**Is a *get* requiredfollowing the conclusion of non-halachic marriages?**

The issue of whether a *get* is required to dissolve a non-halachic marriage is one that has become more widespread in recent years; civil and non-halachic marriages in both Israel and abroad are now more commonplace.[[1]](#footnote-1) When a marriage that was not grounded in the halachic process breaks down, the question is raised as to whether a halachically recognised marriage existed at any point to the extent that a *get* would be needed.

Specifically, does either the marriage ceremony or the couple subsequently living together as man and wife constitute *kiddushin* that engenders the requirement for a *get*. Below we will present the *sugya* dealing with this issue, initially focusing on the couple’s cohabitation and then on the wedding ceremony itself.

**Halachic Significance of Cohabitation**

**Background**

If the initial marriage ceremony of the people in question does not bear any halachic legitimacy (we will revisit this assumption later with regards to both civil marriages and ‘Jewish’ non-halachic marriages), the first question to be asked is: what is the basis to assume a marriage in the first instance, which would lead to a necessity for a *get*?

The *Mishna* in Gittin[[2]](#footnote-2) brings a *machlokes* between Beis Hillel and Beis Shammai in the case of a divorced couple that are seen ‘lying together in an inn’; Beis Shammai hold that a second *get* is not needed whilst Beis Hillel hold that it is. The *gemara*[[3]](#footnote-3) brings two options as to the basis of this dispute. The first assumes that the pair were actually seen to have relations. The question then relates to a person’s mind-set when they cohabit – do they do so for the sake of marriage[[4]](#footnote-4) or not? Beis Hillel hold that when one cohabits, it is done with the intention of marriage and thus there is a requirement for a new get. This is the concept of ‘*chazaka ein adam oseh b’ilaso b’ilas z’nus’,* meaning that it is assumed that a couple would not cohabitate outside of the context of marriage.[[5]](#footnote-5) However, Beis Shammai hold that cohabitation does not indicate any intention for marriage.

The second explanation for the *machlokes* assumes that only *yichud* was witnessed. Do we then say that once *eidim* have seen *yichud*, we can assume that the pair have had relations (known as *hein hein eidei yichud hein hein eidei bi’ah,* testimony of *yichud* is equivalent to that of relations), or do we not assume this way? Beis Hillel hold the former, hence *eidei yichud* alone are enough to create a second marriage and therefore a second divorce is needed, whereas Beis Shammai disagree and hold that there is no new marriage. Even according to this approach, Beis Hillel assume that should relations have taken place, this is assumed to be equivalent to marriage (due to the *chazaka* mentioned in the first explanation).

**How do we *pasken*?**

Unsurprisingly, we *pasken* like Beis Hillel on both issues discussed above. We hold that there is a *chazaka ein adam oseh b’ilaso b’ilas z’nus*[[6]](#footnote-6) (hereafter ‘the *chazaka*’) and that *hein hein eidei yichud hein hein eidei biah*. [[7]](#footnote-7) Yet, in terms of the former, the extent to which we apply this *chazaka* is subject to a *machlokes*.

The Rashba[[8]](#footnote-8) explains that we only apply the *chazaka* when there is a realistic basis to assume that *kiddushin* is on the cards, enabling us to interpret the *bi’ah* accordingly. This includes a couple who have had *eirusin* or are formerly divorced and are therefore more likely to become intimate once again. However, in the case of a normal *p’nuya* where they were not discussing *kiddushin* beforehand,[[9]](#footnote-9) one can safely assume that the *biah/b’ilah* taking place is a *b’ilas* *z’nus*, and there is therefore no *chashash kiddushin* (no worry that *kiddushin* has taken place)*.*

The Rambam[[10]](#footnote-10) also states that the application of the *chazaka* is limited. He first quotes the view of the Ge’onim who state that the *chazaka* should apply to all women who have relations in a case with sufficient *eidus* that they did so. The Rambam himself states that ‘this view is very far away from the *darchei hora’ah* (correct ways of teaching) and it is not fit to rely on it’. Rather, he holds that the *chazaka* is to be applied in limited circumstances and in most cases it is safe to assume that a *b’ilah* that takes place is a *b’ilas z’nus*.[[11]](#footnote-11) (Indeed, the Rambam elsewhere[[12]](#footnote-12) states explicitly that the *chazaka* only applies to *k’sheirim.*) The Magid Mishna[[13]](#footnote-13) says that the Rambam’s view is the same as that of the Rashba. Rav Ovadiah Yosef says that this view represents the opinion of the majority of the Rishonim.[[14]](#footnote-14)

The Shulchan Aruch[[15]](#footnote-15) *paskens* like the Rambam in limiting the application of the *chazaka* and this appears to be the prevalent view. It is worth mentioning the position of R’ Ovadia Yosef[[16]](#footnote-16) who states that these days, since we do not tend to be *m’kadesh* women by means of *bi’ah* [[17]](#footnote-17) and only *talmidei chachamim* are

aware that this is indeed a way to form a marriage, there is even less basis to suggest that *bi’ah* between two average people was done for the sake of *kiddushin*.[[18]](#footnote-18)

Once we have established that there is a limited scope to the application of the *chazaka* in ‘normal’ circumstances, the fact that we pasken *hein hein eidei yichud hein hein eidei biah* is of less consequence. Testimony as to the taking place of *yichud* may, by extension, be testimony as to the taking place of *bi’ah*. However, if that *bi’ah* itself is not considered to have been undertaken for the purpose of *kiddushin*, the *eidei yichud* do not serve to attest to any marriage having been consecrated.

**Application to Civil/Non-halachic Marriages**

As we have seen above, the *chazaka* is limited and therefore one would intuitively conclude that in the case of a regular couple that has a civil ceremony and subsequently live together as man and wife, there is simply no point at which *kiddushin* has taken place. However, this may not be quite so straightforward.

**The case and view of the Rivash**

The Rivash[[19]](#footnote-19) deals with the case of two Marrano Jews from Majorca who were forced to marry in a church under the auspices of a priest. (It is apparent from the *t’shuva* that no subsequent Jewish wedding ceremony took place.) After being married for three months, the husband left his pregnant wife and did not return. The question was whether a *get,* apparently unobtainable,was needed.[[20]](#footnote-20)

The Rivash first notes that no element of the church ceremony would constitute a *chashash kiddushin*. In terms of the *chazaka*, he suggests that this is no less than ‘*medaber ima al iskei kiddushin’*, which even the Rambam would agree brings the *chazaka* into place[[21]](#footnote-21). However, he concludes that in this instance a distinction is to be made as follows: here the couple were married in a church and therefore, regardless of why this was the case, their marriage is not considered to be one *k’das Moshe v’Yisroel*. As such, it would be strange to assume that subsequent *b’ilos* were for the sake of *kiddushin*. He therefore states that even according to the Ge’onim who the Rambam cites and dismisses, in this case, they would not apply the *chazaka*.[[22]](#footnote-22)

Moreover, he argues that in the case of these Marranos, there was no *mikvah* in the vicinity. It is therefore safe to assume that the woman is a *niddah* with whom there is an *issur kareis* to have relations.[[23]](#footnote-23) It would be odd to suggest that disregarding this more strict issue, the couple would nonetheless be careful to conduct their *b’ilah ‘l’sheim kiddushin*’ out of concern for the relatively more lenient prohibition of cohabiting with a *p’nuya*.

The view of the Rivash is quoted by the Shulchan Aruch[[24]](#footnote-24) and Rema[[25]](#footnote-25) as halachically binding. Furthermore, R’ Moshe Feinstein points out that the *halacha* follows the Rivash *‘me’etzem hadin’* and that it is also possible that no-one argues with him.[[26]](#footnote-26)

**Application of the Rivash to Instances of Civil Marriage**

It is clear that the case of the Rivash is different to both a wedding conducted under the auspices of non-Orthodox clergymen/women and a civil marriage. In terms of the application of the distinction, this forms a fundamental basis in the *machlokes* between the contemporary *poskim* about the necessity for a *get* following a civil marriage, often described colloquially as the *machlokes* between R’ Henkin and R’ Moshe.[[27]](#footnote-27)

R’ Moshe[[28]](#footnote-28) deals with a case of an irreligious couple who got married in a civil ceremony and lived together for a number of years, for some time within the Jewish community of Los Angeles and for some time in an area with no Jewish community. The couple had children together and then separated.

R’ Moshe posits that it would make sense to try and obtain a *get* from the husband.[[29]](#footnote-29) This is because the religious neighbours would have thought of the pair to be a regular married couple and therefore could serve as *eidim* to the fact that they lived together. By extension, we could theoretically apply the *chazaka* and therefore assume that a marriage had taken place, which now requires a *get*. However, importantly, he states that that if a *get* cannot be obtained one can rely on the aforementioned Rivash with regards to not applying the *chazaka* to non-observant Jews.

One sees from the approach of R’ Moshe that although the Rivash’s circumstances are specific to an extreme case, the principle can be applied to civil marriage between all non-observant Jews. Similar to R’ Ovadia cited above, he also notes that a change in circumstances as to people’s morality could further dilute the possible application of the *chazaka*. The S’ridei Eish[[30]](#footnote-30) quotes *machmirim* who counter this approach being applied to civil marriage, arguing that although people may well be more casual in this sense, they would still not wish to actually *live* together outside of the context of marriage.

Even on the off-chance that an irreligious couple do intend for their *b’ilah* to be for the sake of *kiddushin*, R’ Ovadia adds, this intention is sufficiently unlikely that we would not have strong enough *eidus* to suggest that *hein hein eidei yichud hein hein eidei biah* with the *biah* being *l’sheim kiddushin*.

Thus, R’ Moshe only requires a *get* in a case of civil marriage *l’chumra* (i.e. *b’makom iggun*) and this would only apply if the couple lived in area that contains religious Jews.[[31]](#footnote-31) This is also the view of R’ Ovadia[[32]](#footnote-32), who says that he himself was *matir* a woman in such a case without a *get* in his time as Chief Rabbi of Egypt. It is important to note that both R’ Ovadia and R’ Moshe deal with the issue of whether the couple living together generates a *safek kiddushin*. However, both assume (as does the Tzitz Eliezer[[33]](#footnote-33)) that the civil marriage ceremony itself would not even constitute a *safek kiddushin*, a point that will be revisited below. The latter quotes R’ Chaim Ozer who says that a woman who was civilly married can even marry a *kohen* subsequently.[[34]](#footnote-34)

R’ Yosef Eliyahu Henkin disagrees with the view of the *achronim* who adopt the position of R’ Moshe for various reasons.[[35]](#footnote-35) In relation to the Rivash, he states that the aforementioned *t’shuva* is a *chidush* and ‘*ein bo ela chidusho’*; i.e. his *t’shuva* relates to a specific scenario where two people were married by a priest and were destined to live a life entirely out of the community. However where a couple lives amongst Jews, he argues that they are considered to be married. R’ Henkin does say that a marriage in the context of civil marriage in communist Russia, where the societal norm was in favour of the destruction of the traditional exclusive marriage relationship, the *heter* of the Rivash could be applied. He emphasises that this was **not** true in America, from where he was writing.

R’ Moshe[[36]](#footnote-36) disagrees with R’ Henkin’s understanding of the Rivash, and, as mentioned above, understands it to have a more far-reaching application. In correspondence with R’ Henkin in HaPardeis[[37]](#footnote-37), R’ Chaim Fishel Epstein, then Dayan of St. Louis, points out that the Rivash’s ruling does appear to be relatively broad in its potential application, given that he seems to accord with the Rambam’s view of the application of the *chazaka*.

**Other concerns[[38]](#footnote-38)**

Aside from the possible application of the *chazaka* in instances of civil marriage, there are also other concerns raised by the *poskim*, which suggest that a *get* ought to be required upon termination of a civil marriage.

**Potential problems arising from being *meikil***

Anecdotally, R’ Henkin is said to have held his position very strongly.[[39]](#footnote-39) It is clear that aside from the halachic issues involved, R’ Henkin is also concerned with the potential fallout from allowing civil marriages to terminate without *gittin*, being that people will try to solve potential *agunah* problems by not having a religious marriage in the first instance.[[40]](#footnote-40) (It is worth mentioning that R’ Menashe Klein[[41]](#footnote-41) believes that even R’ Henkin does not hold that a *get* is required absolutely, rather *l’chatchila* – it is not clear that this is how other *poskim* understand his view.)

R’ Dovid Tzvi Hoffman[[42]](#footnote-42) shares a similar concern if civil marriages were to terminate without the giving of a *get*. He says that there may be occasions where, with the marriage having terminated without a *get* and with the woman having remarried, the husband will subsequently come along and say that he was *bo’el l’sheim kiddushin* and will bring *eidei yichud* to that end. Because of this, it would be dangerous to have a flat-out *heter* for all such marriages. He goes on to quote a view that each individual circumstance should be judged by a group of *Rabbanim* on its own merit. Shu’t Sridei Eish[[43]](#footnote-43) questions the practicality of getting three *Rabbanim* together to adjudicate such cases, arguing that there aren’t three ‘*Rabbanim Muvhakim B’hora’a*’ in any one place and even if there were, they wouldn’t want to get involved in such a *chamur* matter. (He therefore suggests that all questions on this should be addressed to R’ Herzog, then Chief Rabbi of Israel.)

**Looking at the Context - *M’daber Ima al Iskei Kiddushin***

In R’ Henkin’s aforementioned piece in Hapardeis, he cites that civil marriage is no worse than a case of ‘*m’daber ima al iskei kiddushin’* (talking to her about getting married). This relates to the *sugya* in Kiddushin[[44]](#footnote-44) whereby a man is discussing the prospect of marriage or divorce and gives the woman an item or document that could achieve either *kiddushin* or *geirushin*. Even if he doesn’t explicate what he is doing when undertaking the action, Reb Yosi (whom we *pasken* like[[45]](#footnote-45)) says this is sufficient.

R’ Henkin applies this to civil marriage. He notes that both parties are aware of what they are doing at a civil marriage (as the phrase suggests) and that although this may bear little resemblance to a halachic ceremony, a number of the features of a halachic ceremony are not strictly speaking needed. For instance, he quotes Tosafos in Kesubos[[46]](#footnote-46) that explain that the saying of ‘*k’das Moshe V’Yisroel’* is not an absolute necessity and is said for reasons other than that of *kiddushin* and *nessuin*.[[47]](#footnote-47)

As such, R’ Henkin suggests that the ceremony itself may achieve *kiddushin*. As an aside, he says that this would only be true if there are kosher *eidim* there (see below) and if there is some sort of giving of a *sh’tar* (document) or *kesef/shaveh kesef* (something of monetary value). He acknowledges that this may not be the case but then draws a parallel to the g*emara* in Kesubos[[48]](#footnote-48), which brings a *case*  in which a person attempts to be *m’kadesh* a woman (erroneously) with an item valued under a *shaveh p’rutah* and then continues to have *b’ilah* with her afterwards. There is a *machlokes* as to whether he is aiming to rectify his failed *kiddushin* in the first instance. Even if the ceremony is not sufficient, R’ Henkin posits that this, combined with the fact the pair live together, would be sufficient to achieve *kiddushin*.

**Alternative Mode of Marriage**

The Rogatchover[[49]](#footnote-49) states a further reason to require a *get* in the case of a civil marriage. There are two *kinyanim* within *kiddushin*: that of a *kinyan* to the *ba’al* as a solely legal transaction and a *kinyan issur* that the woman can no longer cohabit with others. There can be situations in which one *kinyan* can exist without the other, which he posits includes the case of two people who live together following a civil marriage.

The view that there can be a quasi-marriage in this sense appears to be based on the words of Tosfos in Kiddushin.[[50]](#footnote-50) The *gemara* seeks to ascertain the source for the fact that a woman can remarry once her husband has died. At one point in this discussion, the *gemara* suggests that the source comes from the fact that an *almanah* cannot marry a *kohen gadol* but can wed a regular *kohen*. The *gemara* dismisses this by suggesting that maybe there is still an *issur aseh* with a regular *kohen.* In terms of what this *issur aseh* may be, Tosfos[[51]](#footnote-51) pose that there is an *aseh* of ‘*v’davak b’ishto*’[[52]](#footnote-52) – one must attach himself to his wife and not another woman – which appears to be aside from the regular *kinyanim/*halachic construction of a typical marriage.

The Rogatchover states that in regular Jewish marriages both elements are at play. In a non-Jewish marriage there is a *kinyan* to the *ba’al* even if she is not formally an *eshes ish* to others.[[53]](#footnote-53) He continues that there is an element of *kinyan* even by a civil marriage in the monetary sense and a *get* is needed to extricate the woman from this *kinyan*.[[54]](#footnote-54)

In responding to someone who adopted this view, the Tzitz Eliezer[[55]](#footnote-55) strongly dismisses the approach of the Rogatchover as *halacha l’ma’aseh*. He says that this notion uproots everything and it is *mevatel* the whole of *kiddushin* *k’das Moshe V’Yisroel* to revert back to a pre-*Matan Torah* model of marriage. This model, he argues, did not remain halachically legitimate post-*Matan Torah*, as is easily implied from the words of the Rambam.[[56]](#footnote-56) It appears that the Rogatchover’s approach is not accepted *l’halacha*.[[57]](#footnote-57)

Notwithstanding the concerns noted above, it would appear that in a regular areligious/non-denominational civil marriage the position of the majority of *poskim*[[58]](#footnote-58) is that a *get* is not needed *me’ikar hadin* but one is sought *l’chumra*.[[59]](#footnote-59)

**The need for a *get* following a non-Orthodox ceremony**

Having discussed the issue of *gittin* following marriage ceremonies which do not fulfil any of the requirements of a halachic marriage, we will move on to discuss non-Orthodox ’Jewish’ marriage ceremonies.

R’ Moshe states any Reform wedding ceremony is overwhelmingly likely to not be halachically binding, especially in a ceremony in which the woman also gives a ring to the man (to which he takes particular exception). Whereas those who have a civil ceremony are aware that they are not married in the Jewish sense and there may be scope to suggest they subsequently want to get married religiously by way of *bi’ah*, the same is not the case with a Reform marriage where participants erroneously believe they are getting married accordingly to the Jewish tradition.[[60]](#footnote-60)

Elsewhere[[61]](#footnote-61), R’ Moshe discusses a marriage ceremony under a Conservative rabbi where he does entertain the possibility that the actual content of the ceremony includes a declaration from the husband of ‘*harei at m’kudeshes li*’ with him passing her a ring. Although he takes it for granted that the Conservative rabbi is not a fit *eid* (even if he is *shomer Torah* and *mitzvos*) and neither are any appointed witnesses likely to be, he does pose that if there are two kosher *eidim* present, for whatever reason, there may be a possibility that the *kiddushin* stands.[[62]](#footnote-62) In order to understand this, we will need to briefly digress and discuss a principle of *eidus*.

***Nimtzah Echad Karov O’ Passul***

The *Mishna* in Makkos[[63]](#footnote-63) says that if one of a group of *eidim* is found to be a relative (to another in the group) or *passul*, the entire testimony is deemed to be inadmissible. Rebbi (whom Rambam *paskens* like)[[64]](#footnote-64) stipulates that this rule applies only in the event that the group formally joined together in order to testify. However, if they did not, but rather happened to see the same act at the same time, ‘what are two brothers to do just because they happened to see something together?’ There is therefore no automatic problem with relatives merely seeing something for which there is a requirement of *eidus*, so long as they are not the designated *eidim*.

There is a *machlokes* in the *Rishonim* regarding the extent to which we apply this *din*. Rosh explains[[65]](#footnote-65) that we only say that one witness can ruin the testimony in the event that they proactively come to *beis din* to testify, not if they happen to just see an event (regardless of their intention when viewing this event). This is also the view of Tosfos, who note that it is commonplace to give a *get* in front of relatives and there is no concern that they should constitute *k’rovim* so as to place this process into doubt as to its halachic validity.[[66]](#footnote-66)

The view of the Rashbam[[67]](#footnote-67), however, is that if the initial intention of the *karov* or *passul* was to see an event for the purpose of testifying in front of *beis din*, even if they do not come forward to testify at any point, that would be enough to jeopardise the entire testimony.[[68]](#footnote-68) The Kessef Mishna[[69]](#footnote-69) assumes that this is the view of the Rambam too.

The Shulchan Aruch quotes both of the above views, with that of the Rambam as *s’tam* and that of the Rosh as a *yeish omrim*.[[70]](#footnote-70)

***Yichud Ha’eidim* at weddings**

In the context of *eidei kiddushin*, there is a requirement for the *eidim* not merely to witness what is taking place in order to prove it subsequently, but rather as *eidim l’kiyum hadavar* (*eidim* who are necessary for the action to take effect).[[71]](#footnote-71) The Shulchan Aruch[[72]](#footnote-72) states that *eidim* are effective even if they are not specified. The Rema there takes this one step further, quoting the Rivash, who states that even if one specifies particular *eidim*, others who also saw the event are able to testify about it. With the Rema in mind, it would seem that there would be sufficient cause for concern if a wedding under the auspices of a non-Orthodox movement were to be halachically valid and performed with two halachically legitimate *eidim* in the audience.[[73]](#footnote-73)

The Pischei T’shuva[[74]](#footnote-74) states that (in accordance with the Rema) even if people only came to watch the ceremony (i.e. as guests) and had no intention to testify, nonetheless they are *eidim* and the couple can be *m’kudeshes* on this basis. He cites the aforementioned *din* in *Choshen Mishpat* as a support for this.[[75]](#footnote-75) There is a *machlokes achronim* as to whether this position is the accepted view *l’ma’aseh*. The Chassam Sofer states that it is, whilst the Mahari Vayil[[76]](#footnote-76) states that it is not and therefore the *yichud ha’eidim* at weddings adopts increased significance.[[77]](#footnote-77)

It would therefore seem that there may be a necessity for a *get* following a non-Orthodox wedding ceremony if the following conditions were fulfilled:

1. The ceremony is run in a halachic manner
2. There were to be members of the audience who are fitting to be witnesses
3. The fitting audience members saw the parts of the ceremony that are necessary for marriage.

**Different types of non-Orthodox ceremonies**

It would follow that R’ Moshe is concerned about a wedding conducted under the auspices of the American Conservative movement as having possible halachic validity.[[78]](#footnote-78) In order to ascertain whether or not this would be a legitimate *chashash*, one would need to research the specific nature of non-Orthodox wedding ceremonies, what they entail, and whether there is any chance that a legitimate *kiddushin* is achieved.

**Conclusion**

We have considered the necessity of a *get* in the context of both civil and non-Orthodox marriage ceremonies, where the couple had lived together for a sustained period. It would appear that in the former, the majority of *poskim* (albeit with notable exceptions) only require one as a *chumra.* Primarily, this is because the ceremony itself does not constitute a *halachic* marriage and neither does their subsequent living together. These *poskim* cite the view of the Rivash, which they argue would apply in modern day civil marriages. Notwithstanding concerns of the minority of *poskim* positing that either the ceremony or the couple’s cohabitation would be enough to engender the need for a *get*, it would appear that these concerns have not been accepted *me’ikar ha’din.*

In relation to non-orthodox wedding ceremonies, it would also appear that a *get* would not be needed to formalise the breakdown of the relationship. This, however, relies on the assumption that the ceremony itself was not halachicallybinding. However, if it is and there are halachically fit spectators in the audience, there may be scope to be *choshesh* for *kiddushin* having taken place.

1. Note: I have been referenced to a number of the *mekoros* for this article from R’ Michoel Zylberman, who is the *Gittin* co-ordinator for the Rabbinical Council of America (RCA). All sources quoted below have been seen inside unless stated otherwise

   See statistics quoted by R’ Shlomo Dichovsky, Techumin 27 pp.240 [↑](#footnote-ref-1)
2. 81a [↑](#footnote-ref-2)
3. 81b [↑](#footnote-ref-3)
4. In accordance with the *Mishna* in Kiddushin 2a, which lists b*i’ah* as one of the ways of being *mekadesh* a woman [↑](#footnote-ref-4)
5. See Shu’t Sridei Eish (3:22) who understands this to be *the* central question here [↑](#footnote-ref-5)
6. Shulchan Aruch Evan Ha’Ezer 149:1, Rambam Hilchos Geirushin 10:17 [↑](#footnote-ref-6)
7. Shulchan Aruch Evan Ha’Ezer 26:1 (see Beis Shmuel and Bi’ur HaGra there), 149:2, Rambam Hilchos Geirushin 10:18-19 [↑](#footnote-ref-7)
8. Gittin 81b ‘*Elah*’ [↑](#footnote-ref-8)
9. See Kiddushin 6a, discussed in further detail below [↑](#footnote-ref-9)
10. Ibid. [↑](#footnote-ref-10)
11. The limited circumstances mentioned here are when the couple was previously married or they currently have a marriage that is dependent on the fulfilment of a condition. The Ra’avad there takes the opposing view and concurs with the opinion of the Ge’onim. [↑](#footnote-ref-11)
12. Hichos Ishus 7:23 [↑](#footnote-ref-12)
13. Ibid *‘Horu miktzas hage’onim’* [↑](#footnote-ref-13)
14. Shu’t Yabia Omer Chelek 6 Even Ha’ezer Siman 1 [↑](#footnote-ref-14)
15. Even Ha’Ezer 26:1, 149:5 [↑](#footnote-ref-15)
16. Shu’t Yabia Omer Chelek 6 Even Ha’ezer Siman 1 in the name of the Sha’agas Aryeh. It is noteworthy that R’ Henkin, quoted below, dismisses those who quote the Sha’agas Aryeh in this discussion as taking his comment out of a very specific context [↑](#footnote-ref-16)
17. See Rambam Hilchos Ishus 3:21 [↑](#footnote-ref-17)
18. This somewhat opens up the topic of which and to what extent certain *chazakos* assumed in the gemara are to have contemporary application. For an article that address some of the facets of this topic, see R’ Moshe Be’eiri in Techumin edition 28 pages 63-68 [↑](#footnote-ref-18)
19. Shu’t Rivash Siman 6 [↑](#footnote-ref-19)
20. See Terumas HaDeshen Siman 209 who deals with a similar case, in addition to Shu’t Radvaz 1:351. R’ Dichovsky in Techumin 2 p.256 describes these three together as forming the cornerstone of the sugya [↑](#footnote-ref-20)
21. Ibid [↑](#footnote-ref-21)
22. See Ohr Sameach Hilchos Geirushin 10:19 who makes this point explicitly. [↑](#footnote-ref-22)
23. Vayikra 20;18 [↑](#footnote-ref-23)
24. Even Ha’Ezer 149:6 [↑](#footnote-ref-24)
25. Even Ha’ezer 26:1 [↑](#footnote-ref-25)
26. Shu’t Iggros Moshe Even Ha’Ezer 1:75. It is implicit from R’ Henkin below that the *din* of the Rivash is uncontested (although he questions its application) [↑](#footnote-ref-26)
27. R’ Herschel Schachter Shli’ta in an audio shiur (Entitled ‘Emor 5776’) posits that this description is inaccurate and really it is a *machlokes* between 98% of *poskim* and R’ Henkin. Shu’t Sridei Esh (3:22) understands the divergence to be between the *poskim* in Hungary and those in Galicia. [↑](#footnote-ref-27)
28. Ibid, the teshuva was written in 1961 [↑](#footnote-ref-28)
29. Rav Ovadia in Yabia Omer Chelek 6:1 disagrees with the notion of obtaining a *get* even *l’chumra*, arguing that it is a *chumra d’asi lidei kulla* (stringency that leads to a leniency) of delaying a woman from getting remarried. It appears that the Tzitz Eliezer (2:19:7) also wouldn’t require a *get* even *l’chumra*. [↑](#footnote-ref-29)
30. 3:22 [↑](#footnote-ref-30)
31. This latter point is brought more clearly in Even Ha’Ezer 2:19 [↑](#footnote-ref-31)
32. Ibid [↑](#footnote-ref-32)
33. 22:67 [↑](#footnote-ref-33)
34. Sridei Eish cited below gives a lot of weight to R’ Chaim Ozer’s view [↑](#footnote-ref-34)
35. R’ Henkin in Hapardeis Journal (8:7:37, dated 1934, which he states is a repetition of the points he made previously in his Peirushei Ivra) [↑](#footnote-ref-35)
36. Ibid [↑](#footnote-ref-36)
37. Ibid, 8:8:44 [↑](#footnote-ref-37)
38. See Techumin 2, p.256-258, where R’ Dichovsky quotes a number of reasons to be *machmir*. I have brought down what I perceive to be the more ‘mainstream’ concerns. [↑](#footnote-ref-38)
39. I have heard from two separate sources, citing Rabbi Frand, that even in his later years, when he did not possess clarity of mind, he would reiterate that ‘she needs a *get*’ in these circumstances. [↑](#footnote-ref-39)
40. Lev Ivra pp 19-20 [↑](#footnote-ref-40)
41. Writing in Techumin 24 pp. 185 [↑](#footnote-ref-41)
42. Shu’t Melamed L’Ho’il 3:20 (old edition) [↑](#footnote-ref-42)
43. 3:22 [↑](#footnote-ref-43)
44. 6a [↑](#footnote-ref-44)
45. Shulchan Aruch Even Ha’ezer 27:1 [↑](#footnote-ref-45)
46. 3a [↑](#footnote-ref-46)
47. See Gittin 34a at the beginning of Perek Ha’Sholeach [↑](#footnote-ref-47)
48. 73b [↑](#footnote-ref-48)
49. Shu’t Tzafnas Pa’aneach Siman 26-27. The wording of the Rogatchover is enigmatic and somewhat difficult to understand. I am assuming the summaries provided by the Seridei Eish cited above, R’ Shiloh Raphael (Mishkan Shilo) cited in R’ Shlomo Dichovsky in Techumin 27, and R’ Zevin in Ishim V’Shitos p124-5. [↑](#footnote-ref-49)
50. 13b ‘*l’chulei alma b’aseh*’ [↑](#footnote-ref-50)
51. As opposed to Rashi there, ‘l*’chulei alma b’aseh*’ [↑](#footnote-ref-51)
52. Bereishis 2;24 [↑](#footnote-ref-52)
53. Akin to the pre-*Matan Torah* model of marriage as described by the Rambam at the very beginning of Hilchos Ishu*s* [↑](#footnote-ref-53)
54. R’ Zevin in Ishim V’Shitos p.124 cites the four places where the Rogatchover deals with civil marriage and this represents one of the reasons for him being *machmir* [↑](#footnote-ref-54)
55. Shu’t Tzitz Eliezer 2:19 (second half of the *kuntras*) [↑](#footnote-ref-55)
56. Ibid. The Rambam is at the beginning of Hilchos Ishus, as mentioned above, where he states a clear divergence between how marriage took place before and after the Torah was given [↑](#footnote-ref-56)
57. Techumin 2, p.260 [↑](#footnote-ref-57)
58. As detailed by R’ Ovadia in the teshuva cited above where he collates the views of the *achronim* [↑](#footnote-ref-58)
59. In his audio shiur, ‘Contemporary Topics in Even Ha’Ezer 2’, R’ Michoel Zylberman states this to be the position of the RCA Beis Din. Anecdotally, I have been informed that this is also the position of the London Beis Din [↑](#footnote-ref-59)
60. Igros Moshe Even Ha’Ezer 3:25 [↑](#footnote-ref-60)
61. Igros Moshe Even Ha’Ezer 4:46 [↑](#footnote-ref-61)
62. To apply this to a contemporary context, one would need to have a clear idea of the marriage ceremony within each non-Orthodox denomination [↑](#footnote-ref-62)
63. 6a, 6b [↑](#footnote-ref-63)
64. Hilchos Eidus 5:3-4 [↑](#footnote-ref-64)
65. Makkos 1:11 ‘*Hilchach*’ [↑](#footnote-ref-65)
66. Makkos 6a, ‘*Shmuel Omer*’ [↑](#footnote-ref-66)
67. Baba Basra 113b ‘*Gimmel Shenichn’su*’ [↑](#footnote-ref-67)
68. The Ritva in Makkos 6a ‘*L’mechzei Assisun*’ understands this to be the view of Rashi per footnote 482 in the Mossad HaRav Kook edition [↑](#footnote-ref-68)
69. Hilchos Eidus 5:5 [↑](#footnote-ref-69)
70. Choshen Mishpat 36:1. My assumption is that the *halacha* follows the *stam*. [↑](#footnote-ref-70)
71. See, for instance, Ritva Ibid [↑](#footnote-ref-71)
72. Even Ha’Ezer 42:4-5 [↑](#footnote-ref-72)
73. A further, obvious consequence of this issue would involve the necessity, or otherwise, to re-perform a wedding ceremony when one or both of the designated witnesses were later ascertained to be unfit for purpose [↑](#footnote-ref-73)
74. Even Ha’Ezer 42:11 [↑](#footnote-ref-74)
75. Shu’t Chasam Sofer Even Ha’Ezer Siman 100 makes the same connection [↑](#footnote-ref-75)
76. Shu’t Mahari Vayil 7 [↑](#footnote-ref-76)
77. I have heard R’ Zylberman’s shiur on the topic (quoted above) that R’ Ovadia felt that this position is the halachic norm and anecdotally that R’ Osher Weiss also gives weight to this view. [↑](#footnote-ref-77)
78. Albeit that *teshuva* was penned in 1980 and their practises may have since changed [↑](#footnote-ref-78)