The Value and Significance of the *Ketubah*

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Introduction

One of the questions frequently posed in contested divorces is how to assess the value of a *ketubah*, the marriage contract that serves as an indispensable part of every Jewish wedding. People generally understand that the *ketubah* describes the Jewish law obligations of a husband towards his wife during marriage, as well as his financial obligations upon death or divorce. For example, the standard form *ketubah* states that the husband obligates himself to pay his wife 200 *zuz* as well as 200 *zekukim* of silver upon death or divorce. However, many people view the *ketubah* more as a quaint symbol of the marriage ritual rather than as a legally enforceable document. What happens, however, when one party seeks to enforce their *ketubah* rights?

This article will explore three different issues related to enforcing *ketubot*.[1] The first is the value – in dollars – of the payments mentioned in the *ketubah*. The second is whether the *ketubah* is still an enforceable agreement in cases of divorce according to Jewish law, in light of Rabbenu

1. *Ketubot* is the plural of *ketubah*.

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Gershom's ban on coerced divorce. Finally, this article discusses whether a *ketubah* creates a contract legally enforceable in American law.

I. The Dollar Value of the *Ketubah*

A. *Zuzim, Zekukim* and Dollars

The *ketubah* recounts the following recitation of obligations by the husband:

> Be thou my wife in accordance with the laws of Moses and Israel, and I will work, honor, support, and maintain you in accordance with the practices of Jewish husbands who work, honor, support, and maintain their wives in faithfulness. And I will give you 200 *zuz*[2] as dowry.... which is due to you under the law of the Torah as well as food, clothing, needs, and cohabitation according to the way of the world.

The Talmud makes clear mention of the fact that the standard amount of money in a *ketubah* was 200 *zuz* for a first marriage.[3]

The amount of 200 *zuz* is equivalent to 50 *shekalim* in the Jewish monetary system.[4] Each *shekel* is generally valued at approximately 20 grams of silver,[5] so that 200

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2. In cases where the woman was previously married or has converted to Judaism, the amounts written in the *ketubah* are generally 100 *zuz* for the base amount, and 100 *zekukim* for the additional amount.

3. See *e.g., Ketubot 10b;* Rambam, *Ishut 10:7; Shulchan Aruch EH 66:6.*

4. *A pidyon haben* requires. 5 *selaim* or *shekalim,* and in each *sela/shekel* there are four *dinarim;* a *dinar* and a *zuz* are the same amount. See *Encyclopedia Talmudit, Dinar,* 7:398- 406.

5. Ibid.

zuz, strictly speaking, should equal the value of about 1000 grams of silver, or one kilogram (2.2 pounds) of silver.[6] Yet other halachic authorities posit an even lower amount, as many Sefardic authorities rule that the *ketubah* can be paid in diluted silver (called *kesef hamedina*, commercial grade silver) which might only contain as little as 120 grams of silver in 200 *zuz*.[7] Thus, if the *ketubah* is valued by the silver content of 200 *zuz*, it is a paltry amount.[8]

The standard Ashkenazi *ketubah* also recounts as follows:

> The dowry that she brought from her father's home in silver, gold, ornaments, clothing, household furnishing, and her clothes amounting in all to the value of 100 *zekukim* of pure silver, the groom has taken upon himself. The groom has also consented to match the above sum by adding the sum of 100 *zekukim* of pure silver making a total in all of 200 *zekukim* of pure silver.

Based on this recounting of the pre-agreed-upon value of the assets of the wife, Ashkenazi halachic authorities

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6. *Chazon Ish EH* 66:21 notes that much silver sells in the modern market place as only 84% silver, with the rest being additives, and thus one has to add 16% additional weight to sterling silver to make it "pure". In addition, *Chazon Ish* notes that one needs to factor in the costs of delivery and taxes into the husband's payment obligations. In fact, in modern America, silver sells in a number of different purity grades; pre-1965 coins are 90% silver, and thus sell at a discount to the spot silver market for pure silver. Other silver coins are only 40% silver and thus sell at a deeper discount. For a discussion of the modern silver market, see www.certifiedmint/silver.htm.

7. See *Sefer Nisuin Kehilchata* 11:80-83.

8. *Chazon Ish* himself posits that 200 *zuz* is worth only 570 grams of silver, or a little more than 1 pound.

concluded that it would be more appropriate to value the *ketubah* in accordance with this understanding of the value of the "200 *zekukim* of pure silver" that are added in every standard *ketubah* in addition to the base amount of 200 *zuz* that is the husband's obligation, as this amount also needs to be returned to the wife upon divorce. [9]

However, the term *zekukim* is not a talmudic term, and there is quite a bit of disagreement as to what it means and to what coin it refers. Rabbi Moshe Feinstein places the value of 200 *zekukim* of silver at 100 pounds of silver (approximately 45.5 kilograms).[10] A similar such view can be found in the *Chazon Ish*,[11] who posits that the value is closer to 127 pounds of silver (approximately 57 kilograms).[12] Both of these views assume that the term *zekukim* is a reference to a large medieval coin of considerable value. Each *zakuk* weighs half a pound or more.

There are at least two other viewpoints concerning the valuation of the 200 *zekukim* of silver described in the *ketubah*: the first is that of Rabbi Chaim Naeh[13] who ruled that the value of 200 *zekukim* is 8.5 pounds of silver (approximately 3.85 kilograms).[14] Yet others posit that the

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9. Indeed, this is the standard and unchangeable text of the *ketubah* for Ashkenazim, thus increasing its universality and thus its enforceability. See *Otzar Haposkim Even Haezer, Nusach Haketubah* Volume 19, pages 57-103.

10. *Iggerot Moshe EH* 4:91-92.

11. *Even Haezer* 66:21.

12. Based on the comments of the Vilna Gaon to *Yoreh Deah* 305:3.

13. *Shiurei Torah* 50:44.

14. It should be noted that this amount is also consistent with, although perhaps not identical to, the view of the author of the *Nachlat Shiva*. See *Nisuin Kehilchata* 11:97. (*Nachlat Shiva* 12:49 is

term *zekukim* reflects yet some other coin, and 200 *zekukim* are valued at between 10 and 14 pounds of silver.[15] Of course, there is the view of many Sefardic *poskim* who posit that the 200 *zekukim* can be paid with diluted silver, thus drastically reducing the amount that needs to be paid.[16]

Once we value the *ketubah* based on 200 *zekukim* of silver and follow the view of Rabbi Feinstein or the Chazon Ish concerning the amount (rather than focusing on the base amount of 200 *zuz*), most decisors generally follow the view of the author of *Bet Shmuel*[17] that we do not separately add the value of the base *ketubah* obligation of 200 *zuz* to our calculation, but rather consider everything included in the 200 *zekukim* of silver, since the face value of 200 *zuz*, as noted earlier, represents such a paltry amount in comparison to 200 *zekukim* that it is considered to be subsumed within that amount (although it may be appropriate to add the 200 *zuz* separately if the view of Rav Chaim Naeh is adopted).[18]

One final view is worth noting. The Mishnah and the Jerusalem Talmud[19] indicate that the base amount of "200 *zuz*" is meant to correspond to a year's worth of support for a single person.[20] Rabbi Shimon Mishantz and Rabbi

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sometimes quoted as holding that 200 *zekukim* is worth 2.5 times the value of 200 *zuz*, but probably held that 200 *zekukim* is closer to 3.75 times the value of 200 *zuz*.)

15. See Rabbi Aryeh Kaplan, *Made in Heaven* page 113.

16. The Israeli work, *Nesuin Kehilchata* 11:97(note 200) avers that such in the practice of the Israeli Rabbinical courts.

17. *Even Haezer* 66:15.

18. See *Drisha*, *Even Haezer* 66:3. See generally *Nisuin Kehilchata* 11:98.

19. *Peah* 8:7 (in the standard Mishnah, it is 8:8).

20. For an elaboration on this, with a full discussion of the

Ovadya Bartenura state explicitly that "One who has 200 *zuz* cannot take charity, as this amount [200 *zuz*] is the cost of food and clothes for a year."[21] Based on this understanding of the function of 200 *zuz* as a year's support, it has been the practice of a number of rabbinic tribunals to assess the 200 *zuz* in the *ketubah* in accordance with the amount of contemporary currency that would reasonably correspond to one years's support, even if this amount is far in excess of the formal value of the silver coinage described in the *ketubah* document itself.[22] By this measure, all Jewish law weights and measures change, as it is their food-and goods-purchasing power (in dollars) that the talmudic rabbis focused on, and not their silver content.[23] The silver coins used in the *ketubah* represented certain values

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many sources supporting this view, see Rabbi Chaim Benish, *Midot Usheurai Torah* Chapter 23, at pages 398-405. He explicitly states that in talmudic times 200 *zuz* was a year's support.

21. Rabbi Shimon Mishantz and Rav Ovadya Bartenura on *Peah* 8:8.

22. This view is clearly contemplated by *Sema, Choshen Mishpat* 88:2, and is perhaps accepted as correct by *Shach YD* 305:1. (See also *Derisha, CM* 88 who elaborates on the above *Sema.*) See *Avnei Meluim* 27:1 who avers that Rashi and Ritva accept this view. (But see *Chazon Ish Even Haezer* 148, who posits that the Ritva rejects this view). See also Rivash 153 who also poses this question, but rejects the conclusion of the *Sema.*

23. Indeed, there are significant halachic authorities who suggest that this is the rule for most amounts found in the Talmud, such as the *perutah* or the *dinar,* which should be linked to the price of food for a day, week, month, or year. See *Sema, Choshen Mishpat* 88:2, who states "according to this, nowadays, when one can purchase with a *perutah* only a very small amount, according to Jewish law we should say that a woman cannot marry with a *perutah.*" A *perutah* in talmudic times was one-thirteenth of the amount a person needed to support himself for a day; see Rabbi Benish, supra note 20 at page 401.

corresponding to different purchasing power, but did not necessarily establish a fixed value for all time based on the worth of the silver alone. Therefore, some *poskim* have concluded that, irrespective of the current value of silver, the value of the *ketubah* should be equivalent to one year's support.[24]

B. A Sample Calculation in Dollars

A troy ounce of .999% silver was worth approximately $4.60 on August 6, 2002, in the New York City silver spot market, and this can be used to calculate the value of a *ketubah*, according to the various views.[25] The net cost on that day for actual delivery of one ounce of pure silver was about $5.60 per ounce.[26]

1. The current value of the *ketubah* (*zuzim* plus *zekukim*) according to the Chazon Ish would be approximately $10,263.

2. The current value of the *ketubah* (*zuzim* plus *zekukim*) according to Rabbi Feinstein would be approximately $8,192.

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24. The mean cost of living in Switzerland is 1.67 that of the mean cost of living in the United States ($167,000 in Switzerland purchases that which $100,000 purchases in America). The cost of living in Atlanta, Georgia, is less than half the cost of living in Manhattan.

25. One kilogram equals 32.15076 troy ounces. One gram equals .03215 troy ounces.

26. See *Chazon Ish*, supra note 6, for an explanation.

In order to actually purchase and take delivery of a 100 ounce silver bar, one needs to add between 65 and 85 cents per ounce delivery fee, plus sales tax of 6%. (Verified by operator, at Certified Mint Inc, and noted as correct at http://certifiedmint.com/silver.htm#Silver Bullion and SilverCoins.)

For this article, we assume an average of 75 cents.

3. The current value of the *ketubah* (*zuzim* plus *zekukim*) according to Rabbi Chaim Naeh would be approximately $693.

4. The value of 200 *zuz* alone[27] would be approximately $180.[28]

5. The value of the *ketubah* as one year's support would be between $15,000 and $55,000.[29]

Each of these amounts would be reduced by 87.5% according to those Sefardic authorities who allow for diluted silver (*kesef hamedinah*) which is only one-eighth silver (although harldy any Ashkenazic decisors accept this view).[30]

C. How To Rule on this Dispute

Given the diversity of views found in the normative halacha, whose view should one follow? Three different answers to that question are found.

One view is that matters of ambiguity in a document

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27. Representing the base amount of the *ketubah*, which is equivalent to 50 *shekalim*, which would be 10 times the amount of the value of *Pidyon Haben*.

28. See also *Piskei Din Rabannim* 11:362. According to these values, the current monetary value of the 5 "*shkalim*" that need to be given for *Pidyon Haben*, which is variously evaluated at either 96 grams, 100 grams (or 101 grams of pure silver), would be between $14.20 (96 grams of silver) and $14.94 (101 grams of silver; 100 grams of silver would currently be $14.79). Since the 5 for *Pidyon Haben* is equivalent to 3,840 "*Perutot*" it follows that the technical value of a *Perutah* is currently less than half a penny.

29. And would vary depending on location; see note 24. If the possibility of 200 *zuz* being equal to perpetual support were seriously considered, the amount would be even more; but see the end of note 20.

30. See *Nesuin Kehilchata* 11:77-83.

are decided against the one who is seeking enforcement. Thus, Rabbi Ovadya Yosef and Rabbi Yosef Kapach adopt the view that the woman receives the lowest amount plausible, as she bears the burden of proof, which she cannot meet.[31]

Another possible answer is accepted by Rabbi Mordechai Eliyahu, who posits that normative halacha accepts the view of Rabbi Feinstein and the Chazon Ish, and that a *ketubah* is worth about 120 pounds of silver.[32] Indeed, a strong claim could be made that *minhag* Ashkenaz [the custom of European-based Jewry] is to follow this view, and it is only Sefardic decisors (such as Rabbis Yosef and Kapach, above) who reject this view.[33] For that reason, all Ashkenazi *ketubot* make clear reference to the 200 *zekukim* standard, rather than the Sefardic practice of varying the amount depending on the woman and man.

Another possible answer is that matters of interpretation have a local context to them, particularly in words such as *zekukim* that are ill defined, and that one should follow local custom on these matter;[34] in America,

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31. See the Israeli Rabbinical Court in PDR 11:362 (5740) in a *psak din* co-signed by Rabbi Ovadya Yosef and Rabbi Yosef Kapach. See, e.g., *Yevamot* 89a.

32. See the dissent by Rabbi Mordechai Elayahu in Israeli Rabbinical Court in *PDR* 11:362 (5740).

33. Indeed no Ashkenazi decisor with the stature of these two authorities has argued with them.

34. This is explicitly noted as a significant factor by *Maharashdam EH* 187. Indeed, there is an open question whether to stipulate that the one who is seeking to enforce a contract has the weaker hand in cases such as this, where the woman had no hand in the crafting of the document; see for example, *Nachal Yitzchak* 61:4, who notes that there are cases where a document is constructed against the one who wrote it, and not against the one who is

this would mean following the view of Rabbi Feinstein in evaluating the *ketubah*, inasmuch as Rabbi Feinstein was the pre- eminent decisor for American Jewry.

This view is additionally supported by the basic talmudic principle that the purpose of the *ketubah* was to mandate payments in cases of divorce high enough so that a man would not hastily divorce his wife. Payments of $25, $100, or even $1,000 hardly accomplish this talmudic mandate. Consistent with this notion, it is noteworthy that Rabbi Feinstein dismissed the European practice which was to evaluate the *ketubah* at 75 rubles because this sum would be laughably small nowadays.[35]

All of this, however, assumes that the *ketubah* is of worth in resolving financial disputes related to divorce. As explained below, that itself is subject to dispute.

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seeking to use it.

35. See *Iggerot Moshe YD* 1:189-191 where Rabbi Feinstein clearly endorses the view that the *ketubah* has to be an amount large enough to deter divorce, no matter what the price of silver really is. Indeed a plausible argument can be advanced that Rabbi Feinstein fundamentally accepts the view that 200 *zuz* is a reference to a year's support, and that Rabbi Feinstein wrote his responsun because the rapid increase in silver prices at the time (circa 1980) had created the anomalous situation where the value of the 200 *zekukim* of silver in the *ketubah* exceeded the cost of supporting a single woman for a year (silver peaked in 1980 at $25 an ounce for pure silver, in which case 100 pounds of pure silver delivered to the door would have been worth more than $40,000, which would be much more than one year's support in 1980 for a single person. According to this position, Rabbi Feinstein's view is that one pays the greater of the two options (1) the value of 100 pounds of silver or (2) the cost of supporting the woman for one year.

II. Is a *Ketubah* Enforceable as a Matter of Jewish Law?

A. Talmudic Rules

The intrinsic nature of marriage and divorce in halacha is different from that of any other mainstream legal or religious system, in that entry into marriage and exit from marriage through divorce are private contractual rights rather than public rights. Thus, in the Jewish view, one does not need a governmental "license" to marry or divorce. Private marriages are fundamentally proper, and governmental or even hierarchical (within the faith) regulation of marriage or divorce is the exception rather than the rule.[36]

This view of entry into and exit from marriage as contractual doctrines is basic and obvious to those familiar with the rudiments of talmudic Jewish law. While the Gemera imposes some limitations on the private right to marry (such as castigating one who marries through a sexual act alone, without any public ceremony[37]) and the

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36. This view stands in sharp contrast to the historical Anglo-American common law view, which treats a private contract to marry or divorce as the classical examples of an illegal and void contract; the Catholic view, which treats marriage and annulment (divorce) as sacraments requiring ecclesiastical cooperation or blessing; or the European view, which has treated marriage and divorce as an area of public law.This should not be misunderstood as denying the sacramental parts of marriage (of which there are many); however the contractual view predominates in the beginning-of-marriage and end-of-marriage rites. This is ably demonstrated by Rabbi J. David Bleich, *Jewish Divorce: Judicial Misconceptions and Possible Means of Civil Enforcement*, 16 Conn. L.R. 201 (1984).

37. Even though such an activity validly marries the couple; *Rav mangid aman demekadesh beviah, Yevamot* 52a; *Shulchan Aruch,*

Shulchan Aruch imposes other requirements (such as insisting that there be an engagement period[38]), basic Jewish law treats entry into marriage as one of private contract requiring the consent of both parties.[39]

Exit from marriage was also purely contractual (except in cases of fault), but according to Torah law, was a unilateral contract that did not require the wife's consent. Thus, according to unmodified Torah law, exit from marriage was drastically different from entry into marriage. Divorce did not require the consent of both parties. Marriage was imbalanced in other ways as well; a man could be married to more than one wife, any of whom he could divorce at will, whereas a woman could be married to only one man at a time, and she had no clearly defined right of exit, perhaps other than for fault.

From very ancient times, and according to some authorities, even according to Torah law,[40] the husband's unrestricted right to divorce was curtailed through contractarian means, the *ketubah*. The *ketubah* was a pre-marital contract, agreed to by the husband and wife, that contained terms regulating the conduct of each party in

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Even Haezer 26:4.

38. *Shulchan Aruch, Even Haezer* 26:4.

39. Marriages entered into without consent, with consent predicated on fraud or duress, or grounded in other classical defects that modern law might find more applicable to commercial agreements are, under certain circumstances, void in the Jewish tradition. For more on this see Michael Broyde, *Marriage, Divorce and the Abandoned Wife in Jewish Law: A Conceptual Approach to the Agunah Problems in America.* (Ktav, 2001) in Appendix B, entitled "Errors in the Creation of Jewish Marriages."

40. There is a dispute as to whether this requirement is biblical or rabbinic in cases of a first-time marriage; all agree it is rabbinic for second marriages; see *Shulchan Aruch EH* 65:.

the marriage and discussing the financial terms should the marriage dissolve through divorce or death. While the *ketubah* does not explicitly restrict the unilateral right of the husband to divorce his wife for any reason, it does impose a significant financial obligation on the husband should he do so without cause – he must pay her a considerable amount of money. Indeed, the Talmud readily states that the *ketubah* was instituted so that "it will not be easy [cheap] for him to divorce her."[41] In addition, and more significantly, the Talmud mandates that the couple may not commence a marital (sexual) relationship unless both the husband and wife have agreed on the provisions of the *ketubah* and it has been executed.

Thus, while the right to divorce remained unilateral with the husband, with no right of consent[42] by the wife, it was now restricted by a clear financial obligation imposed on the husband to compensate his wife if he exercised his right to unilateral divorce (absent judicially-declared fault on her part). There are even views among the *Rishonim* that if the husband cannot pay the financial obligation, he is prohibited from divorcing her except in cases of fault.[43] Indeed, the wife, as a precondition to entry into the marriage, could insist on a *ketubah* payment higher than the minimum promulgated by the rabbis.[44] Of course, divorce could be by mutual consent, subject to whatever agreement the parties wished.

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41. *Yevamot* 89a, *Ketubot* 11a.

42. The wife, however, needs to be aware of the divorce, even if she does not consent. See Rambam, *Gerushin* 1:1-3.

43. See *Shulchan Aruch, Even Haezer* 119:6, and *Chelkat Mechokek* 119:5 for a presentation of the different views on this matter.

44. And, as noted above, the Ashkenazic custom was to do just that and add the term 200 *zekukim* to the *ketubah*.

Thus in talmudic times, the economic rules for divorce were as follows:

1. The husband had a unilateral right to divorce and had to pay a pre-agreed upon amount to his wife (agreed to in the *ketubah*, but never less than 200 *zuz*) upon divorce, except in cases of fault.

2. There was divorce by mutual consent with payment to be determined by the parties.

Consequently, in a case where the husband wanted to divorce his wife, he could do so against her will, and pay her the *ketubah*. She could not under such circumstances sue for divorce[45] as a general rule, although she could perhaps restrict his rights through a *ketubah* provision.[46]

B. The Ban of Rabbenu Gershom

In the eleventh century Rabbenu Gershom, through his bans on polygamy and forced divorce, fundamentally changed the basic halacha in divorce. The decree of Rabbenu Gershom [47] was enacted for a variety of reasons, and in order to equalize the rights of the husband and wife to divorce, it was necessary to restrict the rights of the husband and prohibit unilateral no-fault divorce by him.[48] Divorce

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45. Unless she had not yet had a child with him, which was a form of fault on his part; *Ta'anat b'eyna hutra l'yada*, see *Yevamot* 64a, *Shulchan Aruch, Even Haezer* 154:6-7 and *Aruch HaShulchan, Even Haezer* 154:52-53.

46. *Yevamot* 65a; but see view of Rav Ammi.

47. See "Cherem Derabbenu Gershom", *Enclycopedia Talmudit*, 17:378. But see *Teshuvot Maharam MiRothenburg* 4:250 who indicates a different framework for the rights of the woman to divorce even after the ban of Rabbenu Gershom.

48. See *Responsa of Rosh* 43:8, who indicates that one of the consequences of this model is that women (and men) will not be

was limited to cases of provable fault or mutual consent. In addition, Rabbenu Tam posits, and the normative halacha accepts, that fault is narrowed to exclude cases of "soft" fault such as unprovable repugnancy, and in only a few cases could the husband be actually forced to divorce his wife or the reverse.[49]

Equally significant, this decree prohibits polygamy, thus placing considerable pressure on the man in a marriage that is ending to actually divorce his wife, since not only would she not be allowed to remarry, but neither would he.[50] According to *Cherem deRabbenu Gershom,* Jewish law now permits divorce only through mutual consent or fault on her part.

Since the promulgation of the ban in the name of Rabbenu Gershom against divorcing a woman without her consent or without a showing of hard fault,[51] the basic

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able to leave a marriage when they wish. See also his responsum 42:1, which indicates that the basic purpose of the ban of Rabbenu Gershom is to create balance of rights between the husband and the wife.

49. This insight is generally ascribed to Rabbenu Tam in his view of *meus alay;* see Tosafot, *Ketubot* 63b *s.v. aval.* In fact, it is worth noting that this view fits logically with the view of Rabbenu Gershom, who not only had to prohibit polygamy and coerced divorce, but divorce for easy fault, as Rambam's concept of repugnancy as a form of fault is the functional equivalent of no fault, identical in result to the *Geonim*'s annulment procedure. What exactly is hard fault remains a matter of dispute, but it generally includes adultery, spouse beating, insanity, and impotence; see *Shulchan Aruch Even Haezer* 154.

50. Absent the prohibition on polygamy, the decree restricting the right to divorce would not work as well, as the husband who could not divorce would simply remarry and abandon his first wife. This prevented that conduct.

51. In which case, the value of the *ketubah* need not be paid as

question of the value of the *ketubah* has been questioned. Since the talmudic rabbis instituted the *ketubah* payments so as to deter the husband from rashly divorcing a wife, the basic value and purpose of the *ketubah* in cases of divorce is limited to cases where the husband can divorce his wife without her consent, and yet has to pay the *ketubah*. However, in cases where the husband cannot divorce his wife without her consent, there is no need or purpose to a *ketubah*. For example, Rambam[52] and *Shulchan Aruch* both agree that when a man rapes a woman and thus has to marry her (if she wishes to marry him) and may not divorce her, there is no *ketubah* payment. *Shulchan Aruch* 177 states in such a case:

> A man who rapes a woman who is a virgin is obligated to marry her, so long as she and/or her father wish to marry him, even if she is crippled or blind, and he is not permitted to divorce her forever, except with her consent, and thus he does not have to write her a *ketubah*. If he sins, and divorces her, a rabbinical court forces him to remarry her.[53]

The logic seems clear. Since he cannot divorce her under any circumstances without her consent, the presence or absence of a *ketubah* seems to make no difference to her economic status or marital security. When they want to both get divorced, they will agree on financial terms independent of the *ketubah*, and until then, the *ketubah* sets no payment schedule. Should she insist that she only will consent to be divorced if he gives her $1,000,000 in buffalo nickels, they either reach an agreement or stay married. The *ketubah* serves no economic purpose in such a divorce.

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a penalty for misconduct imposed on the woman.

52. Rambam, *Ishut* 10:10.

53. *Shulchan Aruch Even Haezer* 177:3.

This case stands in clear contrast to the standard marriage in previous times. In such a marriage, prior to marriage the husband and wife negotiated over the amount the husband would have to pay the wife if he divorced her against her will or he died. She could not prevent the husband from divorcing her, except by setting the payment level high enough that the husband was economically deterred from divorce by dint of its cost.

All this changed in light of the two decrees of Rabbenu Gershom. Rabbenu Gershom decreed that a man may not divorce his wife without her consent, except in cases of serious fault on her part, and a man may not marry a second wife under any circumstances.

What then is the purpose of the *ketubah* in cases of divorce after the ban on polygamy and unilateral no-fault divorce? Rabbi Moshe Isserless (Ramo) provides a very important answer. He states in the beginning of his discussion of the laws of *ketubah*:

> See *Shulchan Aruch Even Haezer* 177:3[54] where it states that in a situation where one may divorce only with the consent of the woman, one does not need a *ketubah*. Thus, nowadays, in our countries, where we do not divorce against the will of the wife because of the ban of Rabbenu Gershom, as explained in *Even Haezer* 119, it is possible to be lenient and not write a *ketubah* at all; but this is not the custom and one should not change it.[55]

Almost all of the classical commentators disagree with this Ramo and rule that one still needs a *ketubah* even after the ban of Rabbenu Gershom. *Chelkat Mechokek, Bet*

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54. The case of rape discussed previously in text.

55. *Even Haezer* 66:3.

Shmuel and Gra all state that one should not rely on this view. The *Mishneh Lemelech* posits that since there was a rabbinical decree mandating a *ketubah*, latter rabbinic authorities are incapable of repealing that obligation, and thus the Ramo ought not be relied on.

Avnei Mishpat[56] argues that Ramo's central analogy is incorrect, in that the *ketubah* serves a purpose in the case of widowhood; *Chazal* did not decree a *ketubah* even in the case of widowhood in the case of a rape victim who marries the rapist, as the mandatory payment of 50 *shekalim* directed by the Torah as his punishment was equal (not by coincidence, either, it is claimed[57]) to the value of the *ketubah*). So too, the *ketubah* establishes rights in the marriage itself that can be enforced,[58] and death benefits, and effects rights in cases of *chalitza* as well.

Indeed, the custom and practice is not to follow the possibility suggested by the Ramo,[59] without other lenient factors present as well. Thus, every Jewish wedding still starts with a *ketubah*, as Ramo himself notes to be the custom.

However, no one argues with the basic economic assertion of the Ramo: The purpose of the *ketubah* written

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56. *EH* 66:10.

57. See *Toldot Adam EH* 66:3. See also *Derech Hamelech* on Rambam *Ishut* 10:10 . *Tosafot Chaim* 2:10 notes another difference, which is that a man who violates *Cherem Derabbenu Gershom* is not forced to remarry his ex-wife, whereas when the rapist divorces his victim against her will, he is forced to remarry her.

58. In Jewish law, a *bet din* can compel support of one spouse by another even absent divorce.

59. See for example, *Teshuvot Vehanhagot* 760. But see *Aruch Hashulchan* EH 177:1 in the parentheses and the last line *She'elot Uteshuvot Mutzal MeAish* 21, *Sefer Kinyan Torah* (page 14).

to impose a cost on the husband for divorce – so that he should not divorce his wife rashly – has become moot. In situations where *Cherem Derabbenu Gershom* is not applicable due to misconduct, fault is always found, and thus no *ketubah* payment is mandated by Jewish law. The only practical case where the *ketubah* is relevant is where the husband's fault generates the grounds for divorce, and the wife seeks a divorce grounded in her husband's fault, and payment of the *ketubah*.[60] Although it might have some value in cases of widowhood as well as a matter of theory, normally it does not.[61]

Consider the observation of Rabbi Moshe Feinstein on this matter. He states:

> The value of the *ketubah* is not known to rabbis and decisors of Jewish law, or rabbinical court judges; indeed we have not examined this matter intensely, as for all matters of divorce it has no practical ramifications, since it is impossible for the man to divorce against the will of the woman; [the economics of] divorce are dependent on who desires to be divorced, and who thus provides a large sum of money as they wish to give or receive a divorce.[62]

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60. Since the central purpose of the *ketubah* was not to allow the husband to easily divorce his wife, Ramo might not have considered these matters truly significant insofar as the main purpose of the *ketubah* was to protect the woman from divorce in cases which she desired to stay within the marriage.

61. The reason this is so is that widows are entitled according to Jewish law to either perpetual support from the husband's estate or their *ketubah* payment, as the widow wishes; see *Shulchan Aruch EH* 93:3 and *Pitchai Choshen*, Volume 8, Chapter 11:1-3. Since the former is much more valuable than the latter, no reasonable person would exercise her *ketubah* rights in cases of widowhood, and thus the proper evaluation of the *ketubah* is practically irrelevant.

Elsewhere Rabbi Feinstein writes:

> I will write briefly the value of the *ketubah* in America nowadays, for use in those circumstances where it is needed. One should know that in divorce there is no place for evaluating the *ketubah*, since the ban of Rabbenu Gershom prohibited a man from divorcing his wife without her consent. Thus, divorce is dependent on who wants to give or receive the *get* and who will give or receive money as an inducement. But it is relevant to a widow, or a *yavamah* who wishes to have *chalitza* done, and who wishes to have her *ketubah* paid from the assets of the brother who is doing *chalitza*.[63] Only infrequently, in farfetched cases, is the value of the *ketubah* relevant to divorce, such as when she agrees to be divorced, only if she is paid the amount owed by her *ketubah*.[64]

A simple example from commercial law helps explain the point of Rabbi Feinstein in divorce law. Suppose someone owns a painting that another likes. The fair market value of this painting is $100. For how much must the owner of this painting sell it to the one who wishes to buy it? The answer is that Jewish law does not provide a price. The seller need sell it only at a price at which he or she is

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62. *Iggerot Moshe Even Haezer* 4:91 (This *teshuva* was written in 5740/1980).

63. The formulation used in this *teshuva* is different from the *Iggerot Moshe EH* 4:91 where, with regards to the rights of the widow, Rabbi Feinstein posits that:

Even widows, even when they are not the mothers of the surviving children, in most cases there is a will, and there is also secular law [i.e, spousal offset] which many people wish to actually use [to resolve disputes].

64. *Iggerot Moshe Even Haezer* 4:92 (This *teshuva* was written in 1982).

comfortable selling it, and the buyer need buy it only at a price at which he is comfortable buying it (so long as they are both aware of the fact that the fair market value is $100). The same is true for a divorce, Rabbi Feinstein posits, after the ban of Rabbenu Gershom. Absent a finding of fault, neither party needs to consent to divorce unless he and she agrees to a financial arrangement or agrees to go to a *Din Torah* about this matter, and the *bet din* resolves this matter in accordance with the rules of compromise or equity. If they cannot work out a deal, or agree on a compromise or a process of compromise, divorce cannot be compelled.

III. Enforcing of the *Ketubah* in American Law

The enforceability in American law of the *ketubah* payment is a matter that has rarely been litigated, and there is not a single case where a court has enforced the *ketubah* obligation to mandate a payment. Consider, for example, in 1974 a widow tried to collect the amount of her *ketubah* and claimed that it superseded her prior waiver of any future claims pursuant to a pre-nuptial agreement between herself and her husband. The *ketubah* had been signed after the pre-nuptial agreement, and thus, if it were a valid contract, would have superseded it. In denying her motion, the New York Supreme Court concluded that "even for the observant and Orthodox, the *ketubah* has become more a matter of form and a ceremonial document than a legal obligation."[65]

Although the New York Court of Appeals, in a subsequent case, enforced a provision of the *ketubah*

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65. In re Estate of White, 356 N.Y.S.2d 208, at 210 (NY Sup. Ct, 1974).

pursuant to which the parties agreed to arbitrate future marital disputes before a *bet din*, the court did not revisit the issue of the enforceability of the financial obligations included in the *ketubah*.[66] While it is true that in dicta, an Arizona court suggested that financial obligations described in a *ketubah* could perhaps be enforceable if described with sufficient specificity,[67] the practice has never been to seek to conform the text of the *ketubah* to the contract requirements of American law.[68] The description of the financial obligations – in *zuzim* and *zekukim*, which require determinations of Jewish law to ascertain the proper value – are not considered sufficiently specific to be enforceable.[69] So, too, the absence of an English text and the absence of signatures of the husband and wife, would seem to make the *ketubah* void as a contract in American law.

When might a *ketubah* be enforceable in the United States? When it is executed in a country (such as Israel) where it is recognized as legally enforceable. This is because American conflict of law rules might determine that the rules governing the validity of the *ketubah* are found in the location of the wedding, where the *ketubah* was a legally enforceable document.[70]

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66. Avitzur v. Avitzur, 459 N.Y.S.2d 572 (1983).

67. Victor v. Victor, 866 P.2d at 902 (1993).

68. See e.g., Hurwitz v. Hurwitz 216 AD 362 (NY Appellate Division, 1928).

69. Whether or not the language of a *ketubah* forms a basis for compelling a *Get* according to secular law doctrine is a question beyond the scope of this article.

70. This principle was first noted in Montefiore v. Guedalla 2 Ch 26 Court of Appeals, England (1903), where a British court enforced the *ketubah* of a Sefardi (Moroccan) Jew who had moved to England, since the law of Morocco would have enforced this

To the best of these writers' knowledge, no American court has ever enforced the financial component of a *ketubah* either in cases of divorce or death.

Conclusion

There are multiple views regarding how to assess the value of the 200 *zuz* and 200 *zekukim* described in the standard form *ketubah* as payable by the husband (or his estate) upon divorce or death. The breadth of the dispute – from a few hundred dollars to many thousands – is quite astonishing. What the normative practice is is also in dispute and is hard to determine.

Additionally, as Rabbi Feinstein points out, since women today cannot be divorced against their will due to the famous eleventh-century enactment of Rabbenu Gershom, a divorce today requires the husband to placate his wife with an amount that she would deem sufficient. Therefore, a woman can effectively "negotiate" for an amount greater than the value of the *ketubah* if her husband wants to divorce her. Thus, the calculation of the amount of the *ketubah* becomes relevant only in very limited cases, such as when both parties expressly stipulate that they want the payment amount from the husband to the wife upon divorce to be determined solely based upon a rabbinical court's evaluation of the *ketubah*.

Hence, most couples never expect that the *ketubah* will actually be used for collection purposes and in fact the majority of Jewish women who have become divorced (or

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ketubah. These same conflict of law principles could well enforce an Israeli *ketubah* in America. It has been followed in many American cases where the parties were married in another jurisdiction; see Miller v. Miller 128 NYS 787 (Sup. Ct., 1911) and Shilman v. Shilman 174 NYS 385 (Sup. Ct., 1918).

widowed) do not seek to collect their *ketubah* but rather use other channels to settle their claims. It is, therefore, virtually impossible to ascertain an established custom or practice with respect to the valuation of the *ketubah* in America.[71] Given these questions, it is not surprising that there is no clear halachic answer relating to the value of the *ketubah*.

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71. Rabbi Zalman Nechemia Goldberg, taking note of this problem, has recommended that a dollar amount be inserted in the *ketubah* — just as Israeli *ketubot* often include an explicit amount in Israeli *shkalim* or even dollars — so that in the event the wife does register a claim pursuant to the *ketubah*, there will be no confusion concerning the proper amount to be paid. However, given the infrequency of cases in which parties intend to invoke the *ketubah* for financial purposes, it is presently unlikely that there will be a movement to accept such a proposal here in America.