27, has his doubts about this position even in the face of *iggun*. He will not consider an across-the-board ruling; there are too many *safekot*. He would, therefore, prefer to judge each case on its own facts and merits.
170. See *Responsa Lev Aryeh*, *supra* (note 137), chap. 4, s.v. *Aval*, and *Responsa Minhat Yitshak*, *supra* (note 133), no. 14, who emphasizes that the mere fact of having a reputation as an Orthodox Jew, even by virtue of membership in an Orthodox synagogue, does not *ipso facto* qualify one as a “kosher” witness.
171. *Responsa Tsits Eliezer*, *supra* (note 134), no. 14. See also: *Responsa Hashavit*, *supra* (note 46), s.v. *Vehinnech bedin*. While Rabbi Grossnass agrees in theory with these *mekilim*, he is reluctant “*mishum humra de’eshet ish*” (because of the gravity of the laws of marriage) to rule accordingly. See *Responsa Lev Aryeh*, Addendum, no. 2, s.v. *Ulefi*.
172. *Responsa Minhat Yitshak*, *supra* (note 133); *Responsa Birkat Shelomo*, *supra* (note 133). See also: *Responsa Maharsham*, *supra* (note 132) (p. 91). Cf. Rabbi Feinstein, *Iggerot*, E.H., I, sec. 23, who requires the actual demonstration not only of the presence of two

- acceptable *edim* but also that the *netinah* was observed to have been performed *kedin*. Without this evidence, it can be presumed in a Reform ceremony that both elements were not carried out in accordance with Jewish Law. See also *Responsa Lev Aryeh*, *supra* (note 137) chap. 4, s.v. *Aval*, where Rabbi Grossnass, as well, takes into consideration, *inter alia*, that perhaps the Reform ceremony was invalid since the *edim* did not witness the actual *ma'aseh kiddushin*.
173. For a Conservative view of Reform marriages see: David Novak, *Law and Theology in Judaism* (New York: Ktav Publishing House, Inc., 1974), I, 37–8.
 174. For a general assessment of Dr. Freehof's contribution, see the tribute essay by Rabbi Walter Scott in Freehof's *Reform Responsa for Our Time* (Cincinnati: Hebrew Union College Press, 1977), pp. IX–XXVII.
 175. Solomon B. Freehof, *Recent Reform Responsa* (Cincinnati: Hebrew Union College Press, 1973), II, sec. 42, pp. 194–203.
 176. *Ibid.*, p. 195 ff.
 177. See Part IV of this work for a summary of his views.
 178. In several instances, the erroneous impression might be gained that just a “public knowledge” of the marriage in the general “community” would also be adequate. See: Freehof, *Recent Reform Responsa*, *supra* (note 175), pp. 196, 198. Rabbi Henkin has taken great care to assert more than once the need for the couple to have dwelt among “Jewish residents,” obviously since only they could qualify as competent witnesses. See “Siddur,” *supra* (note 83) at p. 6.
 179. It should be stressed that Rabbi Henkin insists categorically upon the inexpensability of competent Jewish witnesses. Without them, no marriage ceremony can be valid. Consequently, even for Rabbi Henkin such a Reform marriage ceremony is invalid. For while the subsequent cohabitation together in public as husband and wife constitutes, for Rabbi Henkin, evidence as to a continuum of the previous *intention* to be married (*kavanah le'ishut*), the matrimonial *act*—and, therefore, the marriage itself—would be established for the first time only by the new and presumed *kiddushei biah*. The latter does not serve as any extension of the antecedent wedding ceremony which even Rabbi Henkin considers invalid.
 180. Freehof, *Recent Reform Responsa*, *supra* (note 175), p. 198.
 181. Freehof, *Contemporary Reform Responsa* (Cincinnati: Hebrew Union College Press, 1974), sec. 18, pp. 82–85.
 182. See *supra*, Part III.
 183. In this instance the ruling was characterized as a “bold step.” Cf. *Reform Responsa for Our Time*, *supra* (note 174), p. 192 where it was described as “so shocking a decision.”
 184. Freehof, *Contemporary Reform Responsa*, *supra* (note 181) at p. 85.
 185. *P.I.*, *supra* (note 83) p. 110.
 186. *P.I.*, pp. 111–117. This plan was later withdrawn. See: *L.I.*, p. 73.
 187. Rabbi Henkin does differentiate sharply between marriages involving Communist and non-Communist Russians. See: *L.I.*, *supra* (note 83), p. 20. Similarly, see: Rabbi Feinstein, *Iggerot, E.H.* I, sec. 74 (end). Furthermore, Rabbi Henkin distinguishes between Communists of the early, revolutionary, period and the later one. See: “Siddur,” p. 6.
 188. See: *Iggerot, E.H.*, I, secs. 74–75.
 189. See: *Erub*. 6b–7a: “Wherever a person may find two *tannaim* or two *amoraim* debating with each other as did the Academy of Shammai and the Academy of Hillel, he shall not act merely in accordance with the lenient decree of the one and the lenient decree of the other, nor like the stringent decree of the one and the stringent decree of the other, but rather he should act either in accordance with the leniency and the stringency of the one or the the leniency and the stringency of the other.”
 190. See: “*Rabbi's Manual*, *supra* (note 1), p. 116: “But in 1893, the Central Conference of American Rabbis declared that no initiatory rite was necessary.”
 191. Freehof, *Reform Responsa for Our Time*, *supra* (note 174), p. 195.
 192. Excerpt included in *The Chronicle* of the Hebrew Union College–Jewish Institute of Religion, No. 25 (July, 1983), p. 5.