

*Herut 'Olam* (London 1928) by Rabbi Yosef Shapotshnick

**Introduction**

This paper should be read in awareness of the following facts.

1. Dr. A. H. Freimann *zt''l* refers in *Seder Qiddushin weNissu'in*<sup>1</sup> to

...the works of the “Chief Rabbi” Yosef Shapotshnick of London – *Herut 'Olam* (London 5688) and *Liqro' la'Asirim Deror* (London 5689) – who wanted to untie the chains of all the ‘*agunot* with the general permit that ‘on that understanding she did not marry’ (*Bava' Qamma'* 110b), with conditional marriage and with a new marriage contract which he authored as follows (*Herut 'Olam* p. 72): “Behold we, the groom and bride, are adjured upon the public mind (‘*al da'at rabbim*) from the moment of *qiddushin* that everything is done according to the enactments and the will of Rabbi Yosef Shapotshnick etc. and Rabbi Yosef Shapotshnick or his representatives have the right to annul the *qiddushin*”. He opened an ‘international office’ in London – a factory for the release of all the ‘*agunot* in the world and he did not even recoil from forging the signatures of famous rabbis. Eventually the rabbinical associations in Poland and in other countries came out against him and repudiated this “Chief Rabbi”.

2. Rabbi Aharon Dov Alter Waranowsky, in the introduction to *'En Tenai BeNissu'in*,<sup>2</sup> (*ETB*) refers to “**that well-known lunatic in London** who has built a factory to release ‘*agunot* ...and has raised his hand in fearsome insolence to release all the ‘*agunot* in the world in one go....”. The reference is clearly to Rabbi Shapotshnick. R. Waranowski explains that it was as a result of the publication of Shapotshnick’s arguments for the introduction of conditional marriage (together with movements by others in that direction) that the decision was taken by a number of *Gedolim* to publish *ETB* which had been originally written in 1908 to dissuade the French rabbinate from introducing conditional marriage but had not been printed at that time because the rabbinate had backed down and publication had been deemed unnecessary. However, with the appearance of Shapothsnick’s arguments it was decided that *ETB*, which had been kept until then in the library of Rabbi Hayyim Ozer Grodzynski of Wilna, must be disseminated.<sup>3</sup> At Rabbi Grodzynski’s request, the job was done by Rabbi Waranowski in Wilna in 1930.

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**I** This work consists of 64 pages. After page 1, the title-page, every page is divided into three columns of print which I shall refer to as a, b and c.

**II** There are many typographical errors and the Hebrew/Aramaic is often ungrammatical and, therefore, difficult to follow. Often, exact sources are missing so that it is not possible to check or consult them. I have noticed that Rabbi Shapotshnick sometimes makes halakhic claims that do not stand up to scrutiny.

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<sup>1</sup> Jerusalem 1964, p. 390, paragraph 1.

<sup>2</sup> Wilna 1930, p. VI.

<sup>3</sup> See Abel, “Rabbi Morgenstern’s Agunah Solution” (henceforth Morgenstern) at footnote 287.

III On pages 2 – 6a the author examines in detail the subject of *safeq* and, on the basis of this, permits the remarriage of 40000 (!) *'agunot* from WWI.<sup>4</sup>

IV On 6a – b, in order to render the finding of a partner easier, he dismisses, on the basis of proofs from the Talmud, the fear harboured by some<sup>5</sup> of two brothers marrying two sisters<sup>6</sup> and of a person marrying someone with the same name as his mother or with the same name as her father.<sup>7</sup>

V On 6b (end) - 7a, he argues for the introduction of conditional marriage. First, he demonstrates that the condition for the case of the apostate brother is not a condition against the Torah so long as it is worded correctly (6c).<sup>8</sup> He then lists all the sources that he cited in *Motsi' 'Asirim BaKosharot* (the third section of his *Liqro' La'asirim Deror*) and he then reverts to arguments for conditional marriage (6c-7a).

VI Those who disagree with Shapotshnick out of jealousy and hatred and pretend to be acting for the sake of heaven are destined, he tells us, to be brought to [Divine] justice (7a). He makes no mention, however, of the possibility that some may disagree for genuine reasons.

VII The dangers to which *'agunot* are exposed he reckons as follows:

1. They may abandon Judaism and even civilised living.
2. They may perish in hunger.
3. They may finish up in an asylum for the insane. (This, he tells us, has actually happened to quite a number of them.)
4. They may fall into the hands of the “cursed merchants”<sup>9</sup>

In addition to all these dangers is the great *Hillul HaShem* brought about by this situation (7a).

VIII In the final paragraph he blesses all those rabbis who support his arguments for freeing the 40000 *'agunot*. If one who saves but one soul is considered as if he saved an entire world (*Sanhedrin* 38)<sup>10</sup> how much more so is this the case if one saves 40000 souls - in addition to all the souls that could yet be born to them. Surely their blood and the blood of their descendants cry out<sup>11</sup> for salvation from the four corners of the world (7a).<sup>12</sup>

IX On 7a end – b he issues a call to the Rabbis of Israel to come to his support. This brief passage is reminiscent of a number of pieces in Morgenstern.<sup>13</sup> In it, Shapotshnick uses the argument that many Jews will abandon the Torah if they see that it cannot produce a cure for this great plague. And who is responsible for this great desecration of the Name? They are none other than the enemies of Shapotshnick who are also the enemies of G-d. And who first stirred up the trouble? - the Marlborough Street *Bet Din*<sup>14</sup> against whom Shapotshnick had previously battled so that they should not allow Jewish children to be

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<sup>4</sup> See further in section LVIII.

<sup>5</sup> Based on the ethical will of Rabbi Yehudah *HeHasid*.

<sup>6</sup> See R. Ovadyah Yosef, *Yabia' 'Omer*, IV EH 10, where the same conclusion is reached.

<sup>7</sup> See *idem.*, *ibid.*, II EH 7, where, again, the same conclusion is arrived at.

<sup>8</sup> See Berkovits, *Tenai BeNissu'in UvGet* (1966) (henceforth *TBU*), 29-32; Abel: “Review of *Tenai be-Nissu'in uvGet*” XXXIII - XLI & “A Critique of *Za' aqat Dalot*” (henceforth *ZD*) 2.2.

<sup>9</sup> Pimps?

<sup>10</sup> Actually, 37a. The mishnah is 4:5.

<sup>11</sup> See Rashi to Genesis 4:10.

<sup>12</sup> It must be said here that in the world of the *Halakhah* it is accepted practice that questions of *'iggun* must be submitted to a recognised pre-eminent halakhic authority – a *Gadol baTorah* - and that such matters are dealt with on a case by case basis and not wholesale.

<sup>13</sup> See, for example, Abel, Morgenstern 37.1.

<sup>14</sup> This was the official London *Bet Din* – the Court of the Chief Rabbi. I am informed by Dr. Ben Elton that this should read Mulberry Street.

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taught the New Testament in the schools under the *Bet Din*'s influence.<sup>15</sup> However, claims Shapotshnick, the powers that be have used their financial clout to bribe even some of the leading rabbis to follow that *bet din*. Nevertheless, a study of his works, argues our author, will convince the rabbis that his *heter*<sup>16</sup> is absolutely correct according to the *Halakhah*.

X 7b – 8c is a *pilpul* regarding one witness (of a husband's death) and annulment (of the wife's marriage enabling her to remarry). This section does not seem to relate to any actual case.

XI 9a is a letter<sup>17</sup> from R. Ya'aqov Meshullam Ginzberg requesting that R. Shapotshnick examine the former's *responsum*, the first part of which he had sent to R. Shapotshnick, regarding the release of an 'agunah whose husband had been severely wounded in battle in Austria and who had, apparently, died there in hospital. R. Ginzberg hopes that his words 'will find favour in R. Shapotshnick's eyes' and, if so, he will make a copy of the second part of his *responsum* and send it to R. Shapotshnick so that he will publish it in volume II of *Herut 'Olam*.

XII 9b – 21c contains a copy of the first part of R. Ginzberg's *responsum* titled *She'elot UTeshuvot Qol HaQore'* which is continued on 32c, q.v. (= section XLV).

XIII 21c – 23c is a *responsum* concerning an 'agunah by R. Kalman Held. In this case, a report of the death of the husband in battle was brought to the brother-in-law of the wife by a gentile soldier. After sitting as an 'agunah for 10 years her plight was brought to the attention of the rabbis. The *responsum* concludes with 8 arguments for leniency and requests R. Shapotshnick's endorsement.<sup>18</sup>

XIV 23c – R. Shapotshnick issues a brief statement in which he agrees with R. Held and says that he may publish his own *responsum* concerning this case in volume II [of *Herut 'Olam*?].

XV 23c – 28a is another *responsum* of R. Kalman Held addressed to R. Shapotshnick<sup>19</sup> and requesting the latter's approbation to the lenient ruling in this *responsum* freeing an 'agunah. Near the beginning, R. Held mentions that he had already shown his arguments to the "Great Ones of our Generation (*Gedoley Dorenu*)" and then he names in particular "the great rabbi Rabbi David Zevi Auerbach, *Av Bet Din* of Sokolov" who had agreed with every point in Rabbi Held's *responsum* and had written to him that he should send the question to Rabbi Shapotshnick (23a). (At the end of 27c, Rabbi Held signs as a grandson (= descendent) of the author of the *Bet Hillel* and of Maharam Padua.)

XVI The facts of the case: The 'groom', who had fled to America before the *huppah* and *qiddushin* and had been brought back, claimed he had indeed married the 'bride' at the prenuptial celebration and refused to give a *get* though he had agreed to a civil divorce (24a).

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<sup>15</sup> See below, XCVII.

<sup>16</sup> For the 40000 'Agunot, presumably.

<sup>17</sup> The greetings heading the letter are fulsome praise of R. Shapotshnick who is described as *Harav HaGaon HaGadol baTorah*....teacher of his people and leader of his nation, light of the world...there is no searching out his understanding... and he is identified at the end of all this as '*Morenu HaRav Yosef Shapotshnick shelita, Rabbi of the community of London, the Capital*'. This would fit with his position (recorded on p. 62 of *Herut 'Olam*) as 'Chief Rabbi of the Rabbinical Association' whatever that may have been.

<sup>18</sup> This communication is headed with praises similar to those noted in footnote 17, this time it is *HaRav HaGaon HaMuvhaq*, Torah prince, Sinai and Uprooter of Mountains....splendour of our generation....and the identification of the addressee is '*Morenu HaRav Yosef Shapotshnick shelita, Av Bet Din of the holy community of London*' - and this at a time when Dayyan Shemuel Yitshaq Hillman (father-in-law of Rabbi Yitshaq Herzog) was Head of the London *Bet Din*. (See Freimann, *Seder Qiddushin weNissu'in* 391; Gertner and Karlinski, "En Tenai BeNissu'in", part 1, *Yeshurun* 8 (5761) 678-717, p. 681 n. 11.) See also, below, notes 165 and 166.

<sup>19</sup> The introductory praises this time include: "...Ga'on of international repute, Joy of the Generation, the true Rabbi and Ga'on, acute and well-versed....chief of the shepherds...." And again he is titled *Av Bet Din* of London.

**XVII** The arguments for leniency were that the witnesses had heard the groom say only *harey 'at* and though he had continued mumbling something no-one had been able to distinguish what it was. In such a case, we are told, there is not even a *safeq* of *qiddushin*. Besides, the giving of the ring was at a pre-marriage gathering 10 days before the intended Jewish wedding and the bride says that she certainly intended only to become civilly married to him at that point. On the basis of her *hezqat kashrut* we can believe her and her case is further bolstered by her *hezqat penuyah* which has not been impaired by the proceedings (24a-25a).

**XVIII** Also, one witness says he heard *harey 'at* whereas the other said that he did not hear even that. This constitutes a contradiction in the essential evidence and renders the testimony totally unfit (25a).

**XIX** Furthermore, since the long established custom is to execute *qiddushin* only under the *huppah* we have an additional reason to declare her unmarried for we must presume that she would not have acted against the customary practice (25a-b).

**XX** Also, since one of the witnesses thought that the *qiddushin* had already taken place abroad,<sup>20</sup> he cannot be accounted as a witness of *qiddushin* so the situation must be considered as *qiddushin* without witnesses<sup>21</sup> which is nothing (25b).

**XXI** Also the one witness did not know the date of the proceedings so according to those who say that marriage witnesses require *derishah wa-ḥaqirah* there is yet another reason to declare the marriage void. Even according to those who do not generally require *derishah wa-ḥaqirah*, here they will agree because, due to the aforementioned contradictions between the witnesses and between the 'bride' and 'groom' it is clearly a suspicious case (*din merumeh*) and in all such cases everyone agrees that *derishah wa-ḥaqirah* are essential (25b-c).<sup>22</sup>

**XXII** The other witness (the one referred to in XX) could not say that the ceremony was intended as *qiddushin* rather than as a civil celebration and the bride definitely denies that it was *qiddushin* (as in XVII) so that even the Semag who is concerned for the validity of *qiddushin* before one witness will agree that in this case there is no concern whatsoever - see Rema *EH* 42:2. (25c).<sup>23</sup>

**XXIII** Indeed, even in cases where there are no contradictions or suspicions and both groom and bride agree that they intended to execute *qiddushin*, if the proceedings took place in front of only one valid witness and the situation is one of *iggun*, the Rema agrees that no *get* is required - see Rema *ibid*. This remains true in spite of the fact that she accepted the '*qiddushin*' where the Rema rules that marriage must be presumed and no '*umdena*' can be applied (25c).

**XXIV** Besides, since at most we are dealing with a one witness wedding where most *posqim* say that the *qiddushin* are void and the concern for the minority view can mean at most that we consider the situation a rabbinic marriage, '*umdena*' can be used to void the *qiddushin* even according to the Rema (25c).

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<sup>20</sup> And he presumably realised that the celebration was related to the civil wedding.

<sup>21</sup> I.e. as *qiddushin* before one witness which is as ineffectual as *qiddushin* without any witnesses.

<sup>22</sup> This is not clear cut. See *ET* VII '*Din Merumeh*' (cols. 290-295), especially @ notes 57-63. See, however, R. Ovadyah Yosef, *Yabia' 'Omer* VII *EH* 18:5, IX *EH* 20:1, X *EH* 25:1.

<sup>23</sup> For discussion of weddings in the presence of one witness see, *inter alia*, R. Ovadyah Yosef, *Yabia' 'Omer*, IV *EH* 5:4 & VI *EH* 6:1-3.

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**XXV** One can also not apply here the shameful argument<sup>24</sup> of *tav lemetav*<sup>25</sup> because she expected that she would marry him anyway in a few days time with all the appropriate accompaniment of *huppah*, *ketubbah*, *minyan* etc. (25c).

**XXVI** An additional reason for declaring the '*qiddushin*' void is the fact that the groom had no ring and gave the girl a ring which he had borrowed from her father - the ring with which her father had married her mother! (25c, end – 26b).<sup>26</sup>

**XXVII** The *Hatam Sofer*<sup>27</sup> argues that the stringency of the Rema regarding *qiddushin* with one witness extends only to cases where the couple were aware of only one witness<sup>28</sup> but where, as in this case, they thought that there were two witnesses but in fact only one (at most) was fit, even the Rema will agree that there is no marriage whatsoever (26b-c).

**XXVIII** What is more, the Maharit<sup>29</sup> says that where the witnesses are in doubt if *qiddushin* actually took place (see above, XVII) they cannot be described as witnesses at all so the case under discussion is one of *qiddushin* without any witnesses. Additionally, though the Rema ruled that due to the *homer 'eshet 'ish* we do not allow '*umdena*' to operate towards leniency in cases of *qiddushin*, that is only in cases where there is no indication from the surrounding circumstances. In this case, however, where the entire ceremony was intended only as a civil act, her claim that she intended to accept the ring only to establish a civil marriage must be accepted (26c).

**XXIX** The next section deals with the question of rumour and decides unequivocally that there is no justification whatsoever in this case to be concerned about it. There are a few interesting references here regarding those who are willing to take a strict line whereby the woman would be left an '*agunah*' (26c – 27c).

**XXX** One reference is to Maharshal in *Yam shel Shelomoh* to *Qiddushin* chapter 2 section 19, who cites the *Terumat HaDeshen*<sup>30</sup> as declaring that the argument that being stringent [regarding the requirement of a *get* when it is unnecessary according to the *Halakhah*] is not **against** the *Halakhah*, is falsehood and nonsense and folly for why do they want to invalidate the daughters of Israel for the seed of Aharon? The [Temple] Courtyard will cry out against them<sup>31</sup> (27a).

**XXXI** Another reference is to the gloss of the Rema *EH* 46:4 which is cited as saying that we must not be strict at all<sup>32</sup> in our rulings concerning rumour so as not to lend support to the wicked who would spread rumours about Jewish girls in order to extract money from them (27a).

**XXXII** Furthermore, a *responsum* of the Rema<sup>33</sup> is cited in which a man claimed, after he had given a *get* of his free will, that he had been forced to divorce. The Rema points out that the members of the *bet din* in question were of the highest quality and no one was to take any notice of this rumour. R. Held tells us to

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<sup>24</sup> Shameful, that is, in these circumstances.

<sup>25</sup> And presume that she did intend for *qiddushin* – thus weakening the argument in XVII and XXII and at the end of XXVIII.

<sup>26</sup> See R. Ovadyah Yosef, *Yabia' 'Omer* IX *EH* 21:3.

<sup>27</sup> R. Held fails to give the reference.

<sup>28</sup> Is it because they are demonstrating their firm reliance on this individual that he is the equivalent of two witnesses?

<sup>29</sup> Again, no reference is given.

<sup>30</sup> R. Held's ancestor.

<sup>31</sup> Cf. *Pesahim* 57a.

<sup>32</sup> I.e. stricter than the *Halakhah* requires.

<sup>33</sup> Number 91.

consult this *responsum* to see how ‘flaming torches’<sup>34</sup> issue from the Rema’s mouth against any who would take a strict line in this case including her future husband who must go ahead with the wedding and must not be afraid of the rumour. Anyone who is strict in a case like this is ‘nought but one of those who make people wonder at them’<sup>35</sup> and he is one who causes the public to stumble and who lends a hand to the sinners. One must not be strict about this rumour so that the eminent daughters of Israel be not a doormat for the soles of the feet of the impudent of our people as the Rashba wrote: “...and [as to] that which you wrote that the custom was to leave her an ‘*agunah* and to believe him – that is a custom born of nonsense and a ‘stringency that leads to a leniency’<sup>36</sup> if someone else gives her *qiddushin*.” Hence, says the Rema, one must not be strict where the Sages said to be lenient and this is included under ‘And you shall not turn aside’ (27c).<sup>37</sup>

**XXXIII** Rema adds<sup>38</sup> that we know how the Israelites were severely punished for believing the spies’ false critical report about the Land of Israel – wood and stone. How much more so can one expect severe punishment if he [does not merely passively believe but] actively does anything to support the rumour. The Rema then orders that his *responsum* be read in public in every place whither it reaches

**XXXIV** 28a – This seems to be Rabbi Shapotshnick’s brief response in which he agrees with R. Held’s lenient ruling. The final sentence reads: “In a lengthy *responsum*, I have replied with absolute permissiveness according to all opinions”.

**XXXV** 28b The first half of this column is occupied by an unsigned letter which seems to be a grateful response to R. Shapotshnick from R. Held in which he says that he will now proceed, together with some other rabbis, ‘to free the poor girl’ from her *iggun*.

**XXXVI** 28b – 29b. A letter<sup>39</sup> to R. Shapotshnick from Rabbi Avraham Berl, *Av Bet Din* of Kalbesov, thanking him for his letter and for the copy of the first volume of his *Shas HaMashpia*<sup>40</sup> He tells of the great delight that he found in the Talmud commentary that R. Shapotshnick had sent him and the great joy generated by R. Shapotshnick’s accompanying letter.

**XXXVII** The main body of R. Berl’s letter deals with a question that R. Shapotshnick had tried to answer in his letter to R. Berl. The question, which has nothing to do with *iggun*, is: how can it be that *Kohanim* are liable for *piggul* - which can be occasioned, according to the Rambam, by mere thought – when other cases of damage by mental causation are exempt?<sup>41</sup> A diminutive footnote at the end of this letter on 29b promises a lengthy response from R. Shapotshnick in volume II of *Herut ‘Olam*.

**XXXVIII** At the end of this column R. Berl strongly requests R. Shapotshnick’s signature and the signatures of his *bet din* and his admirers “on the *heter*<sup>42</sup> that I am sending him”.

**XXXIX** 29c – 30b. A *responsum* sent from Warsaw concerning a *qatlanit*<sup>43</sup> sent for R. Shapotshnick’s approbation<sup>44</sup> by R. Yehonatan HaLewi Eybeschütz.<sup>45</sup> A man had heard after his *erusin* that the wife he

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<sup>34</sup> Cf. R. Yohanan’s account in *Hullin* 137b of the debates between Rabbi and Rav.

<sup>35</sup> Cf. *Menahot* 40a.

<sup>36</sup> *Pesahim* 48b.

<sup>37</sup> I.e. from the words of the Sages. See Deuteronomy 17:11.

<sup>38</sup> This piece is not quoted by R. Held.

<sup>39</sup> In the heading of this letter R. Shapotshnik is described, in addition to the more usual terms that we have already met, as the Light of the Exile, the Lamp of Israel, the Splendor of the Generation, Warrior in the Battle of Torah, Glorious Crown of Israel and **Head of all the Community of the Exile**. He is identified as the Rabbi of *Adat Yisrael* in London.

<sup>40</sup> This was an edition of the Talmud published by Shapotshnick with his own commentary.

<sup>41</sup> See *ET VIII ‘Hezeq she’eno nikar’* (cols. 702-722), s.v. *Bemaḥshavah* (cols.) 710-711.

<sup>42</sup> For an *agunah*, I presume.

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had taken was a *qatlanit* and the rabbi he consulted told him that it was forbidden for him to live with her. He had been fed false information by the *shadkhan* and by the wife's family who told him that both her previous husbands had already been ill when they married her so she cannot be classified as a *qatlanit* and that is why he had gone ahead with the *qiddushin* and subsequently he had discovered that he had been duped. He is now scared to the point that it has made him ill and he wants to divorce her but she steadfastly refuses to accept the *get* unless he pays her a hefty bribe. His question is whether he can take another wife without needing a *heter me'ah rabbanim*. R. Eybeschütz is inclined to permit him to deposit a *get* with an appointee and then to take another wife without requiring a *heter me'ah rabbanim*. However, he is unsure because the *Sefer Hasidim* (*siman* 478) says that a woman who has children, as was the case of this woman, cannot be classified as a *qatlanit*.

**XL** 30b. The rest of this column is devoted to a short response from R. Shapotshnick in which he rules that in the circumstances one cannot allow the divorce to go ahead against the wife's wishes. One point is that maybe the husband has set his eyes on another woman. Also the Rambam rules that though a *qatlanit* must not marry, if she did she need not leave her husband and even if she entered only into '*erusin* the *nissu'in* may go ahead. This is more so the case nowadays when, according to *Responsa Rivash*<sup>46</sup> and *Responsa Binyamin Ze'ev*,<sup>47</sup> we need no longer be concerned about the danger of *qatlanit*. We find similarly in many medical areas, he writes, that the natural order has changed.<sup>48</sup>

**XLI** 30c – 31b contains a letter to R. Shapotshnik signed by R. Avraham Altein '*Rosh Bet Din* here in the aforementioned Holy Community' – but I cannot find any community mentioned in this letter apart from that of London. The letter begins by thanking R. Shapotshnick for the copies of his works (*Liqro' La'Asirim Deror, Motsi' 'Asirim BaKosharot* and the *Shas HaMasbir*). R. Altein then relates that he showed these works to the gentleman under consideration who had married a woman who needed, and had not yet received, *halitsah* because he had believed the lies published in the press that Rabbi Shapotshnick permits the remarriage of the widow of a childless husband without *halitsah* from her late husband's brother. On seeing in these works that Rabbi Shapotshnick held no such view he was shocked and asked whether he could forcibly divorce her through an agent since she refuses to be divorced and he cannot, due to fear of the threats from her family, coercively divorce her himself and he also cannot even afford the expense of arranging a *heter me'ah rabbanim* to permit him to take a second wife. R. Altein concludes that it is permitted to forcibly divorce her through an agent.

**XLII** Lower down the column there appears a short response from R. Shapotshnick firstly expressing his profound distress<sup>49</sup> and then agreeing with this ruling but adding that the husband should not act merely according to the dictates of the law but should temper them with the quality of mercy by giving her some financial support. As to 'this great sin' of her marriage to an outsider without having received *halitsah*, the responsibility, R. Shapotshnick writes, lies upon

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<sup>43</sup> A woman who has been widowed from her two first husbands.

<sup>44</sup> The heading introduces new honorary titles for R. Shapotshnick. He is, we are told, the treasure-store of Torah, wisdom and science from whom no secret matter is withheld....famous to the ends of the world, the diadem of the age...

<sup>45</sup> Author of *Responsa Sha'ar Yehonatan*.

<sup>46</sup> Shapotshnick gives *siman* 241 which does indeed speak of *qatlanit* but I could not find there anything which even remotely implies that the concern about marrying a *qatlanit* does not apply nowadays. 242 and 243 also speak about *qatlanit* but there also there is no mention of the danger not existing today.

<sup>47</sup> Shapotshnick gives *siman* 126. This *responsum*, though not dealing with *qatlanit*, does touch on it in the last but one paragraph (s.v. *Weqarov lazeh*) where the author does indeed say that no-one nowadays forbids the remarriage of a young *qatlanit* although it is against the ruling of Rabbi in the Mishnah and against the Rambam and the Rosh. They permit her remarriage, he says, out of fear that she might otherwise become degenerate. Indeed, we see daily occurrences of *qatlanit* marrying for a third time and the marriage proving long-lasting and successful and blessed with sons and daughters.

<sup>48</sup> *Nishtanah hateva* – see Abel, *ZD*, 5.7.

<sup>49</sup> '*Tsar li me'od*' – see II Samuel 24:14.

“the Rabbis of the *sitra*’ *’ahara*’<sup>50</sup>, the sinners and liars and masters of deceit and trickery who published accusations in the press that I had abrogated the commandment of *halitsah*, Heaven forbid, when it is they who publicly desecrate the Name of Heaven and the Torah and through them the mishap occurred and who knows how many mishaps there have been in the world due to those who believe that false accusation.”<sup>51</sup>

**XLIII** 30b – 32b. A letter sent to R. Shapotshnick from Warsaw signed by three rabbis: Aharon Naftali Zavladaver, Yehonatan Eybeschutz, Ya‘aqov Yosef Brikman and by the Association of Rabbis and Judges of Poland in which they ask for Rabbi Shapotshnick’s agreement to a *heter me’ah rabbanim* in a case where a young wife had attempted suicide and would clearly never be physically or mentally well but both the wife and her father are pressuring the husband to wait, in the hope that she will be cured. The *heter* was based on six arguments.

**XLIV** 32c. Rabbi Shapotshnick, in his brief agreement, adds a seventh argument, namely that any children this woman would bear would be physically and emotionally weak and we may not disadvantage these children in their absence<sup>52</sup> – indeed before they have even come into the world.

**XLV** 32c – 41a. This lengthy item is a continuation of R. Ginzberg’s *responsum* (see above, XII) and deals with the question: Is a gentile’s conveyance of the news of the husband’s death, when spoken by itself and unconnected with other matters, considered ‘speaking in innocence’ and not with intention to testify?<sup>53</sup> He concludes (in accordance with the view of his ancestor the *Bah*) that even a lone, unconnected statement about the death of the husband is enough so long as we can see some reason for his saying it apart from a wish to testify. This *responsum* continues on 46a.

**XLVI** 41a – 46a, a *responsum* of Rabbi Shapotshnick, concerns a woman, Frimmer bat Shmuel, who had been married as a 16 year old to a man of 30 who had abandoned her after 4 years of marriage and then steadfastly refused to give her a *get* for almost 7 years. For 9 months people worked with all their strength to persuade him to divorce but he wants only to leave her an ‘*agunah*’ all her life. He publicly desecrates Shabbat and is a confessed atheist. The supervisor of the wedding was a *hazzan*, the witnesses were secular Jews and the wedding was a mistaken transaction. Two expert doctors have testified that her heart is very weak and if she does not marry she will be in great danger.

**XLVII** The *responsum* begins by citing the *yesh ’omrim* in the *Tur* that the *qiddushin* of an apostate are void and, though the majority view is that his *qiddushin* are valid, that, we are told, is only where he is an apostate to one of the commandments such as Shabbat but in a case like this, where the groom is an apostate to the entire Torah, all agree that his *qiddushin* are void.<sup>54</sup> Shapotshnick adds (41b) that nowadays, when Shabbat desecration has become so prevalent, we must be all the more strict and rule that the perpetrators be considered gentiles.<sup>55</sup>

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<sup>50</sup> Literally, ‘the other side’. In the mystical literature, a reference to the forces of darkness/evil which are allowed to exist in opposition to the divine forces of light/goodness.

<sup>51</sup> This type of violent critique is reminiscent of Morgenstern – see above, note 13.

<sup>52</sup> Cf. ‘*Eruvin* 7:11 & 81b (et al.) - *Zakhin le’adam shelo befanav we’en havin le’adam shelo befanav*.’

<sup>53</sup> And therefore sufficient to allow the wife to remarry.

<sup>54</sup> This is simply not true. Most *posqim* maintain that the *qiddushin* of an apostate – even in the most extreme sense of the word – are fully valid even in Biblical Law (*EH* 48:9). However, the minority view could be used as a component of a multiple doubt.

<sup>55</sup> And, presumably, that their *qiddushin* are invalid. Actually, the prevalence of *hillul Shabbat* is reason **not** to consider the desecrator an apostate since the likelihood is that he thinks of such desecration as a minor matter due to its very prevalence and acceptability in society. Hence we find Dayyan Weisz arguing that nowadays an apostate (as regards *safeq qiddushin*) means only one who converts to another faith. (See *Minhat Yitschaq* I 13:19 and Abel, Morgenstern 21.2.6.5.) Nevertheless, in this case, where the groom professes atheism, I think it possible that Dayyan Weisz would agree that this is no better (or worse)

**XLVIII** 41b (second paragraph) deals with the question of accepting the evidence of the doctors that her heart is weak and that she will be endangered if she does not marry. We are directed to page 9 of a work titled *Tosefot Hayyim*.

**XLIX** 41b – 42b starts with a protracted discussion of David's reliance upon the evidence of the Amalekite that the latter had killed Saul<sup>56</sup> and leads on from there to the leniencies regarding evidence for the death of a missing husband. At the end, our author notes that the *Ba'al Hatanya*,<sup>57</sup> when explaining how it is possible to rely on one witness to allow the woman's remarriage, directs us, among other sources, to Rashi in *Shabbat* 145b who says that one witness is believed on the basis of rabbinic annulment of the marriage. From this, R. Shapotshnick derives that annulment may still be done by today's rabbis in cases of great urgency.<sup>58</sup>

**L** As a *safeq*, he adds that since she was only 16 it is possible that she had not yet grown two pubic hairs and so was a minor (in biblical law) which would render her *qiddushin* void (42b). He proceeds to demonstrate that the Rambam, the Rashba and the Me'iri all agree that a male must not marry until we are sure that he is 13 years old and has grown two pubic hairs and that if he did marry before that time his marriage would be considered void.<sup>59</sup> He presumably means to say that the same will apply to the marriage of a minor female (which this girl may be)<sup>60</sup> though he fails to actually state explicitly the connection (42b-c).

**LI** 43a. He introduces here<sup>61</sup> the argument that just as we find in *EH* 17 that two average *simanim* add up to one superior *siman*<sup>62</sup> so can it be said that it is possible to free an *'agunah* by means of a combination of halakhic opinions even though each by itself would not suffice. He then<sup>63</sup> cites in the name of the Rabbis of Provence and Catalonia that a combination of two doubts suffices even for *'eshet 'ish*. Similarly, we are told,<sup>64</sup> the Rashba (*Responsa* I 1216), in a case where the age of the girl was not known and she may have been under 12 and no pubic hair was discovered, wrote that

“One needs to think carefully about this because one can apply doubts here - had she yet reached the age of 12 and, even if she had, had she grown pubic hair? - and every double doubt leads to a lenient ruling.”<sup>65</sup>

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than conversion to another religion.

<sup>56</sup> II Samuel 1:10.

<sup>57</sup> R. Shneur Zalman of Liady, founder of Ḥabad/Lubavitch Ḥasidism and first Lubavitcher Rebbe.

<sup>58</sup> The annulment spoken of by Rashi can only happen in the specific case described in the Talmud and the annulment will occur automatically on the authority of the talmudic sages not of the contemporary sages. I cannot understand how that helps our case where the husband is alive and refusing to divorce. There is no talmudic annulment in such a case and there is no proof from that statement of Rashi that annulment can be applied by the contemporary rabbinate in cases other than those mentioned in the Talmud. See, however, legitimate sources for contemporary annulment of marriage (at least as a component of double or triple doubt solutions) in Abel, *HKT*, A VI - XV.

<sup>59</sup> See *Shulḥan 'Arukh*, *EH* 1:3, *Bet Shemuel* there sub-para. 4 and *Ḥelqat Meḥoqeq* there sub-para. 3.

<sup>60</sup> Actually, a minor female's marriage would be biblically valid if she were given in marriage by her father. If her father had died, her marriage would be only rabbinically valid.

<sup>61</sup> S.v. *'Anu ro'im*.

<sup>62</sup> See *EH* 17:24 and the discussion there in *Pitḥey Teshuvah* 106.

<sup>63</sup> S.v. *'Od huva'*.

<sup>64</sup> S.v. *We'ayyen behaRashba'*.

<sup>65</sup> R. Shapotshnick's presentation of the Rashba is misleading. It implies (correctly) that the preceding context had been veering towards requiring a *get* and that the Rashba was here saying that one needs to think carefully whether this is indeed true because we have here a double doubt which always requires us to rule leniently and R. Shapotshnick leaves us with the impression that that is how the Rashba left matters. The truth is, however, that the Rashba immediately added “**Nevertheless, I cannot see my way to being lenient because I must consider the matter further**”. R. Shapotshnick fails to mention this.

**LII** 43a-b. In the final paragraph of this section we are reminded that the power of the permitter is greater than that of the forbiddler<sup>66</sup> and that in cases of *'iggun* it is possible to rely on even a sole lenient view.<sup>67</sup>

**LIII** In 43b-44b, Shapotshnick shows that evidence for a husband's death can be accepted from a gentile's written account (that was not intended as evidentiary) just as it can be from his verbal account.

**LIV** In 44b-c, he moves on to discuss the question of *da'at 'aḥeret maqnah* which, the Ran says, does not exist in *qiddushin*. R. Shapotshnick answers a number of questions by means of this view of the Ran but I cannot see the relevance to the practical problem of *'iggun* with which he was supposed to be dealing.

**LV** 44c<sup>68</sup>– 45c is a discussion of *qiddushin* in the presence of unfit witnesses. The question is whether or not we have to be concerned that such witnesses repented in their hearts at the time of the *qiddushin* so that the marriage would be valid. He leaves the question in abeyance so that, in the case with which he was dealing, it would constitute a doubt.<sup>69</sup>

**LVI** 45c-46a deals with the fact that the marriage was a mistaken transaction and concludes that once the *qiddushin* are judged void due to the error in their execution the subsequent acts of intercourse do not create any new marriage bond. He compares this to conditional marriage where the breach of the condition in *qiddushin* annuls the marriage in spite of the acts of unconditional intercourse which ensued even over many years.<sup>70</sup>

**LVII** 46a-56b is the third section of R. Ginzberg's *Qol Qore'* (see above, XLV) which proceeds with the discussion of the validity of evidence of gentiles and of sinning Jews for freeing an *'agunah*. In his summary, in the middle of 56b, he writes that in the light of his research into the admissibility of (i) written gentile evidence, (ii) even when declared independently of accompanying context, (iii) evidence from gentile courts and (iv) evidence of non-observant Jewish soldiers even if they are seen to remain unobservant when they return home from the army, there is ample room to permit this woman to remarry if the *Gedoley HaDor* will agree.

**LVIII** 56b-c contain a final paragraph (no. 66) of this *responsum* which states that the arguments in the preceding sections which resulted in a lenient ruling in the case of this individual woman, open the door for the tens of thousands of *'agunot* of the [first] world war. Note is also taken of the fact that R. Shapotshnick has already demonstrated halakhic arguments for leniency for these thousands of *'agunot* and R. Ginzberg then adds further argument to support R. Shapotshnick's ruling.

**LIX** 57a-62abc (= top 3 columns of p. 62) contains a discussion of conditional marriage. The headings (57a) include a description of Shapotshnick as 'Chief Rabbi and President of the Great World Rabbinic Union'.<sup>71</sup> He begins by telling us that there are 17 questions relevant to conditional marriage that need to be dealt with (57a-b).

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<sup>66</sup> He cites *Hullin* 58; Rashi *Betsah* 2 s.v. *Dehetera'*; *Responsa Rashba* I 1253; *Hullin* 116.

<sup>67</sup> We are directed to *EH* 157. Cf. my discussion in *Morgenstern* 3.2, 15.2 and 15.3.

<sup>68</sup> S.v. *Hameqaddesh*.

<sup>69</sup> See further Abel, *Morgenstern* 30.6.5 note 240 and the extensive discussion in R. Ovadyah Yosef, *Yabia' 'Omer* III *EH* 8:1-19.

<sup>70</sup> There are two difficulties here. Firstly, R. Shapotshnick never tells us what the error in this marriage was. Secondly, he compares cases of error to cases of breached conditions whereas the former would effectively annul the marriage even if the error was discovered after unconditional *nissu'in* while the latter might not do so.

<sup>71</sup> I do not know what this 'World Union' was.

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**LX** These questions are as follows:<sup>72</sup>

1. Will the fact that people know that their wedding was conditional and the marriage therefore uncertain lead them to be lenient in their treatment of the sanctity of the marriage?
2. What will be if the husband claims that his letters were delayed through no fault of his own?
3. Is there not a danger that unscrupulous individuals will purposely delay their letters in order to breach the condition and annul the marriage?
4. Will not unscrupulous husbands bring about a breach of the condition so as to be free to marry another woman?
5. How shall we explain the rule *'en tenai be nissu'in*?
6. How shall we deal with the requirement, by those authorities who insist upon it, of a repetition of the condition before the first intercourse and, according to some, before every intercourse?
7. Might he not persuade her to forego the condition?
8. What of the problem of *qiddushey bi'ah* and of the condition being foregone?<sup>73</sup>
9. How will it be possible to recite the marriage blessings when there will always be a doubt whether the liaison is really a marriage?
10. Since nowadays the presumption of fitness of character is no longer realistic - especially when we are proposing an across-the-board solution which will probably involve the entire population – how can we rely upon the couple's never cancelling the condition? This is particularly problematic according to those who say that the condition must be repeated before every intimacy – how is it possible in today's climate to rely on the couple doing that?<sup>74</sup>
11. What about the rule that the subject of a condition must be capable of fulfilment through an agent which is clearly impossible in this case?
12. Is there not a problem of *matneh 'al mah shekatuv baTorah*?
13. What of the rule that 'a woman does not go out without a *get*'?
14. How can such power be wielded by a merely spoken condition?
15. What of the fact that it looks very strange to people?
16. How can we disregard the possibility that with the passage of time he will engage in intercourse for the purpose of creating a new unconditional marriage?<sup>75</sup>
17. Will any children born from this marriage be genealogically blemished?

The following paragraphs do not offer any response to questions 1 – 4 or to question 14. Question 14 seems ridiculous as every condition governing any transaction is composed of 'merely spoken words' which have the power to confirm or annul any contractual agreement just as they had the power to confirm or annul the acquisition by the Reubenites and the Gadites of the east bank of the Jordan. Indeed, in his answers, R. Shapotshnick ignores this question altogether.

The thematic problem in 1-4 is the moral and social damage that could be occasioned by conditional marriage. Again, R. Shapotshnick fails to address these concerns in the following paragraphs but concern for this type of collateral damage has been raised, and dealt with, by others.<sup>76</sup>

5, 6, 7, 8, 10 and 16 are really all one question: the rule *'en tenai be nissu'in* (5) is based on the concern

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<sup>72</sup> All these questions except for 9, 13 and 15 are raised, explicitly or implicitly, in R. Lubetsky's *'En Tenai BeNissu'in* which was published two years after *Herut 'Olam*. 2, 3, 4, 9, 11, 13, 14 and 15 are not mentioned there but 2, 3 and 4 are really variations on 1 (which is mentioned) 11 is not really a question at all (see LXXVIII) and 14 is meaningless and, indeed, R. Shapotshnick makes no attempt to answer it.

<sup>73</sup> This presumably means without his persuasion because otherwise 8 would be a repetition of 7.

<sup>74</sup> I suppose this to mean that even if a solution, depending upon the couple's fitness of character, can be found for the problems described in 7 and 8 would the solution work in the whole of contemporary Jewish society which is no longer as spiritually wholesome as it used to be.

<sup>75</sup> I do not know what this adds to 7, 8 and 10.

<sup>76</sup> See, for example, Abel, *Plight* IX.4-5 and IX.7.

that due to fear of retroactive promiscuity the couple may cancel their condition and thereby reactivate unconditionally their original betrothal (7) or engage in intercourse for the purpose of creating a new unconditional betrothal (6, 8, 10, 16). It is with these questions that R. Shapotshnick now engages.

**LXI** 57b-58c deals with the subject of conditional *qiddushin* followed by *nissu'in* without repetition of the condition discussed in *Ketubbot* (72b-73b) and *Yevamot* (110a) and codified in *EH* 38<sup>77</sup> and concludes that the requirement of a *get* in such cases is, according to most *posqim*, only rabbinic due to doubt;<sup>78</sup> according to biblical law no *get* is required.<sup>79</sup>

**LXII** His second argument (58c-59b) is that the doubtful state of marriage due to the possibility that the condition may have been rendered ineffective is of concern only where it was a condition in his favour. In such a case there is doubt as to whether he would have foregone the condition. Where it was a condition in **her** favour, no such doubt exists. This is, firstly, because it may be that she is not included in the prohibition of *bi'at zenut*<sup>80</sup> and even if she is there is no reason to think that **she** would forego a condition which would save her from *'iggun* even if **he** wanted to cancel it.<sup>81</sup> Additionally, contemporary Jewish society is unaware of the possibility of *qiddushey bi'ah*<sup>82</sup> and we no longer practice the custom of seclusion witnesses outside the Land of Israel.<sup>83</sup>

Nevertheless, one who wishes to take a stricter line would have to arrange for the condition to be repeated at *bi'ah*.<sup>84</sup>

R. Shapotshnick then reckons out a list of *posqim* who state that so long as it is made clear that the condition at *bi'ah* refers to the marital status vis-à-vis *get* and not to the *ketubbah* the condition will remain effective.<sup>85</sup>

**LXIII** 59b, half way down. Here, he moves on to conditional marriage to obviate the problem of *halitsah* from an apostate brother and adds that this condition has been accepted by most *posqim* also in the case of a missing or dumb brother.<sup>86</sup> The fact that the *qiddushin* are nowadays made together with the *huppah* and are shortly afterwards followed by *yihud* and *bi'ah* means that the condition will automatically apply to them and this is especially so, he says, if the *qiddushin* take place towards evening.<sup>87</sup>

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<sup>77</sup> Paragraph 35.

<sup>78</sup> It seems more accurate to say that the situation is considered a *safeq de'Oraita*. One can then proceed to argue that since, according to most *posqim*, all doubtful biblical prohibitions are biblically permitted and only rabbinically proscribed (=Rambam and not Rashba, see Abel, "Halakhah – Majority, Seniority, Finality and Consensus" IV.12), the prohibition on her remarriage is only rabbinic.

<sup>79</sup> This does not address any of the above questions but seeks to minimise their gravity by reducing the entire affair to a question of rabbinic law only.

<sup>80</sup> See Abel, *HKT* Section C LVIII where this very point is made.

<sup>81</sup> See Abel: *ibid.* LIX and "Plight" IX.40 (ii) where the same point is made.

<sup>82</sup> See Abel, "Plight", Appendix, end, and footnote 111.

<sup>83</sup> The Ashkenazi custom of seclusion witnesses is still practised today throughout the Diaspora as far as I am aware. Besides, even without specific seclusion witnesses the public knowledge of their living together as man and wife could be problematic because of the opinion of the Re'ah – see below LXXV and Abel, "Plight" Appendix.

<sup>84</sup> This means that we have no solution to question 6 and the latter question in 10. Note, however, that R. Mosheh Sofer (*Hatam Sofer EH* II 68 s.v. *Wa-'ani*, end and s.v. *We'omnam*, end) regards the repetition of the condition advocated by the *Aharonim* as no more than a stringency over and above the requirements of the *Halakhah*. The previous paragraph answers the other questions (5 7 8 10 16).

<sup>85</sup> But see below, LXV.

<sup>86</sup> See Abel, "Plight" III.

<sup>87</sup> He here refers us to the *responsa* of Mahardakh, *bayit* 9, *heder* 1&2, s.v. *we'af'al gav*. See also Abel, "Plight" IX.40 (i).

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**LXIV** He then cites a sermon of Maharimat,<sup>88</sup> section *Devarim*, p. 198, who writes:

To what may this be compared? It is like one who married a woman on condition<sup>89</sup> that she not commit adultery so that if she was adulterous the *qiddushin* would be retroactively annulled. She would not be forbidden to her husband [because of her adultery] and even if she then married another [she could, on her divorce or widowhood, return to him].

From this, he argues, it is clear that a condition in marriage would work even where the question is one of adultery not just of *yevamah lashuq*.<sup>90</sup>

**LXV** 59b-c. A similar case is then cited from a work known as *Peri Ha 'Arets*,<sup>91</sup> part1, [p.?] 62. A *kohen* made a condition in his *qiddushin* and *bi'ah* that his wife should not visit her brother's house for 2 years. The wife breached the condition by visiting her brother in his home within the time limit. She also committed adultery and bore children from her paramour. The rabbi<sup>92</sup> permitted her to remarry without a *get* and declared the children free of *mamzerut*<sup>93</sup> although the condition at the *bi'ah* had not made it clear that the reference was to the *get* and not the *ketubbah*.

**LXVI** He then quotes the *Rav Pe'alim*<sup>94</sup> who supported the practical application of Mahari Bruna's enactment for cases of the apostate brother and the *Ta'alumot Lev*'s<sup>95</sup> response to Bucharest<sup>96</sup> and Paris<sup>97</sup> in which he supports conditional marriage (with repetition at *bi'ah*) for problems of 'iggun due to *seruv halitsah* (= Mahari Bruna) and *seruv get* respectively.

**LXVII** 59c-60b, top, expands on a condition for her benefit. Such a condition cannot be cancelled by him without her agreement.<sup>98</sup> There is no need to fear that she might have cancelled it herself or agreed to his cancellation of such a condition. This is more so the case according to the Rashba who maintains that only conditions involving money can be foregone because it is possible to argue 'I consider it as if I have received the money'.

According to the above it is not necessary to repeat the condition at *bi'ah*.<sup>99</sup>

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<sup>88</sup> This refers presumably to the sermons of Rabi Yosef miTrani mentioned in the introduction to his *responsa (She'elot uTshuvot Maharit = Maharimat)* by his son Rabbi Yeshayah.

<sup>89</sup>R. Shapotshnick does not tell us whether or not Maharimat says that the condition was repeated after the *qiddushin*.

<sup>90</sup> It also makes clear that Maharit considers a condition possible even when it is stipulated on *nissu'in* and *bi'ah* and even when its breach would annul the marriage during the husband's lifetime – see Berkovits, *TBU* 51-56 and Abel, *Plight* IX 25-41 and especially IX 33-35.

<sup>91</sup> By Rabbi Meir Mizrahi, in 3 parts.

<sup>92</sup> Rabbi Mizrahi.

<sup>93</sup> Again, this demonstrates that a condition in marriage can operate in *nissu'in* and *bi'ah* and can annul the marriage even during the husband's lifetime.

<sup>94</sup> By Rabbi Yosef Hayyim of Bagdad (=the *Ben Ish Hai*). See *Responsa Rav Pe'alim* II EH 6.

<sup>95</sup> By Rabbi Eliyahu Hazzan of Alexandria.

<sup>96</sup> See *Responsa Ta'alumot Lev* III 48.

<sup>97</sup> See *Responsa Ta'alumot Lev* III 49. This was the *responsum* upon which the French rabbinate relied in their proposal of conditional marriage in 1887. See "Plight" IV.2-3.

<sup>98</sup> See above, LXII.

<sup>99</sup> This is true according to those (Rif, Rambam, *Tosafot*, *Shulhan 'Arukh* – see Berkovits, *TBU* 23-25) who say that the concern is that the cancellation of the condition means that the original *qiddushin* become unconditionally reactivated but according to those (Rashi, Ramban, Rashba, Rosh, *Tur* – see Berkovits *ibid.*) who say that the concern is that the *bi'ah* will function as new unconditional *qiddushin* the Rashba's opinion will not help us. See, however, below, LXXII-LXXIV.

LXVIII 60a, end - 60b, top. Here, he cites *Me'il Tsedaqah*,<sup>100 101</sup> *Noda' BiHudah*,<sup>102 103</sup> *Shivat Tsiyon*<sup>104</sup> and *Bet Shelomoh*<sup>105 106</sup> who say that where the condition is to protect the rights of the woman we need not fear that perhaps she cancelled the condition at *bi'ah*<sup>107</sup> so even if he did not repeat the condition at *bi'ah* there is no need to be concerned.<sup>108</sup>

He also cites a *responsum* of the Rosh<sup>109</sup> as saying that when the condition is in the interests of the woman he cannot cancel it even if it was not repeated at the time of *bi'ah*.<sup>110</sup>

LXIX 60b, top. Here, he cites a *responsum* of the Redakh (9:4 77b) where it is stated that the fear of cancellation in order to avoid promiscuous intercourse applies only where there would certainly be *bi'at zenut* or where the majority possibility is that there would be *bi'at zenut* but where the *bi'at zenut* is only a minority possibility we say that the husband relies on the majority and engages in intercourse relying on his original [conditional] *qiddushin*. Shapotsnick is implying that since in such a case there is no application of אֵעָבְבָהּ the condition need not be repeated at *bi'ah*. He then refers us to: *Mordekhai*,<sup>111</sup> *Ĥatam Sofer*,<sup>112</sup> *Noda' BiHudah*,<sup>113</sup> *Torat Ĥesed leRabbaney Ashkenaz*,<sup>114</sup> *Bet Shemuel*.<sup>115</sup> All of these sources argue that in the case of conditional marriage to avoid the problem of the apostate brother, there is no promiscuous intercourse on breach and annulment so there need be no fear of cancellation. Although, logically, it should follow that, if so, there is no need to repeat the condition at *bi'ah* none of these authorities actually say that in practice such repetition can be dispensed with.

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<sup>100</sup> No. 62.

<sup>101</sup> These *Responsa* are not on the CD 14+ and I have not, so far, been able to check Shapotsnick's claim regarding them.

<sup>102</sup> I *EH*, end of no. 54.

<sup>103</sup> At this point he mentions סק"ה"ת"ס which I cannot decipher. It may be an error for ס"ק"ה"ת"ס = *Pithey Teshuvah* (*EH* 157) sub-para. 9) at the end of which it is stated that where the condition is for her protection we need not fear that she might forego it.

<sup>104</sup> No. 71. The author criticises the ruling of R. Yehonatan Eibuschitz who added to the order of conditional marriage, in the case of the apostate brother, established by *Noda' BiHudah*, *Ĥatam Sofer*, R. Aqiva' Eiger etc. the requirement for the woman to swear that she would never cancel the condition. He insists that this is unnecessary for two reasons one of which is that we may rely on her not cancelling a condition for her benefit due to considerations of *bi'at zenut* but he nowhere says that we can dispense with the repetition at *bi'ah*. Even *Ĥatam Sofer* who says that the repetition is only a *ĥumra* did not suggest disposing with it.

<sup>105</sup> p. 149.

<sup>106</sup> These *responsa* are not on the CD 14+ and I have not, so far, been able to check Shapotsnick's claim regarding them.

<sup>107</sup> Hence, this paragraph, like the preceding one, belongs with LXII.

<sup>108</sup> In the case of the *NB* the woman stated that she had repeated the condition at every *bi'ah* as stated at the beginning of the *responsum* s.v. 'Aḥarey. R. Landau in the final paragraph of the *responsum* is willing to release her from *ĥalitsah* so long as she testified that she had repeated the condition at the first *bi'ah*. He may have considered doing so even if the condition had not been repeated even once after the *qiddushin* as seems to be the case from the end of the penultimate paragraph but there is no explicit declaration to that effect.

<sup>109</sup> *Kelal* 46.

<sup>110</sup> The Rosh does say that he cannot cancel a condition made in her interest and this is presumably true even if there was no repetition at the time of *bi'ah* but the Rosh does not say so explicitly.

<sup>111</sup> I do not know where R. Mordekhai ben Hillel discusses conditional marriage in the case of the apostate brother. If he does, it would be very strange that none of the 'Aḥaronim mention it.

<sup>112</sup> *EH* [II] end of *siman* 58. It would have been more to the point to cite *Ĥatam Sofer EH* II 68 s.v. *wa'ani* at the end of which R. Sofer states explicitly that specifying that the condition refers also to the acts of intercourse is merely a *ĥumra*'. However, even R. Sofer never actually said that repetition at intercourse can be dispensed with in practice.

<sup>113</sup> *Tinyana' EH* 27 [final paragraph]. Again, there is no definitive statement that the condition need not be repeated at intercourse.

<sup>114</sup> *Orah Ḥayyim* 14. I do not know this work.

<sup>115</sup> *EH* 157 sub-para. 6. This author says that the fear of the first act of intercourse being used as an unconditional betrothal is not logically applicable in the case of the apostate brother where there is no danger of retrospective promiscuity but, again, he does not take the bold step of ruling that the repetition can be dispensed with in practice.

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**LXX** 60b, centre. This paragraph cites *Maḥberet Qiddushin 'al Tenai* which was composed by the Constantinople Rabbinate to justify their proposal of conditional marriage and wherein it is argued that there is no reason to fear that the wife would forego the conditions which were introduced to save her from the tragedy of *'iggun*. On the contrary she relies upon her husband not breaching any of the conditions. Even in the case of those conditions over which he has no control like illness or death, he cannot know that the conditions will be breached. Hence we need not fear that he would ever ask her at *bi'ah*<sup>116</sup> to forego any of the conditions.

**LXXI** 60b, last para. - 60c, top. Shapotshnick discusses here the question of the levirate bond<sup>117</sup> where her husband or brother-in-law is an apostate and the related question of whether the marriage with an apostate husband is possible and whether a marriage with a husband who apostatised at some point after the *qiddushin/nissu'in* disintegrates.<sup>118</sup> He adds the argument that since every husband declares at his marriage that he betroths her according to the Law of Moses and Israel it is as if he had made a condition that his betrothal is dependent upon his remaining a believing Jew so that when he apostatises the *qiddushin* are automatically annulled<sup>119</sup> and the *get* required is no more than a formal stringency. At the end, he admits that many *posqim* disagree with this and maintain that an apostate's *qiddushin* are fully valid but, he says, there still remains a doubt that can be harnessed to a *sefeq sefeqa*'.

**LXXII** 60c-61a. Regarding the fear of the couple using *bi'ah* as a new unconditional marriage, Shapotshnick directs us to *Maḥberet Qiddushin 'al Tenai* where the following two points are made.

**LXXIII** 1. A number of *posqim*<sup>120</sup> have argued that nowadays people no longer betroth with *bi'ah*.<sup>121</sup> Also, Maharibal<sup>122</sup> says that אאעבב"י applies only to *talmid ḥakham/ 'adam kasher*. How much more so is this a consideration nowadays when almost no-one cares about *bi'at zenut*.<sup>123</sup>

**LXXIV** 2. Furthermore, even if a liaison for the purpose of (a new, unconditional) marriage did take place it would fail for lack of witnesses as we find in a certain *Sefer Aviezer* published at the end of *Sefer Tif'eret Yisrael* to *Seder Nashim*:

Rabbi B. raised a question.... 'If so, in the case of the aforementioned condition, we should be concerned that at some act of intimacy he might persuade her to agree to remarry him unconditionally to save himself from a rabbinic prohibition. The answer is that although witnesses of seclusion are equivalent to witnesses of intimacy, nevertheless, since he made an explicit condition the witnesses do not know that he has rejected his original condition.'<sup>124</sup>

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<sup>116</sup> And certainly at any other time.

<sup>117</sup> This matter is not relevant to conditional marriage and does not relate to any of the 17 questions posed by R. Shapotshnick to which these paragraphs are supposed to be supplying answers.

<sup>118</sup> See Abel, Morgenstern 21.2.6.7.1 and footnote 121 there.

<sup>119</sup> See Abel, Morgenstern 21.2.6.7.4 where it is recorded that R. Shelomoh Kluger had already suggested this idea.

<sup>120</sup> Some of his references are not accurate and one that I did find and check (the *Ḥatam Sofer*) does not say what Shapotshnick claims.

<sup>121</sup> See above, LXII and note 82.

<sup>122</sup> *Responsa Maharibal*, III:45, end.

<sup>123</sup> Cf. Abel, Plight IX.51-54.

<sup>124</sup> I have not gained access to this work but it seems to me that the logic is that whereas the **conditional** marriage is **known** to have taken place, although a (possible) new marriage by *bi'ah* has been "witnessed" by the public, a new **unconditional** marriage has not been witnessed because there were no witnesses to the absence of the condition. According to this, we must say that the cases in the Talmud of conditional *qiddushin* followed by *nissu'in* without repetition of the condition which lead to (at least doubtful) married status, are cases where the unconditional *nissu'in* were performed in the presence of **witnesses** who can therefore testify to the absence of a condition.

**LXXV** Although everyone knows that they are living together as man and wife so the whole world are the witnesses and we do not require specific witnesses of seclusion, this is only the opinion of the Re'ah. What is more, the Re'ah himself speaks only when the groom discovered that the *qiddushin* were not valid because the item used had not been worth a *perutah* and after that they lived together as man and wife. In such circumstances the Re'ah maintains that public knowledge operates as witnesses on the basis of '*anan sahadey*' but in our case, where the husband cannot know if the condition will be breached, why should we think<sup>125</sup> that he has used his intercourse for the purpose of creating an unconditional marriage? Surely, we would need actual witnesses of seclusion who could testify that he was intimate for the purpose of remarrying her unconditionally. Even if the two of them would state unequivocally that they had had relations for the purpose of creating an unconditional marriage we would not need to be concerned since there were no witnesses.<sup>126</sup>

**LXXVI** Add to these two arguments, says Shapotshnick, the consideration that in conditional marriage there is no *bi'at zenut* (as mentioned earlier)<sup>127</sup> and that the couple swear an oath that they will never forego the conditions<sup>128</sup> and that the concern for cancellation is only rabbinic,<sup>129</sup> and it becomes clear that we have nothing to worry about.<sup>130</sup>

**LXXVII** 61a-b. R. Shapotshnick now raises the requirement that a condition, to be valid, must be capable of being fulfilled by an agent as the *Tur* mentions at the beginning of *EH* 38.<sup>131</sup> Most say that this means that the **transaction governed by the condition** must be capable of execution by an agent; *Tosafot* seem to understand that it means that the **fulfilment of the condition itself** must be possible through an agent. In our case of conditional marriage neither is possible. Apparently, then, any proposal for a condition in marriage (even if repeated at *bi'ah*) to avoid *get*-refusal seems doomed from the start.

**LXXVIII** 61b. However, this rule really belongs to the area of *halitsah* and does not apply to *qiddushin* at all as pointed out in *Bet Yosef* there in *EH*.

**LXXIX** 61b-c. R. Shapotshnick now deals with the problem of 'stipulating a condition against the Torah'.<sup>132</sup> He regards this question as a non-starter because the Mishnah itself lists many types of conditions in *qiddushin* and these conditions have been accepted by the Talmud and *Posqim* without amendment.<sup>133</sup>

**LXXX** All statements in the literature about the impossibility of a woman leaving her marriage without a *get*<sup>134</sup> refer to a woman **halakhically married**<sup>135</sup> but in the case of a conditional marriage the breach of the condition renders her an unmarried woman so she has no marriage to leave!<sup>136</sup> Even the concern that

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<sup>125</sup> I.e. why should we apply '*anan sahadey*'?

<sup>126</sup> See the similar discussion of this opinion of the Re'ah in Abel, "Plight", Appendix.

<sup>127</sup> See above, LXIX.

<sup>128</sup> This is mentioned here for the first time.

<sup>129</sup> See above, LXI.

<sup>130</sup> R. Shapotshnick fails to refer back here to the major theme of the preceding passages, namely that she will not agree to forego a condition that was stipulated to save her from tragedy and he cannot cancel the condition without her consent. See above, LXII LXVII LXVIII & LXX.

<sup>131</sup> See above, LX q. 11.

<sup>132</sup> See *ibid.* q. 12.

<sup>133</sup> For this question and Berkovits's response, see Abel, "Plight" IX.70-76. R. Shapotshnick's answer is not satisfactory because none of the conditions in the Mishnah include a requirement that he divorce her.

<sup>134</sup> See above, LX q. 13.

<sup>135</sup> Or at least doubtfully halakhically married – see *Ketubbot* 74a (Rav Kahana in the name of Ulla).

<sup>136</sup> Provided it is clear that the condition was meant to apply to the stages of *nissu'in* also, including *bi'ah*.

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people **might think** she was married and therefore she is halakhically forbidden to leave without a *get*<sup>137</sup> does not apply here because anyone who sees the unfolding of the events will be able to explain the lack of a *get* as being due to the existence of a condition.<sup>138</sup>

**LXXXI** 61c. A brief paragraph deals with the prohibition, mentioned in *Tur* and *Shulḥan 'Arukh* 272,<sup>139</sup> of permitting something which seems wrong<sup>140</sup> to the public. This, we are told, is not a problem because it does not apply when the matter is explained and proofs for its validity are publicised.

**LXXXII** 61c. The next question is that of the genealogical purity of the children born from such a marriage.<sup>141</sup> On this point Shapotshnick is adamant that since there is no sin in the liaison there can be no blemish in the children.<sup>142</sup> He points to a citation in the *Hagahot Asheri* of a ruling of the Rashba that if a married couple had children and it was later discovered that the item used for the *qiddushin* was not worth a *perutah* the children are fit to be high-priests.<sup>143</sup>

**LXXXIII** 61c-62a. The final section of this discussion of conditional marriage (see above LIX) treats the problem of reciting the blessings at a conditional wedding when there is always a possibility that the marriage may become retroactively annulled so that it never actually happened and the blessings would be rendered blessings in vain.<sup>144</sup> On this point Shapotshnick cites *Shittah Mequbetsset to Betsah* 6 in the name of *Tosafot*, *SAOḤ* 202:11 and *Magen Avraham* 527 sub-para. 5. He cites *Tosafot* in *Berakhot* 11, s.v. *Shekevar* who ask why one does not recite a blessing before sleeping in the *sukkah* and they cite the answer of the *Yerushalmi* that there is concern that sleep might not come and the blessing would then be in vain. The *Tosafot* continue that, accordingly, how is it possible to ever recite the blessing *Hamapil* and they say that the difference between these two blessings is that the blessing over the commandment of *sukkah* refers to the person's individual obligation which, if he cannot sleep, will be a blessing in vain. The *Hamapil* blessing, however, refers to the creation of the nature of sleep so that even if **he** cannot sleep that would not render the blessing vain. The wedding blessings fall into the latter category so even if the marriage is at some future point retroactively annulled they too will not be rendered vain. He concludes with references to two *Tosafot*<sup>145</sup> regarding the question of whether we need be concerned that a woman reciting a blessing before immersion might then fail to dip due to her fear of the water.

**LXXXIV** In the centre of 62, occupying the full width of the page, there is a boxed *ketubbah* text for conditional marriage. It is signed:

Chief Rabbi of the Rabbinical Association

JOSEPH SHAPOTSHNICK,

7, Frostic Place, Old Montague St., E.1. London [England].

**LXXXV** The lower part of 62 reverts to a threefold division and contains information which may be helpful to a rabbi in need of leniencies for an '*agunah*'.

**LXXXVI** 63a, top, begins with a promise of two explanations (in *Liqro La'Asirim Deror*). One is an explanation for the fact that there sometimes is a need for 100 rabbis to enable a woman to remarry when

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<sup>137</sup> As a result of which some may come to think that any marriage can be annulled without a *get*.

<sup>138</sup> This problem would be definitely solved if conditional marriage became the norm.

<sup>139</sup> I do not know to what this refers.

<sup>140</sup> Lit. 'something astonishing'. See above, LXX q. 15. See, for example, '*Orah Hayyim* 317:3 at the end of the gloss of the Rema.

<sup>141</sup> See above, LXX q. 17.

<sup>142</sup> Cf. Abel, Plight IX.28.

<sup>143</sup> I.e. if they happen to be male *kohanim*.

<sup>144</sup> See above, LXX q. 9.

<sup>145</sup> *Berakhot* 51 and *Pesaḥim* 7b s.v. '*Al hatevilah*'.

the condition of her first marriage has been breached and sometimes just 3 *Gedolim* suffice.<sup>146</sup> The other is an explanation of the different rulings that apply in cases which are emergencies (*she'at hadeḥaq*) and those which are not.

**LXXXVII** 63a-b presents further arguments concerning the case of the 'agunah Frimmer bat Shemuel with whom R. Shapotshnick already dealt above on pp. 41-46.<sup>147</sup>

**LXXXVIII** 63b, centre, is a brief letter from R. Shemuel Eliyah Margoliyot *Av Bet Din* of Tshitsha (?) to R. Shapotshnick concerning the aforementioned 'agunah Frimmer bat Shemuel. In it, R. Margoliyot states that he agrees with every detail of R. Shapotshnick's arguments. Besides, he adds, who would dare question the rulings of so great a scholar as R. Shapotshnick?

**LXXXIX** 63b, end - 64a is headed *Zohar HaShemesh wa'Ovi haḤoshekh* and is an attack on many contemporary rabbis who, in Shapotshnick's view, are ignoramuses who obtained their *semikhah* on the basis of their knowledge of *terefot* and *basar beḥalav* etc. which, he tells us, anyone can pick up in 3 months. Of all other areas of *Halakhah* and of the Talmuds and the *Tosafot* and *Rishonim* they know nothing – not even the laws of *Niddah*!<sup>148</sup> The *Sa'ir La'azazel* too received *semikhah*<sup>149</sup> but it was then sent away and people were free of it but these rabbis cannot be got rid of so that they are a perpetual nuisance. He then adds:

**XC** “Not long ago about 600 insolent dogs came forth to bark at me and 3 true rabbis fell into their net and they died suddenly around the same time and received their punishment in this world and found atonement through their death. I forgive them absolutely.

I issued a public challenge in my newsletter asking [my many opponents] to debate the *Halakhah* with me but that also had no effect on them....for they are ignoramuses...I was almost ensnared in the trap of pride because 600 rabbis (corresponding to the 600 chariots of the wicked Pharaoh<sup>150</sup>) could not critique even one line of a number of works<sup>151</sup> for the benefit of the 'agunot. They just bark like dogs and seek prohibitions without taste or scent.”<sup>152</sup>

**XCI** He goes on to suggest that perhaps these rabbis belong to the sect of the Qaraites or the Sadducees who reject the Oral Law because all his arguments are taken from that Law hence if one of those rabbis would touch wine no true fearer of heaven should drink it.<sup>153</sup> Besides the fact that they did nothing for the 40000 'agunot, when his *Motsi 'Asirim BaKosharot*, which deals with conditional marriage, was

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<sup>146</sup> This seems to be referring back to the *ketubbah* text on p. 62 where it is stated that if the conditions of marriage be broken then 100 rabbis should sign that the marriage is void and if that is not possible then, so long as R. Shapotshnick agrees, it will be sufficient if 3 *Gedolim* sign. There does not seem to be any halakhic significance in these numbers.

<sup>147</sup> See above XLVI.

<sup>148</sup> Criticism of the contemporary rabbis by leading scholars is far from unknown. See, for example, *Responsa Teshuvah Me'Ahavah, Haqdamah Rishonah* (ed. Jerusalem 5745: p.2b, second column) where there is cited a still earlier example in Maharshah's introduction to *Hullin* where the latter declares that those who issue halakhic rulings are many but those who know what they are talking about are few. However, in light of what we know of R. Shapotshnick (see above, p. 1, Introduction) his criticism of his peers needs to be taken with a pinch of salt.

<sup>149</sup> See Leviticus 16:21.

<sup>150</sup> Exodus 14:7.

<sup>151</sup> He presumably refers to his own works.

<sup>152</sup> I.e. without any reason.

<sup>153</sup> Wine touched by a gentile may not be drunk. This is a fence against socialising and ultimately against intermarriage. An apostate is considered a gentile in certain areas of the Law. The Rashba says that this is one of them so that one cannot drink wine that has been handled by an apostate. One type of apostate is a person who rejects the Oral Law.

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published for the first time these hypocrites called a special meeting paid for by public money and began barking like mad dogs but no-one, he informs us, who has merely mastered *terefot* and *basar behalav* over 3 months could possibly successfully criticise his work based as it is on both Talmuds, Ge'onim, *Rishonim* and *'Aḥaronim*. However, there is no decency and no shame. These people cannot be of the seed of our father Abraham who possess the three qualities of mercy, modesty and loving-kindness.<sup>154</sup> He then tells us that in his forthcoming work *Ru'ah Sefatayim* he will expose all the hypocrites – may their name be blotted out.<sup>155</sup>

**XCII** At the end of this section (top of 64a) he mentions that Rabbi Yehonatan Eibuschutz once supervised a conditional marriage for one of his friends<sup>156</sup> and such conditional marriage is a major subject in the Talmud and the Ge'onim. Anyone who attacks it is attacking not R. Shapotshnick but the Talmudic Rabbis and the Ge'onim.<sup>157</sup>

**XCIII** 64a–b. In this piece, headed *Tokhen shel HaSefer Herut 'Olam*, R. Shapotshnick points out that to the earlier mentioned arguments permitting the 40000 war wives to remarry one can add that the contemporary strict supervision of travellers from one country to another by the border police makes it all the more likely that these 40000 men now missing for some 13 years (even 12 months is considered *'avad zikhro* – Rashi *Berakhot* 58) must be dead. Besides the presumption is that one who did not return from war is dead – *Tosafot Ketubbot* 9 s.v. *Kol hayotsay*.

**XCIV** 64b. Under the heading *Qol 'al Kol Ha'Olam* a call is made to the recalcitrant rabbis to admit their error in opposing R. Shapotshnick.

**XCV** 64b, end-c. This section refers again to the halakhic possibility of freeing the 40000 *'agunot*. It contains multiple references with a little argumentation and is signed 'One of the Rabbis'.

**XCVI** 64c The final paragraph of the book is headed:

The way that leads to peace is truth.

Here R Shapotshnick refers to the London *Bet Din* as occupied by 'evil children'<sup>158</sup>, 'reverends' who are associated with the assimilationists and the irreligious community. At first it was Dr. Adler.<sup>159</sup> When he ascended the throne of the [Chief] Rabbinate there were three candidates – Dr. Adler, Dr. Stern and Professor Marcus and when Dr. Adler was chosen to be Rabbi of the irreligious community Dr. Stern apostatised and became a leading missionary and Professor Marcus created for himself a group of extremist assimilationists and who knows what would have become of Adler had Stern or Marcus been chosen? Dr. Adler rejected the Torah scholars with both hands.<sup>160</sup> After him came his son the second

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<sup>154</sup> *Yevamot* 79a; Y. *Qiddushin* 4:1.

<sup>155</sup> With all his vituperation against his rabbinic opponents, R. Morgenstern never descended to such depths as to apply this term – intended for Amaleq (in modern terminology the Nazis and their ilk) – to his fellow Jews.

<sup>156</sup> I do not know where this is recorded. I suppose that it was a case of an apostate brother.

<sup>157</sup> The Talmud and Ge'onim speak only of conditional *qiddushin*. There is no clear case of conditional *nissu'in* but see Abel, *HKT* Section C (ii) 52.

<sup>158</sup> *Rabbanim* (rabbis) = *ra' banim* (evil children) – a play on words which, it must be said, is as grammatically hopeless as it is widespread.

<sup>159</sup> Rabbi Nathan Marcus Adler (1803-1890), appointed Chief Rabbi in 1844. (R. Shimshon Refael Hirsch had been a candidate.) R. Adler authored *Netinah laGer* (a commentary on Targum Onkelos) and *'Ahavat Yonatan* (a commentary on Targum Yonatan – i.e. pseudo-Jonathan).

<sup>160</sup> This accusation cannot be taken seriously.

Adler<sup>161</sup> who followed in his father's footsteps and rejected totally the Torah scholars. When the true Gaon Rabbi Eliezer Gordon *ztswql* came to London he was hardly moved to say 'Happy is he who came here with his [Torah] scholarship in his hand' for when he visited Reverend Adler the latter told him that he had never heard of the Rabbi of Telz and spoke harshly to him.<sup>162</sup> As a consequence of the pain and humiliation, he suffered a heart attack, was confined to his bed and died but Dr. Adler at least came to accompany his cortege and to appease him after his death.

**XCVII** After the demise of Adler came Dr. Hertz.<sup>163</sup> This is the Dr. Hertz who wanted Jewish children to learn the New Testament in school.<sup>164</sup> When there was a public protest meeting against Hertz in the Manekedam Hall in London which was attended also by Hertz's *dayyanim*, R. Shapotshnik gave a long speech followed by Rabbi Bloch and Dr. Hertz's plans were frustrated. R. Shapotshnick also fought with Dr. Hertz for many years about *Kashrut* and in the end opened his own Board of *Shehitah*. When Dr. Hertz saw that he was on a loser as the observant community began to increase, he spread false accusations through his *dayyan*, Dayyan Shemuel Yitshaq Hillman,<sup>165</sup> against certain rabbis and when Shapotshnick began his work for the release of the '*agunot*, Shapotshnick claims, Dayyan Hillman took a few pages from one of his smaller works and sent them to a number of rabbis claiming that merely upon the arguments mentioned in those pages had Shapotshnick released all the '*agunot*.<sup>166</sup> He did not however send them the whole of my works. Had he done so they would have known with whom they were contending. These rabbis who did not write to him to hear his side of the argument should now admit the truth and this will not diminish their honour, on the contrary, it will enhance it and people will then realise that the assimilationist sinners in London are responsible for the quarrel and the other rabbis will be shown to be innocent.

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<sup>161</sup> Rabbi Hermann (Naphtali) Adler 1839-1911, elected Chief Rabbi in 1891, he failed to win over the orthodox refugee communities from Russia and Eastern Europe whose presence in England perturbed him greatly. He thought in terms of a 'National Jewish Church' and even adopted the garb of the Christian clerics.

<sup>162</sup> Again, I consider this accusation suspect.

<sup>163</sup> Rabbi Joseph Herman Hertz, 1872-1946 who, in 1894, had been the first graduate of the Jewish Theological Seminary. He was appointed Chief Rabbi in 1913. R. Hertz was even further removed from the spirit of the Ultra-Orthodox community (stemming from the Russian and Eastern European immigrants) than R. Herman Adler had been.

<sup>164</sup> There had been some movement towards informing Jewish children of the claims of the Christian scriptures and teaching them the Jewish responses thereto in order to protect them from the advances of the missionaries. The matter was brought to Dr. Hertz who ruled against the idea. This is not the impression one gets from Shapotshnick's description. I am grateful to Dr. Ben Elton for this information.

<sup>165</sup> Dayyan Hillman (1868-1953) was head of the London *Bet Din* from 1914 to 1934.

<sup>166</sup> I cannot believe that Dayyan Hillman, who was a correspondent of Rabbi Hayyim Ozer Grodzinski and of Rabbi Yisrael Meir Poupco (the *Hafets Hayyim*), who was father-in-law of Rabbi Yitshaq haLevi Herzog and who authored many profound halakhic works, would have behaved in such a manner.