Gender, Religion, and Family Law

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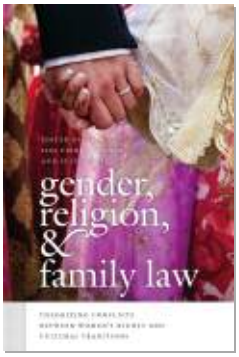

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Chapter Four From Religious "Right" to Civil "Wrong" Using Israeli Tort Law to Unravel the Knots of Gender, Equality, and Jewish Divorce

"Legal discourse . . . is the divine word . . . [it] creates what it states." —*Pierre Bourdieu*[1]

The purpose of this paper is to describe how Israeli cause lawyers[2] are using tort law to untie the knots between gender, equality, and Jewish divorce law. To that end, I will give a brief overview of Israel's family law regime and its gender quagmire, explain how the tort of "*get*-refusal" is being constructed in response, present some preliminary statistics from the trenches, and outline some of the practical and theoretical implications of these new tort cases.

I will posit that using tort law is a creative way to reframe the gender problems posed by Jewish law and to "bring the state back in" to help resolve them. Tort law turns a Jewish husband's religious "right" to give a divorce at his "uncoerced behest"[3] into a civil "wrong" that harms his wife and entitles her to damages. This reframing delineates and distinguishes the harm being done to women, raises consciousness, demystifies the power relations that undergird Jewish divorce law, strips away the religious aura of a cruel act, and forces a dialogue of change.

Background: The Millet System

On or about its founding, the State of Israel incorporated the millet system (*millet* means "religious community") of the Ottoman Empire into its laws of personal status. In the spirit of religious pluralism, this system categorizes

citizens in accordance with their religious affiliations, ceding jurisdiction over matters of marriage and divorce to religious courts. The millet system effectively subjects citizens of the same state to different rules of divorce, depending on their particular religious affiliation and irrespective of their religious beliefs. Secular, religious, traditional, ultra-Orthodox, atheist, agnostic, and fundamentalist Catholics, Muslims, and Jews of the State of Israel who get married or divorced must submit to the rules of canon law, the Sharia, and the halakhah,[4] respectively, whether they want to or not.

Marriage and divorce is the only area of law in which Israel defers exclusively to religious law and the religious courts.[5] In all other matters, civil law and civil courts, inspired by Western notions of liberalism and democracy, determine the outcome of disputes between Israeli citizens. In all other areas except family law, Israel empowers its women.[6] While the rabbinic courts might have risen to the challenge of interpreting the long and venerable tradition of Jewish law so that it responded to the needs of a modern democratic state and to the idea of gender equality, the rabbinic courts have fallen far short of such expectations.

Rabbinic courts apply Jewish law (halakhah) to determine whether or not a person is married or divorced. According to the halakhah, a divorce occurs only when a man delivers a bill of divorce (a *get*) to his wife[7] of his own free will.[8] A bill of divorce delivered by a man against his will is invalid (a *get meuseh* or a "forced divorce").[9] If a man is missing, is incapacitated, or simply refuses to give his wife a *get*, she remains married to him forever (an *agunah*, literally an "anchored woman"). The halakhah penalizes women who conduct extramarital relationships with men who are not their husbands, stigmatizing children born of such relationships as *mamzerim*. A *mamzer* and all the progeny of the *mamzer* for generations are banned from marrying other Jews.[10]

Only Orthodox Jewish men preside as Israeli rabbinic court judges. No Jewish woman of any religious affiliation and no Jewish man who is not of Orthodox persuasion can, by law,[11] sit on a rabbinic tribunal. Israeli rabbinic judges do not run a divorce court in any way similar to what a reader living outside of Israel may imagine. In determining whether a husband should divorce his wife, the rabbis are not informed by notions of fault or no-fault. Instead, the rule against the "forced divorce" (the *get meuseh*) holds sway, with the rabbis favoring tactics of delay and extortion. If the rabbis refrain

from making decisions, wives may remain trapped in failed marriages, but the sacred rule against the forced divorce is not compromised. Similarly, if wives yield to extortion and pay for their freedom, the rabbis would not have to apply any pressure on husbands to give the divorce. The tactics of delay and extortion ensure that no invalid force is brought to bear upon husbands. Only when delay and extortion prove ineffective do the rabbis exercise the limited authority that Jewish law gives them to influence husbands to divorce their wives.[12]

Remedy of Desperation: The Tort of *Get* Refusal

In 1999, Hanna was thirty-six years old. An ultra-Orthodox woman, Hanna was the mother of six children and had lived apart from her husband for the last ten years when she came to my office for advice. Though she desperately wanted a *get*, Hanna had not set foot in a rabbinic court since 1994. At her last hearing, the tribunal tried to persuade her to surrender her half of the family home and to waive her entire child support award, past and future, in exchange for the *get.* These were her husband's conditions for the *get*, and they were, to say the least, not acceptable to Hanna. When she rejected those terms, the tribunal blamed Hanna for her state of marital limbo. She absolutely refused to go back to the rabbis for help. And meanwhile, she had used up the conventional and not very effective arsenal[13] available to Israeli divorce attorneys to try and convince her husband to give her a *get*, of his own free will of course.

I suggested to Hanna that she sue her husband in tort. Academics had for some time raised the possibility of recovery in tort for *get* refusal.[14] But in 1999, there had been no successful attempt to do so, whether inside of Israel or outside of the country, except in France.[15] Hanna, however, had nothing left to lose, and I, as a cause lawyer for an NGO (non-governmental organization), had been waiting for her case.

A "tort" is a wrongful act that causes injury for which the law awards monetary damages (*tort* comes from the Latin word for "twisted, dubious"). The Tort Ordinance of the State of Israel defines what acts are torts for purposes of the Israeli civil courts. This list includes traditional, as well as more modern conceptions of what is a "wrongful act" worthy of compensation, including

threatening violence or intentionally inflicting physical harm (assault and battery), imprisoning someone against her will (false imprisonment), or doing something that is expressly prohibited by law and causes harm. It does not include "*get* refusal."

In 2000 Hanna filed a claim for damages against her husband for *get* refusal. She argued that her husband's refusal to divorce her caused emotional harm and infringed on her basic rights to marry and have children. In December 2001, on the same day that Hanna's husband agreed to give her a *get* in exchange for the dismissal of her petition, the Hon. Judge Ben-Zion Greenberger of the Jerusalem Family Court denied a motion to dismiss the complaint.[16] He held that *get* refusal is a tort because it violates a woman's *personal autonomy* protected under the Basic Law: Human Dignity and Freedom. Similar lawsuits followed. A few months later, Judge Philip Marcus ruled that *get* refusal is a tort because it breaches the *statutory duty to obey court decisions* under section 287 (a) of the Criminal Law Ordinance.[17] Like Greenberger, Marcus did not need to quantify the amount of damages that the husband owed his wife. Here too the husband gave his wife a *get* in exchange for the dismissal of her damage claim.

In December 2004, Judge Menachem HaCohen ruled on the merits of a case, awarding a wife 325,000 NIS in damages, and another 100,000 NIS in aggravated damages (about $120,000 in total).[18] HaCohen held that *get* refusal was a tort because it was *unreasonable* behavior that fell under the rubric of *negligence*, section 35 of the Tort Ordinance. And in 2006, Judge Tzvi Weitzman, following the logic of Judge HaCohen, ordered the estate of a man to pay his estranged wife 711,000 NIS in damages (about $180,000).[19] Most cases rendered since 2008 place the tort under the rubric of "negligence," with a growing number also arguing that it is a violation of the statutory duties embodied in the Basic Law: Human Dignity and Freedom.[20]

The Cases

For this article, I examined twenty-five tort cases that were filed between the years 2000 and 2008 against recalcitrant husbands.[21] Of the plaintiffs, 63 percent were religious women (42 percent ultra-Orthodox and 21 percent

religious-Zionists), 33 percent were not religious (8 percent secular and 25 percent traditional), and 4 percent are unknown. These women waited or have been waiting an average of ten years for their *get*.

Of the twenty-five women in the sample who sued for *get* refusal, the *longest* amount of time a woman waited for a *get* was twenty-nine years (her husband died). Seventeen (the vast majority) of the women waited or have been waiting between seven and eleven years for the *get*.

Twelve of the twenty-five women "closed" their tort cases before the family courts could render a decision in them. Ten of the women who "closed" their cases agreed to dismiss their cases *with prejudice* (they can't reopen the cases) in exchange for the *get*. Nine of the ten husbands gave the *get*. One husband reneged on his promise.[22] The nine women who received their *get* had lived an average of eight years apart from her husbands; but they waited an average of only *fourteen months* for the *get* from the time that they filed for damages. Two of the women who "closed" their cases agreed to dismiss their cases *without prejudice* (they can reopen their cases). In these cases, the wives closed their files in response to pressure from the rabbinic judges.[23]

Since 2000, family court judges all over Israel have rendered awards of damages for *get* refusal.[24] As mentioned, in 2004, J. HaCohen awarded 425,000 NIS (about $120,000) to a *haredi* woman. The court transferred the rights to the marital home to the wife in execution of the judgment, but her husband has still not given her *get*. They have been living apart for seventeen years. In 2006, J. Weizman awarded 711,000 NIS (about $200,000) to a secular woman. She had been living apart from her husband for twenty-nine years when he died without having given her a *get* or leaving her any money. She sued her husband's estate and collected damages. From 2008 to 2010, family court judges rendered decisions awarding damages ranging from 108,000 to 700,000 NIS (between $30,000 and $200,000).[25] These decisions have expanded on HaCohen's 2004 decision, holding that get refusal is not contingent on a rabbinic court decision that orders a husband to give a *get* (Greenberger 2008); and can be awarded to a woman even after she has received her *get* (Marcus 2010).

New cases are being brought on a regular basis. At the time of final editing of this chapter, at least seventeen rulings have been rendered in family courts all over the country (including preliminary decisions and final judgments) upholding these cases, and more judgments are pending. One judgment was

upheld in the Tel Aviv District Court and has been turned down for appeal by the Supreme Court.[26]

Some preliminary observations regarding the above rudimentary statistics:

1. Most of the men who are sued for damages for *get* refusal give their wives a *get* in exchange for the waiver of the damage claims.

2. All the men who gave their wives a *get* after having been sued for damages for *get* refusal did so within two years.

3. Not all the men who were sued for damages for *get* refusal agreed to give a *get*. One man refused to give the *get* even after the court ordered him to pay substantial damages and even after the wife transferred his rights in the marital home onto her name. Tort is not a complete, systemic solution to the problem of Jewish women and divorce.

4. Religious women are more likely to sue for damages for *get* refusal than are secular women.

It seems reasonable to speculate that religious women are more likely to sue for damages than are secular women because their freedom is more drastically affected by their husband's refusal to give them a *get.* The two most extreme cases in this study are those of secular women who waited more than twenty years for a divorce.[27] It cannot be determined from this study that religious Israeli men are more likely than secular men to withhold a *get*, though it indeed might be the case.

Why Tort? Reframing

Tort law is an important tool in the hands of innovative cause-lawyers who want to reform Israeli divorce law and whose vision of a good Israeli society is one that is both Jewish and democratic. Tort law allows these cause lawyers to articulate and reframe the problem of Jewish women and divorce in a manner that makes room for such vision. Such reframing is far-reaching in its goals and theoretical underpinnings.

Reframing is an act of translation in which an interpretive code ("schema") is transposed from one setting to another. This act of translation and renaming allows the legitimacy of the familiar (harms should be redressed) to be attached to the strange (a Jewish husband gives a divorce of his free will).[28] Translation

is a creative but difficult balancing act in which the translator–cause lawyer must maneuver adroitly between tradition and change, politics and justice, words and visions. The translator must try to resonate with existing laws and customs and at the same challenge them. At any given moment, she must decide to what extent she can openly challenge existing ways of thinking and to what extent she must conceal her radical ideas.[29] Cause lawyers who reframe a Jewish husband's "right" to deliver a *get* at will into a civil "wrong" translate simultaneously in more than one direction. They reframe tort law to include *get* refusal, and they reframe religious law to recognize the forced divorce as an actionable injurious act. They translate transnational human rights principles (women have the right to divorce[30]) *down* into civil tort claims, and they translate local religious customs (only the husband can give the *get*) *up* into tort violations.

I will posit that these delicate acts of translation and reframing allow the cause lawyer to improvise, invent, and create. Dubbing *get* refusal a "tort" allows cause lawyers to define and delineate the problem of Jewish women and divorce, rally consciousness and unite women, demystify an act of power, defrock a religious act, and bring the state back in to redress the harms inflicted on its citizens. Moreover, by constructing the tort of *get* refusal, cause lawyers draw attention to the conflict of values that are in issue and force a dialogue that the rabbinic courts would otherwise avoid.

DEFINES, DELINEATES, AND QUANTIFIES

For Jewish women whose husbands refuse to give them a divorce, the tort of *get* refusal gives them a voice. It breaks what Catherine MacKinnon would refer to as the "silence of a deep kind" — "the silence of being prevented from having anything to say."[31] Though rabbis have for years bemoaned the plight of the *agunah*, Orthodox rabbis — the only ones that count in Israel — have not articulated a satisfying response or a systemic solution to the problem of Jewish women and divorce. Nor have these Orthodox rabbis listened to women. They have consistently held that women cannot act as judges and cannot write reponsa. They have even refused to allow women to attend conferences scheduled to discuss the problems of Jewish women and divorce. In short, they have effectively "prevented women from having anything to say." By suing husbands (and rabbis[32]) for damages, women are forcing the rabbis to

listen. Women, not the rabbis, are defining and delineating what is happening to them: it's a tort, a twisted and distorted act that causes harm. What's more, it is a harm that Judge HaCohen has quantified in the amount of $150 a day. Cause lawyers use his evaluation as a benchmark when suing.[33]

In my mind, *get* refusal is a tort that requires still further clarification. The term "*get* refusal" is one that I have adopted for purposes of this article, but it hardly does justice to the injustice. The judges in the Israeli family courts are still jostling for the privilege of naming the tort. One judge claims that *get* refusal is an infringement on personal *autonomy.* Another posits that it is an act of *negligence*. I would like the judges to declare that *get* refusal is a violation of the Law against Family Violence (1991), thus emphasizing the torts' intentional and harsh effects. Instead of *get* refusal, perhaps the act of causing harm to one's wife by refusing to give her a religious divorce should be referred to as the tort of "marital bondage" or "marital imprisonment."

RALLIES CONSCIOUSNESS AND UNITES

By articulating *get* refusal as a tort, women's groups and responsive family court judges have raised the consciousness of Jewish women. Leslie Bender, a feminist tort expert, explains, "Feminist consciousness-raising creates knowledge by exploring common experiences and patterns that emerge from shared telling of life events. What were experienced as personal hurts individually suffered reveal themselves as a collective experience of oppression."[34] The publicity given to damage cases for *get* refusal by the press, women's groups, and the family courts has allowed individual Jewish women to understand that their individual experience of *get* refusal is not unique and isolated, but a collective injustice.

DEMYSTIFIES RELATIONS OF POWER

To this very day the rabbis are more concerned with protecting the "right" of husbands to divorce their wives at their "uncoerced behest" and with monitoring the rule against the "forced divorce" (*get meuseh*) than they are in redressing the harms done to women who remain anchored to their recalcitrant husbands. Calling *get* refusal a "religious right to divorce your wife of your own free will" is like calling a terrorist a freedom fighter. The "forced divorce" is a euphemism

that conceals the relations of domination that underlie *get* refusal.[35] *Get* refusal is an act of raw patriarchal power. Calling it a privilege of free will or a problem of the "forced divorce" masks its relations of domination. Tort law demystifies the language that dissimulates the relations of domination and reveals them.

DEFROCKS

Similarly, calling *get* refusal a tort avoids any attempt to sanctify it and place it under the protective aegis of religion. Using the civil tort laws of the state, Israeli women reframe a husband's exercise of a *religious* "right" to refuse to give his wife a *get* into a *civil* "wrong" that entitles her to damages. Instead of an act of religious conscience, *get* refusal becomes a secular tort that the liberal state — in particular a state like Israel where there is no separation of church and state — is more willing to remedy under routine civil law. By calling it a tort, the law can more easily "bring the state back in" to redress what is happening.[36] Calling *get* refusal a tort counterbalances confusing "religious" language that places the husband's behavior beyond the reach of civil law.

What's more, it is clear from the cases described that awarding damages for *get* refusal does *not* in fact interfere with a religious act at all. Husbands can, and do, continue to exercise their "right" to refuse to give their wives a *get* just as they always have before the introduction of tort law. If women had the choice, they would probably choose both the *get* as well as the damages for their lost years. In my opinion, the fact that most defendant-husbands manage to convince their wives to give up their tort claims in return for the *get* just proves that the power to give or take the *get* still remains strongly lodged in the hands of Jewish men.

Dialogues

Calling *get* refusal a tort provokes a direct confrontation between religious values and modern ones. *Get* refusal is about male dominion over women. Equal power to sue for divorce is about liberty, autonomy, and equality for women. It is a modern notion. The tort of *get* refusal forces the rabbinic court to confront modernity and to conduct a dialogue, whether they want to or not, with women.

It was and remains the hope of Israeli cause lawyers that this dialogue and confrontation would yield a transformative response from the rabbinic court and religious communities that will untie the knots between gender, equality, and Jewish divorce law. Various transformative responses are imaginable, some more radical than others, all of which are possible: (1) The rabbinic courts could embrace the tort of *get* refusal as a way to help them resolve difficult cases; theoretically at least, the rabbis could encourage women to sue for damages in the civil court as a way of warning husbands against recalcitrance; (2) rabbinic leaders might be encouraged to find internal systemic halakhic solutions to the problem of religious divorce; (3) alternative Israeli Orthodox rabbis could break with existing rabbinic judges to form more modern rabbinic courts; and (4) an increasing rift may develop between the secular and religious courts that would pave the way for the legislation of secular marriage and divorce in Israel.

Rabbinic Supreme Court Responds to Tort Claims: March 11, 2008

Despite the effectiveness of the tort law in solving long-standing cases in the rabbinic court (not to mention doing justice), the Israeli rabbinic courts have not embraced tort as a solution or as a way of ameliorating the problem of *get* refusal. On the contrary, as more and more women have been suing for damages for *get* refusal, the rabbinic court has been expressing more and more opposition to those cases on religious grounds, arguing that these cases violate the rule against the forced divorce (*get meuseh*). The rabbis claim that husbands who give the *get* after they've been sued in tort are not giving the divorce freely, but in response to the tort cases.

On March 11, 2008, the Supreme Rabbinic Court[37] issued a twenty-six-page decision (all *obiter dictum*) in which it held as follows:

> All petitions filed outside the rabbinic court — like petitions to civil courts for damages — that relate to *get* refusal, whose practical consequence is to accelerate the delivery of the *get*, are an interference with the laws of the Torah regarding divorce, and effectively preclude the possibility of the execution of a [kosher] *get*. . . .

> Attorneys who deal in family law should be advised to weigh carefully their recommendations to clients to file damage claims in the family court for *get* refusal. Such recommendations are tantamount to malpractice, and I doubt that attorneys could avoid such claims [of malpractice], even it if they were to sign their clients on waivers to that affect. It can be assumed that clients are not aware and cannot possibly foresee what serious consequences and delays can occur in the delivery of the *get*, even after the husband has agreed to give the *get*, if the husband's agreement [to give the *get*] was given subsequent to a petition for damages for *get* refusal (J. Algrabli).

In short, the rabbinic court declared in no uncertain terms that it would not yield to outside attempts to reform its failings and wielded, once again, the immutable rule against the "forced divorce" (*get meuseh*), thus rewinding the knot of religion that had for a moment loosened. Recent rabbinic court cases have reconfirmed this stand.[38]

In Conclusion

The tort of *get* refusal is delineating, distinguishing, demystifying, and defrocking the knots that bind gender, equality, and Jewish divorce law. The tort has prompted an important dialogue/confrontation in the Israeli courts between modernity and tradition, between liberal principles and religious values. It remains to be seen how this encounter will play itself out and if the knots that bind Israeli Jewish women unremittingly to their husbands will somehow be undone. It could be that women will lose patience in their attempt to unravel these knots and will simply cut them in order to escape entanglement.

Appendix: The Tort of Get Refusal (in alphabetical order, according to judge)

FAMILY COURT CASES

Bergman, J. Rachel (2010) (Haifa, File 12200/08) (awards 108,000 NIS to woman for *get* refusal)

Buhadana, Esther (2012) (Tiberius, File 15377-09-10) (awards 180,000 NIS damages to woman for *get* refusal that is not contingent upon rabbinic court order against husband)

Elbaz, J. Shlomo (2001) (Jerusalem, File 12130/03, Motion 50576/04) (denies motion to dismiss claim for damages for *get* refusal)

Felix, Nimrod (2011) (Jerusalem File 44248-05-10) (awards 164,000 NIS — 4,000 NIS a month from the day the wife left the marital home)

Greenberger, J. Ben-Zion (2001) (Jerusalem, File 3950/00) (denies motion to dismiss claim for damages for *get refusal)*

——— (2008) (Jerusalem, File 006743/02) (awards 550,000 NIS damages to woman for *get* refusal that is not contingent upon rabbinic court order against husband)

HaCohen, J. Menahem (2004) (Jerusalem, File 19270/03) (awards 425,000 NIS damages to women for *get* refusal, first instance)

——— (2007) (Jerusalem, File 022158/97, Motion 056986/07) (declares that there is claim for damages for *get* refusal independent of rabbinic court order)

——— (2010) (Jerusalem, File 021162/07) (awards 53,333 NIS damages to man whose wife refuses to accept *get*)

Katz, J. Itai (2010) (Jerusalem, File 18561/07) (awards damages of 400,000 plus 4,000 NIS a month to man whose wife refuses to accept *get*) (lowered on appeal)

Kitsis, J. Yehudit (2008) (Rishon Le'Tzion, File 030560/07) (awards 377,200 NIS damages to woman for *get* refusal and declares that *get* refusal is violation of Basic Law: Human Dignity and Freedom)

Maimon, J. Nili (2008) (Jerusalem, File 022061/07, Motion 054445/08) (denies motion to dismiss claim for damages for *get* refusal filed against husband's family)

——— (2004) (Jerusalem, File 20673/04) (awards damages to woman who was victim of abuse, including *get* refusal; amount increased on appeal)

Marcus, J. Philip (2001) (Jerusalem, File 9101/00, Motion 054233/01) (denies motion to dismiss claim for damages for *get* refusal)

——— (2009) (Jerusalem, File 22511/08, Motion 059740/08) (denies motion to dismiss claim for damages for *get* refusal, husband claiming that rabbinic court did not order him to give *get*)

——— (2010) (Jerusalem, File 9189/01) (awards 600,000 NIS damages to woman at rate of 100,000 NIS a year who sued for damages *after* she had already received her her *get*)

Sivan, J. Tova (2008) (Tel Aviv, File 24782/98) (awards 700,000 NIS to woman for *get* refusal)
——— (2011) (Tel Aviv, File 10-02-35371) (awards 400,000 NIS to ultra-Orthodox husband who received dispensation from rabbinic court to take a second wife, but whose first wife still refused to accept a *get*)
Stein, Yaffa (2011) (Rishon Le'Zion File 9877/02) (awards 680,000 NIS to woman even though rabbinic court rescinded order issued against husband to give a *get*)
Weitzman, J. Tzvi (2006) (Kfar Saba, File 19480/05) (awards 770,00 NIS to woman for *get* refusal against estate of husband)

DISTRICT COURT

Kovo, J. Esther, with J. Michal Rubensteing and J. Ofra Cherniak (2011) (Tel Aviv 1020/09) (affirming decision of Tova Sivan, Tel Aviv, File 24782/98)
Rachel Avraham TA file 43840/07

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Susan Weiss initiated the tort cases described in this paper. My thanks to Susan Aranoff for her cogent comments and editing.

Notes

1. Pierre Bourdieu, *Language and Symbolic Power* (Cambridge, MA: Harvard University Press, 1991), 42.

2. Stuart Scheingold and Austin Sarat, *Something to Believe In: Politics, Professionalism, and Cause Lawyering* (Stanford: Stanford Law and Politics, 2004), 2. ("For cause lawyers, . . . [l]awyering . . . is a deeply moral or political activity, a kind of work that encourages pursuit of their vision of the right, the good, or the just.")

3. J. David Bleich, "Modern-Day Agunot: A Proposed Remedy," *Jewish Law Annual* 4 (1981): 167, 171. ("*Halakhah* requires that the *get* be drafted at the uncoerced behest of the husband. Free will on the part of the husband is a necessary condition of validity.")

4. Israeli Rabbinic Courts Jurisdiction (Marriage and Divorce) Law of 1953. See generally Irving A. Breitowitz, *Between Civil and Religious Law: The Plight of the Agunah in American Society* (Westport, CT: Greenwood Press, 1993), setting forth a thorough overview of the structure of halakhah (Appendixes E and F, pp. 307–20).

5. Under certain circumstances, and with respect to certain matters that are ancillary to the divorce process like child support, custody, and marital property, the family courts of Israel have parallel jurisdiction with the rabbinic courts. However, only the rabbinic courts can decide if an Israeli Jew is married or divorced. In matters of personal status, Israel is a theocracy (defers to the laws of God), not a democracy (defers to the laws of men).

6. Valerie Moghadam, *From Patriarchy to Empowerment: Women's Participation, Movements, and Rights in the Middle East, North Africa, and South Asia* (Syracuse: Syracuse University Press, 2007), 353–64. Of the six variables by which the sociologist assesses a states' empowerment of women, family law is the only one in which Israel fails its women.

7. Deuteronomy 24:1(cited as the proof text for this principle).

8. Talmud Bavli, Yevamot 112b.

9. Talmud Bavli, Gittin 88b.

10. Shulhan Arukh, Even Ha'Ezer 4:1, 13, 22.

11. See, e.g., "Convention on the Elimination of All Forms of Discrimination against Women," United Nations Division for the Advancement of Women, accessed September 21, 2011, http://www.un.org/womenwatch/daw/cedaw/cedaw.htm. (Israel expressly notes its reservations to section 7[b] of the law stating: "1. The State of Israel hereby expresses its reservation with regard to article 7 [b] of the Convention concerning the appointment of women to serve as judges of religious courts where this is prohibited by the laws of any of the religious communities in Israel. Otherwise, the said article is fully implemented in Israel, in view of the fact that women take a prominent part in all aspect of public life." See "Declarations, Reservations, and Objections to CEDAW," United Nations Division for the Advancement of Women, accessed September 21, 2011, http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm.)

12. Susan Weiss, "The 3 Methods of Jewish Divorce Resolution: Fundamentalism, Extortion and Violence" (in Hebrew), *Eretz Aheret* 13 (2002): 42–47.

13. Israeli couples can divorce by agreement with no waiting period. In cases of contested divorces, most divorce attorneys who represent wives "race" to the family courthouse to sue for matters ancillary to the divorce. They hope to obtain financial

advantage in the family court with which they can leverage their clients' freedom. Hanna, an Orthodox woman, had sued in the rabbinic court. Moreover, she had offset her husband's child support debt against his half of the marital home. He still refused to give her a *get*.

14. Barbara J. Redman, "Jewish Divorce: 'What Can Be Done in Secular Courts to Aid the Jewish Woman?'" *Georgia Law Review* 19 (1984–85): 389; David M. Cobin, "Jewish Divorce and the Recalcitrant Husband — Refusal to Give a Get as Intentional Infliction of Emotional Distress," *Journal of Law and Religion* 4 (1986): 405; Breitowitz, *Between Civil and Religious Law*, 239–49.

15. Jews who feel bound by Jewish law, irrespective of where they live, will not feel free to remarry until their marriage is terminated with a *get*. In France, Jewish women successfully sued their husbands for damages when they refused to give them a religious divorce after they had been civilly divorced. See, J. C. Nidas, "The Position of French Civil Courts with Regard to Claims Filed against Jewish Husbands for the Delivery of a Get" (in Hebrew), *Dinei Israel* 20–21 (2000–1) (reviewing and translating French court cases that addressed the claims of wives for damages against their recalcitrant husbands).

16. J. Greenberger (2001), Jerusalem File 3950/ 00. (All Israeli family court cases are anonymous. They do not refer to the name of the parties. Most of the cases cited here were not published but can be found on Israeli legal websites. Some can be read on CWJ website at http://cwj.org.il/our-projects/torts [English] and http://sites.google.com/site/cwjhebrew/tort-of-get-refusal [Hebrew].)

17. J. Marcus (2001), Jerusalem File 9101/00.

18. J. HaCohen (2004), Jerusalem File 19270/03.

19. J. Weizman (2006), Kfar Sava File 19480/05.

20. See Judge Kitsis (2008), Rishon Le'Tzion File 030560/07; and Judge Katz (2010), Jerusalem File 18561/07 (placing the tort squarely under the Basic Law).

21. These were all the cases that I know of. Since 2008, at least another fifteen cases have been filed. Statistics gleaned from those additional cases are similar to the ones set forth in this article. Most of the cases have been brought by the Center for Women's Justice, an NGO that I founded and stand at the head of. I think it fair to say that all the cases filed were inspired by our work, and all were bent on expanding the tort to cover all cases of *get* abuse, irrespective of rabbinic court order. I have listed all the decisions that I know of in the appendix.

22. This client alleged that she was fraudulently induced to agree to dismiss her case with prejudice, and she moved to reopen her case. A trial was conducted, and as of January 2011, the decision in the matter is still pending.

23. In 2007, the rabbinic court put one of the husbands into prison (and on

alternative weeks into solitary confinement) for refusing to give a *get*. As of 2010, he has yet to give the get, even though he has been in jail for close to four years. Rabbi Levi Brackman and Rivkah Lubitch, "Rabbinical Court Send Divorce Recalcitrant to Solitary Confinement," *Jewish World*, accessed January 25, 2010, http://www.ynetnews.com/articles/0,7340,L-3523781,00.html. In the second case, the rabbinic court first ordered the husband to give a *get* in 2009. In December 2010, the rabbinic court agreed to incarcerate the husband. After a week in jail, he agreed to give the *get*. Both women had been living apart from their husbands for over ten years. They are both in their late thirties.

24. See comprehensive list in the appendix. Note that this includes cases that award damages to men. In 2010, Judge HaCohen (Jerusalem File 21162/07) and Judge Katz (Jerusalem File 18561/07) also awarded damages of 533,333 NIS and 400,000 + 4,000 NIS each month, respectively, to men whose wives refused to accept a *get*.

25. See appendix.

26. The appeal was decided on January 25, 2011, upholding Tel Aviv District Court award of 700,000 NIS (almost $200,000) issued by J. Sivan in 2008 (Appeal 1020/09). On February 15, 2012, Judge Neal Hendel denied the husband the right to a second appeal (Motion for Appeal 2374/11).

27. In both those cases, an outside event triggered their tort claims. Another secular woman who withdrew her tort case (she is exploring other avenues) is also waiting more than twenty years for a divorce.

28. See Patrick Ewick and Susan S. Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago: University of Chicago Press, 1998); Austin Sarat and Stuart Scheingold, *The Worlds Cause Lawyers Make: Structure and Agency in Legal Practice* (Stanford: Stanford Law and Politics, 2005) (discussing how lawyers use schemas creatively).

29. Sally Engle Merry, "Transnational Human Rights and Local Activism: Mapping the Middle," *American Anthropologist* 108:1 (2006) (explaining how social movement activists and NGO participants translate ideas from the global arena down and from the local arena up).

30. See generally Convention for the Elimination of Discrimination against Women (CEDAW).

31. Catherine MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge, MA: Harvard University Press, 1987), 39. ("When you are powerless, you don't just speak differently. A lot, you don't speak. Your speech is not just differently articulated, it is silenced, eliminated, gone. . . . Not being heard is not just a function of lack of recognition, not just that no one knows how to listen

to you, although it is that; it is also silence of the deep kind, the silence of being prevented from having anything to say. Sometimes it is permanent.")

32. For example, Rachel Avraham (Tel Aviv File 43840/07) (sued the state for negligent supervision of rabbinic court judges that allowed case to drag on for almost nineteen years).

33. Though awards have been averaging between 40,000 and 60,000 NIS per year of refusal (between $12,000 and $16,000 a year.) See appendix.

34. Leslie Bender, "A Lawyer's Primer on Feminist Theory and Tort," *Journal of Legal Education* 39 (1988): 3, 9.

35. John B. Thompson, *Ideology and Modern Culture: Critical Social Theory in the Era of Mass Communication* (Stanford: Stanford University Press, 1990) (how meaning sustains relations of domination).

36. Compare Cass Sunstein, "Should Sex Equality Law Apply to Religious Institutions?" in *Is Multiculturalism Bad for Women?* ed. Susan Muller Okin et al. (Princeton: Princeton University Press, 1999).

37. File 7041-21-1.

38. See also Tel Aviv District Rabbinic Court File No. 8455-64-1; and Netanya District Rabbinic Court File 272088/6, (calling on rabbinic courts to refrain from deciding divorce cases or issuing *gittin* subsequent to the filing of tort claims and claiming that the filing of a tort claim renders any future *get* invalid). Despite these decisions, at least three CWJ clients have received a *get* after the filing of the tort claims and with the full knowledge of and cooperation of the rabbinic courts. Despite these decisions, I know of no occasion in which a *get*, once rendered, was declared invalid because of a tort claim for damages for *get* refusal.