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Transnational Non-Judicial Divorces: A Comparative Analysis of Recognition Under English and U.S. Jurisprudence

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I. INTRODUCTION

Under U.S. law, dissolution of the marital res is predicated on state jurisdiction established through domicile. The fundamental premise is that divorce constitutes a civil judicial process. Divergent procedures for the acquisition of divorce, however, exist from country to country. This issue becomes important when courts must determine the validity and effect of divorces that persons in England and the United States acquire by procedures alien to those forums. Of special interest is what recognition courts give to the atypical, non-judicial, religious divorces that Jewish and Islamic law authorize.

This Article highlights the current egregious treatment given under Anglo-American law to transnational divorces. It analyzes the problem through a comparative approach to illustrate the contumelious disregard of the Jewish and Muslim cultures. Part II examines U.S. case law to illustrate the disparity between recogniz-

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1. The concept that divorce is dependent upon domicile within the territorial jurisdiction is known as the *lex domicilii* principle. The U.S. Supreme Court held that the domicile of the plaintiff suffices for divorce jurisdiction over an ex parte application. *Williams v. North Carolina*, 317 U.S. 287 (1942). In an ex parte divorce, only the plaintiff is actually before the court. In inter partes proceedings, both parties participate before the court. Under English law, however, the position is governed by the *Domicile and Matrimonial Proceedings Act, 1973*, ch. 45, § 5(2) (Eng.), by which both domicile and habitual residence for one year constitute jurisdictional touchstones. The basis is not simply domicile but also habitual residence. For dissolution see Clifford Hall, *Cruse v. Chittum: Habitual Residence Judicially Explored*, 24 INT’L & COMP. L.Q. 1 (1975); Paul Beaumont, *Conflicts of Jurisdiction in Divorce Cases: Forum Non Conveniens*, 36 INT’L & COMP L.Q. 116 (1987).
ing non-judicial divorces obtained outside the forum and not recognizing non-judicial divorces obtained within the forum. Part III concentrates on the effect of transnational proceedings in non-judicial divorces, particularly in light of English statutes governing the recognition of divorces. Part IV discusses the various policy considerations involved in the recognition of non-judicial divorces. Part V concludes that an urgent need exists for statutory legislation to rectify the current lacuna that denies recognition to all transnational divorces where an element in the process occurs in England or the United States.

II. RECOGNIZING NON-JUDICIAL DIVORCES IN ENGLAND AND THE UNITED STATES

Both English and U.S. law recognize non-judicial divorces that domiciliaries of foreign countries obtain within their countries and that \textit{lex domicilii} \textsuperscript{2} recognizes as legally dissolving the marriage.\textsuperscript{3} The recognition afforded non-judicial divorces that foreign domiciliaries obtain outside the forum is in stark contrast to the lack of recognition given divorces where the forum is the place of origin of the actual divorce. The United States denies recognition to religious, non-judicial divorces that U.S. residents obtain within the United States.\textsuperscript{4} Similarly, in England, statutes regulate divorce and only competent courts of civil jurisdiction may grant them.\textsuperscript{5} This dichotomy is best illustrated by comparing two U.S. cases, \textit{Kapigian v. Der Minassian},\textsuperscript{6} involving a non-judicial divorce

\begin{itemize}
\item \textsuperscript{2} \textit{Lex domicilii} is defined as "the law of the domicile." BLACK'S LAW DICTIONARY 911 (6th ed. 1990).
\item \textsuperscript{3} Machransky v. Machransky, 166 N.E. 423 (Ohio Ct. App. 1927) (involving a Russian rabbinical divorce); Shapiro v. Shapiro, 442 N.Y.S.2d 928 (Sup. Ct. 1981) (recognizing a 1979 Israeli decree granting the husband, a New York resident, a divorce in accordance with rabbinical law where an order of the Israeli court was jurisdictionally well-founded, free from the taint of fraud, and did not contravene New York public policy); Sherif v. Sherif, 352 N.Y.S.2d 781 (Fam. Ct. 1974) (recognizing Egyptian divorce where both husband and wife were Egyptian nationals). English law accords recognition pursuant to the Family Law Act of 1986.
\item \textsuperscript{4} Shikoh v. Murff, 257 F.2d 306 (2d Cir. 1958).
\item \textsuperscript{5} Family Law Act, 1986, ch. 55, § 44(1) (Eng.), which governs this matter, states: "[n]o divorce obtained in any part of the British Islands shall be regarded as effective in any part of the United Kingdom unless granted by a court of civil jurisdiction." Divorce is viewed as entirely a matter of civil competence, denying recognition to any form of non-judicial divorce, religious or by custom. \textit{Id.}
\item \textsuperscript{6} 99 N.E. 264 (Mass. 1912).
\end{itemize}
obtained outside the United States, and Shikoh v. Murff, involving a non-judicial divorce obtained within the United States.

A. Recognition of Non-Judicial Divorces Obtained Outside the Forum

Kapigian v. Der Minassian involved an interesting Turkish divorce process. The respondent married his first wife in Turkey, in a Christian ceremony, while domiciled in Turkey. The couple initially practiced Christianity. The wife subsequently renounced Christianity, professed Mohammedism, and then married a Mohammedan. Under Turkish law, such a renunciation of Christianity automatically rendered her Christian marriage null and void. The respondent established a new domicile in Massachusetts, where, relying on Turkish law, he married the petitioner. The petitioner subsequently sought a decree of nullity, claiming the prior Turkish divorce was invalid. The court rejected the nullity decree and recognized the Turkish divorce. The court found the Turkish form of divorce immaterial and not repugnant to public policy. Because both parties to the respondent's first marriage were Turkish domiciliaries at the time of the Turkish annulment, the court held their marital status subject to Turkish jurisdiction. This case illustrates the willingness of U.S. courts to recognize foreign divorces, even when they are non-judicial in form.

U.S. courts recognize religious divorces that foreign domiciliaries validly obtain abroad, based on principles of *lex domicilii* and international comity. Recognition of such divorces is entirely appropriate. For U.S. courts to universally apply their

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9. Id.
10. See Note, United States Recognition of Foreign, Non-Judicial Divorces, 53 MINN. L. REV 612, 618-19 (1989), stating:

[...]
own peculiar domestic standards to deny recognition to religious divorces is inimical to international comity and subversive of reciprocity among countries. The disastrous consequence of non-recognition creates limping marriages—a marriage validly dissolved in one jurisdiction but not in another.

B. Recognition of Non-Judicial Divorces Obtained Within the Forum

The Second Circuit Court of Appeals reached a different result in *Shikoh v. Murff*. The petitioner was a male Pakistani national, studying in New York, who attempted to divorce his wife by writing a declaration of divorce signed by the spiritual head and national director of the Islamic Mission of America. The petitioner's wife remained domiciled in Pakistan throughout the process. This declaration effectively ended the marriage under the laws of Islam, and the wife received a copy of the declaration in Pakistan. The Second Circuit determined the declaration of divorce invalid, and not a "judicial proceeding" within the meaning of New York's constitutional provision that prohibits the grant of a divorce other than by judicial proceedings. In essence, the court applied the principle of territorial jurisdiction and held that divorce proceedings must follow New York law to be valid within the state. The United States recognizes foreign divorce decrees between persons domiciled abroad because of requirements of international comity. The United States, however, does not recognize divorces obtained in New York between persons not domiciled in New York.

The United States has created a dichotomy by not recognizing non-judicial divorces actually obtained within the United States contrary to a judicial process requirement, yet recognizing non-judicial divorces where, although the parties are physically present within the United States, a foreign official in a foreign jurisdiction of domicile granted the divorce. New York appellate courts

12. 257 F.2d 306 (2d Cir. 1958).
13. *Id.* at 307.
14. *Id.* at 309. The New York Constitution provides, in part: "[n]or shall any divorce be granted otherwise than by due judicial proceedings." N.Y. CONS. art. 1, § 9.
16. *Id.*
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upheld divorce decrees issued in this latter scenario in a trio of Danish Royal decree cases. In each of these cases, Denmark issued the decrees to the Danish Consulate in New York. Unlike the situation in Shikoh v. Murff, the divorces properly originated from the foreign country and the foreign official in New York was not the divorcing authority. A divorce procured within the forum by non-judicial means is wholly invalid both in England and the United States. This invalidity is predicated on territorial sovereignty over divorce cases, which forms a fundamental premise for conflicts rules in both countries.

C. The Importance of Non-Judicial Divorces

1. The Jewish Get Procedure

It is not surprising that the validity of a religious, non-judicial divorce in Shikoh arose in the state of New York. That particular forum is home to diverse religious communities embracing, among others, the Jewish and Islamic faiths. The difficulties of non-judicial transnational divorces under these religions represent the focus of this Article. Certainly, the Jewish divorce by get, contrary to secular civil divorce in New York, raises great controversy and has been the subject of academic literature.

The Jewish divorce by get requires formal delivery to the wife of the get document. Securing a get is vital for Jewish couples

19. Sorenson, 220 N.Y.S. at 242; Hansen, 8 N.Y.S.2d at 655; Weil, 26 N.Y.S.2d at 467.
20. Sorenson, 220 N.Y.S. at 242; Hansen, 8 N.Y.S.2d at 655; Weil, 26 N.Y.S.2d at 467.
22. The word get is the arabic translation of the Hebrew word meaning "bill of divorce." See Feldman, supra note 21, at 139. The availability of a religious divorce has its roots in a Biblical verse in Deuteronomy that states: "When a man takes a wife and marries her, if it then comes to pass that she finds no favour in his eyes for he has found something unseemly in her, he shall write her a document of divorce and give it to her hand and send her out of his house." Irving Breitowitz, The Plight of the Agunah: A Study in Halacha, Contract and the First Amendment, 51 MD. L. REV. 312, 313 n.2. (1992) (translating Deuteronomy 24:1).
because both orthodox and conservative Judaism require a religious divorce in addition to a civil divorce.23 A woman whose husband leaves her and refuses to give her a get is known as an agunah, and according to Jewish law she remains married to her husband and cannot remarry.24 If an agunah remarryes, the religion regards any children to that second marriage as illegitimate.25 The social ostracism is palpable.

A husband may capriciously deny a get as a bargaining device.26 A disreputable husband can force his wife to accept a disadvantageous financial settlement by threatening denial of the get.27 This type of economic coercion results from the inequalities between the parties.28 To some extent, New York case law29 and

23. See generally Feldman, supra note 21, at 139.
24. Id.
25. Id.
26. See Breitowitz, supra note 22, at 395. Note that Professor Breitowitz stated, The unwilling spouse's claim that the get law violates his free exercise rights is further refuted in the vast majority of cases, where his refusal to give a get is not motivated by religious beliefs, but out of spite, or as a means of obtaining valuable concessions. Indeed, it is precisely because the husband knows that a get is needed that he is able to use it as a bargaining chip. The withholding of a civil divorce where the failure to give a get is not religiously based is certainly not a First Amendment violation.
27. Nadel, supra note 21, at 68.
28. See Perl v. Perl, 512 N.Y.S.2d 372 (App. Div. 1987) (voiding unfair property settlement because coercion was exerted by the husband); Golding v. Golding, 581 N.Y.S.2d 4 (App. Div. 1992) (voiding unfair separation agreement because coercion was exerted by the husband). In both of these cases, the courts have clearly demonstrated an increased willingness to void unfair property settlements and separation agreements obtained by husbands in exchange for the delivery of a get.
29. See Avitzur v. Avitzur, 446 N.E.2d 136 (N.Y. Ct. App. 1983). The Court of Appeals' decision in this case exemplifies the problem for Jewish women and creates a limited remedy. The parties married in 1966 in accordance with Jewish law and tradition. Prior to the marriage ceremony they signed a ketubah, which stated that in the circumstance of marital problems, the aggrieved spouse had the right to summon the other party to appear before a Beth Din. The husband obtained a civil divorce in 1978, and the wife sought an appearance before the Beth Din to achieve a get. The refusal of the husband to comply was held by the court to give rise to a civil suit for specific performance. Secular terms of the parties' binding prenuptial agreement to arbitrate any post-marital religious obligations before a specified rabbinical tribunal, which was entered into as part of a religious ceremony, were enforceable. The Court of Appeals then decided the case solely upon the application of neutral principles of contract law, without reference to any religious principle. Consequently, the defendant's objections to the enforcement of his promise to appear before the Beth Din, based as they were upon the religious origin of the agreement, posed no constitutional barrier to the relief sought by the plaintiff. Id.
statutory reform\textsuperscript{30} remedy the egregious position of the wife in such a scenario.

The above analysis highlights the importance of forum recognition of Jewish divorces by get. Both England and the United States recognize non-judicial divorces obtained in foreign countries, while denying recognition where procured territorially within the forum and contrary to judicial process. Such divorces typically occur transnationally when a party writes the formal get document in New York or London but delivers the document to the wife in Israel. Consequently, this Article addresses vital issues such as the recognition of such decrees, applicable policy considerations, and the relevance of equitable principles and rationality.

2. The Islamic Talaq Procedure

According to ancient Islamic law, a husband's pronunciation of the word "talaq"\textsuperscript{31} three times immediately dissolves a marriage between Muslims.\textsuperscript{32} This form of talaq, known as a bare talaq, is immediately effective and does not require notification to the wife.\textsuperscript{33} Both Kashmir and Dubai still adopt a bare talaq.\textsuperscript{34} Pakistan, however, no longer recognizes a bare talaq as effective by itself to dissolve a marriage.\textsuperscript{35}

\textsuperscript{30} Because the Avitzur decision was narrowly construed, the difficulties incumbent on the wife over get acquisition remained largely unresolved. In an attempt to rectify the problem the New York Legislature amended the Domestic Relations law by adding § 253 entitled, "Removal of Barriers to Remarriage." N.Y. DOM. REL. LAW § 253 (McKinney 1986). Under this so-called "get statute," the state will not enter a final divorce judgment until a petitioner, whose marriage was solemnized by a clergyman, submits a verified statement that he or she has removed any "barrier to remarriage" that is "solely within his or her power to remove." Id. § 253(4). A "barrier to remarriage" is defined to include "any religious or conscientious restraint or inhibition imposed on a party to a marriage, under the principles held by the clergyman [sic] or minister who has solemnized the marriage, by reason of the other party's commission or withholding of any voluntary act." Id. § 253(6). The result is that, under § 253, a Jewish husband whose wife wants a get may not be able to procure a civil dissolution of the marriage without first initiating a religious divorce via the get process.

\textsuperscript{31} The talaq divorce in classic Muslim Sunni law dissolves the marriage through the oral pronouncement by the husband of "talaq, talaq, talaq," literally translated as "I divorce you, I divorce you, I divorce you." Zaal v. Zaal, [1983] 4 F.L.R. 284, 287.


\textsuperscript{33} Once pronounced, the talaq is irrevocable and takes effect immediately. The wife does not have to be present and there is no formal necessity for any witnesses to be present. See Zaal, [1983] 4 F.L.R. at 287 (Justice Bush).

\textsuperscript{34} Transnational Divorces, supra note 32, at 63.

\textsuperscript{35} Id.
In 1961, Pakistan enacted the Muslim Family Laws Ordinance. Section 7(1) of the Ordinance placed a fetter on the right of a husband to dissolve a marriage in this manner by introducing four requirements for a talaq to be effective. These requirements are: (1) the husband must pronounce the talaq either orally (unlike the get) or in writing; (2) the chairman of the relevant local union council in Pakistan must receive notice of the talaq; (3) the wife must receive a copy of the notice; and (4) ninety days must expire following the delivery of the notice to the chairman. The punishment for noncompliance can be either imprisonment for up to one year or a fine of 5000 rupees ($146.10 USD). The criminal penalties consequently prohibit the basic talaq procedure and supplant it with the state determined ordinance talaq.

III. THE EFFECT OF TRANSNATIONAL PROCEEDINGS IN RECOGNIZING NON-JUDICIAL DIVORCES

English law has considered, albeit in a piecemeal fashion, the question of recognizing non-judicial transnational divorces. U.S. jurisprudence, however, contains few precedents. This Article, therefore, concentrates on the English experience, including a review of the statutory and common law developments. Ultimately, English and U.S. case law illustrate that the inexorable current trend is in breach of international comity. Finally, the Article proposes equitable policy grounds as the basis for urgently needed reforms. The underlying premise is that courts more effectively adjudicate family law problems, not through strict adherence to established legal principles but by arriving at a just and socially desirable result.

A. English Law Prior to 1986

English common law prior to 1971 recognized an overseas divorce, provided that the parties obtained the divorce in an overseas country in which they had a real and substantial connec-
Using the real and substantial criterion, the House of Lords held that the parties' overseas divorce was valid in *Indyka v. Indyka*. The problem with using such a test as a judicial basis is the uncertainty of the standard.

In 1971, England codified the recognition of foreign divorce decrees in the Recognition of Divorces and Legal Separations Act. This Act gave effect in England to the provisions of the Hague Convention, applying a jurisdictional basis such as nationality, domicile, or habitual residence as a preliminary filter for recognition. The recognition of foreign nullity decrees remained uncodified, but following Law Commission recommendations, nullity recognition rules became aligned with the divorce recognition rules. These Law Commission recommendations also contained proposals to improve the divorce recognition rules and suggested enacting the new rules in a single code. This code is now set out in Part II of the Family Law Act of 1986, sections 44-55. The Family Law Act, which replaced earlier statutes, contains a recognition mechanism that applies to all overseas divorces wherever obtained.


The underlying philosophy contained in Part II of the Family Law Act...

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43. *Id.* at 34-35.
44. Recognition of Divorces and Legal Separations Act, 1971, ch. 53 (Eng.).
45. *Id.*, see also Convention on Recognition of Divorces and Legal Separations (Hague XVIII), June 1, 1970, 1975 U.K.T.S. 123 (Cmnd. 6248) (jurisdictional basis from habitual residence, nationality, or domicile of either spouse in the country in which the divorce was obtained). Article 17 of the Convention left contracting states at liberty to apply rules of law more favorable than those required by the Convention. *Id.* art. 17. Parties to the Convention include Cyprus, Czechoslovakia, Denmark, Egypt, Finland, the Netherlands, Norway, Sweden, Switzerland, and the United Kingdom. M.J. Bowman & D.J. Harris, *Multilateral Treaties* 338 (1984).
47. Law Commission and Scottish Law Commission, No. 137, 1984, Cmnd. 9341 at 45.
Law Act provides a jurisdictional basis for divorce recognition.\textsuperscript{50} The law no longer differentiates between non-judicial divorces obtained outside and within the jurisdiction. Rather, the Family Law Act draws a fundamental distinction between overseas divorces that are "obtained by means of proceedings," judicial or otherwise, and overseas divorces that are "obtained otherwise than by means of proceedings."\textsuperscript{51} The distinction is of great significance because the jurisdictional basis of recognition is now much wider for recognizing divorces obtained by proceedings. In the case of divorce "proceedings," section 46 provides that:

(1) The validity of an overseas divorce, annulment or legal separation obtained by means of proceedings shall be recognised if—

(a) the divorce, annulment or legal separation is effective under the law of the country in which it was obtained; and
(b) at the relevant date either party to the marriage—
(i) was habitually resident in the country in which the divorce, annulment or legal separation was obtained; or
(ii) was domiciled in that country; or
(iii) was a national of that country.

(3) In this section 'the relevant date' means—
(a) in the case of an overseas divorce, annulment or legal separation obtained by means of proceedings, the date of the commencement of the proceedings \textsuperscript{52}

Thus, England recognizes overseas divorces by means of proceedings if the divorce is effective under the foreign law, and if either party was a national, domiciliary, or habitual resident in the foreign state. Domicile is the touchstone for limiting the jurisdictional basis of the non-proceeding divorce, contained in section 46(2):

The validity of an overseas divorce, annulment or legal separation obtained otherwise than by means of proceedings shall be recognised if—

(a) the divorce, annulment, or legal separation is effective under the law of the country in which it was obtained;
(b) at the relevant date—

\textsuperscript{50} The act received the Royal Assent on November 7, 1986. Family Law Act, \textit{supra} note 5.
\textsuperscript{51} Family Law Act, \textit{supra} note 5, § 46(1), (2).
\textsuperscript{52} \textit{Id.} § 46.
(i) each party to the marriage was domiciled in that
country; or
(ii) either party to the marriage was domiciled in that
country and the other party was domiciled in a country
under whose law the divorce, annulment, or legal
separation is recognised as valid; and
(c) neither party to the marriage was habitually resident in
the United Kingdom throughout the period of one year
immediately preceding that date.53.

Additionally, the requirement that neither party habitually resided
in the United Kingdom for one year preceding the divorce serves
as an anti-evasion criterion for non-proceeding divorces.54

In essence, the jurisdictional requirements operate as a filter
to deny or allow recognition. The statute distinguishes between
proceeding and non-proceeding divorces, but unfortunately
provides no definition of the term “proceedings.” Some suggest
the phrase is limited to cases involving some act external to the
parties themselves, such as registration, conciliation proceedings, or
some other form of approval.55

Non-judicial divorces raise two distinct questions of
interpretation over the Family Law Act of 1986.56 First, in the
context of a Jewish divorce, is whether a Jewish get represents a
divorce obtained by proceedings, judicial or otherwise. This issue
has an impact on the jurisdictional touchstones. Second, and more
important, is in which country should judicial determination find
the divorce has been “obtained.”55 This issue is vital because
section 44 of the Family Law Act of 1986 provides that no divorce
obtained in the British Islands is effective in any part of the United
Kingdom unless granted by a competent court of civil jurisdic-
tion.58

53. Id. § 46(2).
54. In this regard, the Family Law Act of 1986 did not follow the Law Commission’s
liberal recommendations to assimilate divorces obtained other than by proceedings with
those obtained by proceedings.
56. Family Law Act, supra note 5, § 46; see Berkovits v. Grinberg, [1995] 2 All E.R.
681 (Fam. Div.).
57. Family Law Act, supra note 5.
58. Id. § 44. This latter question replicated the dilemma the U.S. court faced in Shikoh
v. Murff, 257 F.2d 206 (2d Cir. 1958). Recall that the parties perfected the religious divorce
document therein, acquired contrary to New York’s judicial proceedings constitution, by
forwarding the document to the wife in Pakistan.
1. What Constitutes "Proceedings" Under the Family Law Act?

Although the Family Law Act provides no definition as to what processes constitute "proceedings," English common law, developed prior to the act, does give guidance. Various courts considered the matter in relation to the bare talaq, the ordinance talaq, and the Jewish get.\(^5\)

The House of Lords in Quazi v. Quazi\(^6\) held that a divorce obtained by talaq in Pakistan, which complied with the procedural requirements of the Pakistan Muslim Family Laws Ordinance of 1961, was a divorce obtained by "judicial or other proceedings."\(^6\)

In determining the validity of the bare talaq, Justice Bush in Zaal v. Zaal found such a process also fell within the criterion of "other proceedings,"\(^6\) whereas Justice Wood in Sharif v. Sharif came to a contrary conclusion.\(^6\) The Court of Appeal resolved the conflict in Chaudhary v. Chaudhary\(^4\). The husband in Chaudhary returned to Kashmir, where a bare talaq itself constitutes a valid divorce, to dissolve the marital ties.\(^6\) The court categorically rejected the husband’s proposition that this constituted "proceedings." In order to be recognized as "other proceedings," the parties must obtain a foreign divorce by means that constitute more than a mere unilateral or consensual act of either or both parties to the marriage, regardless of how formal or solemn the act was or what ritual or ceremony accompanied it.\(^6\) Lord Justice Oliver stated "[t]he word must import a degree of formality and at least the involvement of some agency, whether lay or religious, of or recognised by the state having a function that is more than simply probative."\(^6\)

The bare talaq is the private act of one


\(^{60}\) [1979] 3 All E.R. at 897.

\(^{61}\) Id. at 897-98.


\(^{63}\) [1980] 10 Fam. 216, 217.

\(^{64}\) [1984] 3 All E.R. 1017.

\(^{65}\) Id. at 1022.

\(^{66}\) Id. at 1030.

\(^{67}\) Id. at 1031 (Lord Justice Oliver).
party and lacks outside involvement. Unlike the ordinance talaq, courts do not recognize a bare talaq as "other proceedings" because it is no more than a unilateral pronouncement and does not involve the machinery of the state.

Courts equate the ordinance talaq, with outside religious involvement and official state recognition, as "other proceedings." The Jewish get bears obvious similarities, and in fact requires greater formalities such as a precise legal document and the Rabbinical Court's involvement. Not surprisingly, the courts have recognized the get as constituting "other proceedings." In Brout v. Brout, the Israeli religious court in Haifa found the Israeli divorce consequential to the get document and receipt in Israel by the wife. Lord Fraser stated quite categorically that "it was abundantly clear that the Israeli divorce fell within the words, 'other proceedings.'" Maples v. Maples later confirmed this approach.

The conclusion that a get amounts to "other proceedings" is significant when applied to more recent cases such as Berkovits v. Grinberg. The wife in Berkovits was clearly an Israeli national, and the get divorce was effective in Israel. The final hurdle for the husband, however, involved the problem of transnational proceedings: a get written in London but delivered in Israel.

2. Where is a Divorce "Obtained" in Transnational Proceedings?


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68. Family Law Act, supra note 5, § 46(2).
70. Id. at 33.
71. [1987] 3 All E.R. 188 (Fam. Div.).
74. Id.
75. Id., Recognition of Divorces and Legal Separations Act, 1971, supra note 44, § 3 stated: "(1) The validity of an overseas divorce or legal separation shall be recognised if, at the date of the institution of the proceedings in the country in which it was obtained -(a)
Although the Family Law Act replaced these statutes, it is instructive to examine the reasoning of the two main cases, *Fatima v. Secretary of State* 76 and *Maples v. Maples*, 77 under the old statutory regime.

In *Fatima*, the transnational divorce involved an ordinance *talaq* procedure. 78 The husband, a Pakistani national and Muslim who lived in England, wished to divorce his wife, who was living in Pakistan. In 1978, he pronounced the *talaq* in England and made a statutory declaration to that effect to an English solicitor. Subsequently, as required under the Pakistan Muslim Family Law Ordinance, his wife and the chairman of the relevant union council in Pakistan received notice and, under Pakistani law, the marriage dissolved ninety days later. 79 The ordinance *talaq*, *in toto*, constitutes “other proceedings.” 80 In 1982, the husband wished to marry Ghulam Fatima, but an immigration officer refused her entry to England because England did not recognize the husband’s *talaq* divorce. The appellant, the husband’s fiancée, sought judicial review. The issue before the House of Lords was where the husband obtained the divorce. 81

Lord Ackner, with whom the other Lordships agreed, held that the husband’s pronouncement of the *talaq* in England was the first step in, and therefore the initiation of, the proceedings of his *talaq* divorce and constituted part of those divorce proceedings. 82 The court held “[t]he proceedings had taken place partly in England and partly in Pakistan.” 83 This obviously was contrary to the appellant’s view that the proceedings had taken place wholly in Pakistan. 84 Lord Ackner cited as a prerequisite to recognizing a divorce that there be “a single set of proceedings which have to be *instituted* in the same country as that in which the relevant divorce was ultimately obtained.” 85

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77. [1987] 3 All E.R. 188 (Fam. Div.).
78. [1986] 2 All E.R. at 32.
79. Id. at 34.
82. Id. at 35.
83. Id. at 32.
84. Id. at 36.
85. Id. (emphasis added).
The Fatima court also relied on policy rationale. Pursuant to section 16(1) of the Domicile and Matrimonial Proceedings Act, no proceedings in England validly dissolved a marriage unless instituted in a competent court. Lord Ackner stressed that it was the policy of the legislature to deny recognition of divorces that persons obtain within the jurisdiction, and therefore subject to the laws of England, by any proceedings other than in an English court. Recognizing, and thereby encouraging, divorces by the talaq procedure obtained through the mail by Pakistani nationals residing in England is contrary to that policy. Territorial sovereignty applies to any part of the divorce process instituted within the forum.

The court in Maples v. Maples adopted a similar approach to transnational divorce. In Maples, the husband agreed to a Jewish get divorce but not to an English civil divorce. An English civil divorce required making various allegations, which neither party wished to make against the other. In accordance with requisite Jewish formalities at the Beth Din in London, the husband granted, and the wife accepted, a get by which both parties acknowledged the dissolution of their marriage in Haifa. The District Court of Haifa subsequently issued a judgment of confirmation of the get obtained in London. The Maples court, however, irrespective of the Israeli confirmation, held that the granting by the husband of the get, and the wife's acceptance thereof, at the Beth Din in London, effectively and finally dissolved their marriage only according to Israeli law. Under English law, these acts constituted an extra-judicial proceeding not entitled to recognition because a competent civil court did not grant the divorce. The effect was to create a limping marriage, recognized as validly dissolved in Israel but not in England.

87. Domicile and Matrimonial Proceedings Act, supra note 86, § 16(1). This section reversed the effect of the decision in Qureshi v. Qureshi, 1972 Fam. 173. In Qureshi, the court recognized the full talaq proceedings which took place wholly within England between Pakistani domiciliaries under the lex domicilii principle. Id.
89. Id. at 36.
90. [1987] 3 All E.R. 188 (Fam. Div.).
91. Id. at 190.
92. Id.
93. Id. at 192.
The reasoning of Lord Ackner in *Fatima*, as applied to the statutory wording of the Recognition of Divorces and Legal Separations Act, has been directly applied to the slightly different wording contained within the Family Law Act. Courts have held that the “date of the commencement of the proceedings” contained within the Family Law Act must refer to one set of proceedings instituted in the country in which the parties obtain the divorce.94 The proceedings should be geographically connected, not only to the place where the parties obtained the divorce, but to the place where they instituted the proceedings.

C. The Berkovits v. Grnberg Decision

The recent English decision in *Berkovits v. Grnberg*95 has important ramifications for members of the Jewish community, and also has consequential implications for Muslims. The issue before Justice Wall in the Family Divisional Court was the recognition of a transnational divorce by a *get* under the Family Law Act.96 In *Berkovits*, part of the divorce proceedings took place in England and part took place in Israel.97 Israeli law recognizes a Jewish religious divorce by the *get* process; if, however, England refuses to recognize a divorce, the parties are caught in a limping marriage.98 The confusion, inequity, and uncertainty over such limping marriages results in “acute misery and frustration.”99 Legislation in this area attempted to cure this very dilemma.100 Regrettably, despite two genuine attempts at statutory reform, inequities still persist.

*Berkovits v. Grnberg* came before the court in a rather unusual way.101 The petitioner was the rabbi who served as a judge of the *Beth Din*.102 The husband was not a party in the court proceedings. The Federation of Synagogues authorized

95. [1995] 2 All E.R. 681 (Fam. Div.).
98. *Id.* at 683.
102. The *Beth Din* is the court for members of the Jewish community wishing to adhere to Jewish law. *Id.* at 688.
Transnational Non-Judicial Divorces

marriages between Jewish couples. Before such a marriage can take place, there must be written authorization that the parties satisfy all requirements under Jewish law, that there is no impediment to the marriage under English law, and that the parties have obtained the requisite certificate from the local registrar.\textsuperscript{103} In November 1992, the rabbi received a letter from the husband applying to marry for the second time and supplying details of his previous marriage and its termination by a \textit{get} in Israel.\textsuperscript{104} The husband obtained a \textit{get}, which was written in London under Jewish ecclesiastical law and delivered to the wife at the District Rabbinical Court at Natanga, Israel, on June 14, 1988. This \textit{get} was effective as a divorce decree under the law of the State of Israel. Pursuant to section 55 of the Family Law Act, the rabbi applied to the court for a declaration that the divorce was valid under English law.\textsuperscript{105}

The \textit{get}, albeit a religious—not civil—divorce process, requires a great degree of formality. The mutual agreement of both parties is a prerequisite, unlike the Moslem \textit{talaq}.\textsuperscript{106} The \textit{get} is a written document and cannot be pronounced orally. A trained scribe takes three hours or longer to complete the \textit{get} in Hebrew and Aramaic. The \textit{get} is executed in the \textit{Beth Din} in the presence of three \textit{dayans}, judges expert in family law matters. Two competent witnesses, specifically appointed for that particular purpose, sign the document. The wife must receive the \textit{get} in person. The

\begin{itemize}
\item \textsuperscript{103} \textit{Id.} at 683.
\item \textsuperscript{104} \textit{Id.}
\item \textsuperscript{105} \textit{Id.}, Family Law Act, \textit{supra} note 5, § 55 entitled “Declaration as to marital status” provides in part:
\begin{enumerate}
\item Subject to the following provisions of this section, any person may apply to the court for one or more of the following declarations in relation to a marriage specified in the application, that is to say—
\item a declaration that the validity of a divorce, annulment or legal separation obtained in any country outside England and Wales in respect of the marriage is entitled to recognition in England and Wales,
\item where an application under subsection (1) above is made by any person other than a party to the marriage to which the application relates, the court shall refuse to hear the application if it considers that the applicant does not have a sufficient interest in the determination of the application.
\end{enumerate}
\item \textit{Id.}
\end{itemize}

The court took the view that the rabbi petitioner did not have sufficient status to seek a declaration under the above provision. \textit{Berkovits}, [1995] 2 All E.R. 681 (Fam. Div.).

\textsuperscript{106} Although today the \textit{get} requires mutual consent, technically it is still the husband who acts to prepare the document.
crucial legal act that dissolves the marital ties is handing the *get* to the wife. In Israel, no civil divorce exists, only the religious form of divorce by the *get* process is available. Where, as in *Berkovits*, the parties reside in different countries, the respective *Beth Din* courts must exchange the formal *get* and hand the document over to the wife in the usual manner in front of two witnesses and in the presence of three judges of the *Beth Din*.

Contrary to the rabbi’s position, the court in *Berkovits* determined that obtaining a divorce by means of proceedings denoted a process rather than a single act. To obtain a divorce a party must go through a process, in the same way that a person obtains a university degree or any other qualification. If that process is part of a judicial process (proceedings) and therefore linked to one judicial authority there is logic and sense in saying that the proceedings must begin and end in the same place.

Accordingly, the mere fact that the parties “obtain” a divorce, in the sense that the divorce is “finalized” or “pronounced” in one country, cannot dissociate the process of “obtaining” it from the proceedings and, therefore, the country in which it was obtained.

The *Berkovits* court would not recognize the transnational Jewish *get* as validly dissolving the marital bond because the parties obtained the *get* partly in England, where the writing of the document was a critical step in the proceedings, and partly in Israel, where delivery of the *get* actually dissolved the marriage. The divorce decree was effective under the Israeli law, but was not recognized in England, and thus created a limping marriage.

D. Application Under U.S. Law

U.S. courts have reached the same conclusions as English courts, as demonstrated by the decision in *Chertok v.*

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108. Thus, the *get* cannot be sent to her in the post; “divorce by post” is a legal impossibility in Jewish law.
110. *Id.*
111. *Id.* at 681-82.
112. EUGENE F SCOLES & PETER HAY, CONFLICT OF LAWS 524 (2d ed. 1982).
Chertok. The parties were Russian nationals who married in 1910 in Russia (the *lex loci celebrationis*), but who became domiciled in New York around 1912. The couple then visited a rabbi in New York to procure a rabbinical divorce. The parties prepared the get document and consummated the divorce in Russia according to rabbinical laws that the government of Russia recognized. The New York Constitution prohibited divorce granted other than by due judicial proceedings. The court held that the writing, purporting to be a divorce that the rabbi in Brooklyn granted, had no effect in the forum and was not valid as a result of the consummation in Russia. Although the parties perfected the rabbinical divorce in Russia, the court regarded the divorce's inception to be when the Brooklyn rabbi issued the get document; therefore, the divorce was void at its inception under the law of the forum. The proceedings were not consonant with prevailing New York law and, thus, created a limping marriage; a marriage valid in New York but dissolved in Russia.

A parallel exists between the prevailing principles applied by both English and U.S. authorities to transnational non-judicial divorces. Territorial sovereignty and judicial process requirements reign supreme despite the creation of limping marriages. In light of policy considerations, does a rational justification exist?

**IV POLICY CONSIDERATIONS**

It is evident that the refusal to recognize transnational divorce by ordinance *talaq*, as in *Fatima* and *Shikoh*, or by Jewish *get*, as in *Berkovits* and *Chertok*, has far-reaching implications for Jewish, Muslim, and other communities that grant non-judicial divorce. The Law Commission noted that the court is
not the only entity that determines the validity of a foreign divorce.  

"For example, British immigration officials abroad and in the United Kingdom, officials concerned with nationality, passport, income tax or social security matters, registrars of marriages, and indeed trustees or personal representatives, may from time to time need to determine the validity of a divorce." Their task would be easier if the law were certain, fair, and easier to ascertain. Present law, however, fails on a number of different levels.

A. Recognizing a "Divorce" as Effective Unless Policy Requirements Supervene

The Hague Convention, which preceded the English statutory recognition regime of 1971, introduced a more liberal approach into this area of the law. In the view of the Law Commission that reported on the Convention: "[O]ur courts recognise any divorce, whatever the form, method or grounds, provided that the court in the State of origin has jurisdiction in our eyes. It would be a retrograde step to resile from this." Clearly, the refusal to recognize transnational divorces because one element of the overall proceedings occurs in England or the United States is in stark contrast to the liberal regime suggested by the Hague Convention. Rather than continuing the current English or U.S. approach, a better solution is recognizing a “divorce” that effectively dissolves the marital ties by the overseas country unless important public policy considerations intervene.

Academics review the current policy of refusing to recognize the transnational divorce with singular disfavor. These academics suggest instead that the parties “obtain” a transnational divorce alone were in this state of marital limbo—civilly divorced but unable to obtain a get. See IRVIN H. HAUT, DIVORCE IN JEWISH LAW AND LIFE 101 (1983).

123. LAW COMMISSION AND SCOTTISH LAW COMMISSION, No. 137, 1984, CMND. 9341, at 3.
124. Id.
divorce where the parties complete the process of divorce, so that the *talaq* or *get* procedure becomes operative.\textsuperscript{128} Hence, these academics find that the crucial factor is where the parties perfect the divorce, not where the parties pronounce the divorce.\textsuperscript{129}

Applying the academics' approach to the facts in *Berkovits*,\textsuperscript{130} the *get* divorce was effected in Israel as delivery to the wife causally perfected the dissolution, not with the mere writing of the document itself. The parties obtained the *get* by the proceedings in Israel—the delivery to the wife—not by subsidiary events which transpired in England.\textsuperscript{131} This approach would differentiate between the ordinance *talaq* and *get* processes. Although the Muslim Family Laws Ordinance requires further conditions,\textsuperscript{132} the pronouncement of the *talaq* ultimately dissolves the marriage. Hence, the position that the *talaq* itself constitutes part of the relevant proceedings is formally sound.\textsuperscript{133} This is not true of the *get* process, where the relevant part of the proceedings is the actual delivery of the *get* to the wife. Based on this analysis, the courts should have recognized the non-judicial *get* divorces in *Berkovits*\textsuperscript{134} and *Chertok*\textsuperscript{135} because they were "obtained" in Israel.

\begin{itemize}
  \item \textsuperscript{128} Pilkington, supra note 46; Transnational Divorces, supra note 32; Forsyth, supra note 127.
  \item \textsuperscript{129} Pilkington, supra note 46, at 135.
  \item \textsuperscript{130} [1995] 2 All E.R. 681 (Fam. Div.).
  \item \textsuperscript{131} Transnational Divorces, supra note 32, at 91. The delineation made is that the writing of the *get* document is merely a preparatory stage in the chain of events ultimately leading to divorce—an essential step, indeed, and subject to very considerable legal conditions and prescriptions—but nonetheless only a preparatory step. The mere writing of the document per se has no legal effect whatsoever in terms of dissolving the marital ties. If the document is not handed to the wife, in the presence of the required witnesses and court, then the transaction will be of absolutely no effect. When the document is properly handed over to the wife, it is that act of physical transfer that is the sole element constituting the divorce. It is not that the initial writing of the document subsequently takes effect; it is the hand-over of the document that dissolves the marriage. *Id.*
  \item \textsuperscript{133} Lucy Carroll, *A Talaq Pronounced in England is not an "Oversea Divorce,"
  \item \textsuperscript{134} [1995] 2 All E.R. at 681.
  \item \textsuperscript{135} 203 N.Y.S. 163 (N.Y. App. Div, 1924).
\end{itemize}
The clear policy of the English legislature to refuse recognition to non-judicial divorces that parties obtain within England reflects a legislative retreat from the decision in *Qureshi v. Qureshi*, where the court recognized a bare *talaq* divorce in England. In *Qureshi*, the divorce was effective in accordance with the law of the parties’ Pakistani domicile. It seems logical that the *lex fori* alone determines the incidents of entire “proceedings” within the jurisdiction which purportedly breaks the marriage bond. This argument is not as persuasive, however, when applied in a transnational context to a non-judicial divorce perfected in the foreign jurisdiction.

**B. The Importance of the Matrimonial and Family Proceedings Act of 1984**

Prior to 1985, under English conflict of law rules, a party who received a dissolution or annulment of their marriage outside England could not obtain matrimonial relief from an English court. Such relief was available only if there was a valid subsisting marriage and either party petitioned in England for divorce or sought financial provision as a result of failure to maintain. The consequence of this harsh scenario was that a wife had to petition English courts for a divorce, request that the English court not recognize the divorce obtained abroad by her husband (usually by non-proceeding or non-judicial means), and thus find that a valid, subsisting marriage existed. The spouses did not wish to remain married; rather, the central issue was whether the wife could force her husband to support her.

Where foreign proceedings terminated the marriage and did not include a financial order, a gap in the law existed because English courts had no power to grant financial relief in such a case. In *Quazi v. Quazi*, Lord Scarman expressed the hope that the Law Commission would look into this anomaly. Following the Law Commission’s report, Part III of the Matrimonial and Family Proceedings Act of 1984, rectified this gap. The availability of

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137. *Id.* at 199.
138. *Lex fori* is defined as “the law of the forum.” BLACK’S LAW DICTIONARY 910 (6th ed. 1990).
140. LAW COMMISSION, No. 117, 1982, at 110-11 (Family Law Financial Relief After Foreign Divorce); Matrimonial and Family Proceedings Act, 1984 ch. 42 actually came into
financial provision in England to persons receiving an overseas divorce is a vitally important consideration when examining current transnational divorce recognition rules.

In light of financial provision concerns, what then is the correct policy to adopt? In *Chaudhary v. Chaudhary*, the court suggested that public policy should prevent England's recognition of a non-judicial overseas divorce when both parties had an English domicile. Lord Justice Oliver stressed that:

> it must plainly be contrary to the policy of the law in a case where both parties to a marriage are domiciled in this country to permit one of them, while continuing his English domicile, to avoid the incidents of his domiciliary law and to deprive the other party to the marriage of her rights under that law by the simple process of taking advantage of his financial ability to travel to a country whose laws appear temporarily to be more favourable to him.

*Chaudhary* involved a bare *talaq*, which today the courts do not recognize because of the domicile jurisdictional requirements contained within the Family Law Act. Nevertheless, prior to the Family Law Act, a party with financial means could obtain an ordinance *talaq* in the overseas country; alternatively, in the Jewish divorce context, one party could write a *get* in England and deliver the document to the other party in the overseas country. Similarly, a *talaq* pronounced in England could be effected in Pakistan by force on September 16, 1985; The ambit of the statute has been recently interpreted by the Court of Appeal in *Hewitson v. Hewitson*, [1995] 1 F.L.R. 241. The court, led by Lord Justice Butler-Sloss, unanimously held that if a wife received a final order by a California court, she cannot thereafter be given leave to apply for relief under § 13 of the Act. This is notwithstanding a temporary resumption of cohabitation with her husband in England after the divorce. It would be inconsistent with comity existing between courts of comparable jurisdiction for an English court to review, or seek to supplement, the foreign order on the basis of the subsequent relationship of former spouses. Litigation must have finality. The statute applies prima facie where a final binding financial settlement has not been negotiated within the foreign territory.

An interesting postscript to the Hewitson case is that, prior to the marriage, the parties entered into an ante-nuptial marriage agreement in California. The husband, a millionaire, was concerned about the liberal California community property regime. As events transpired, it would have been prudent for the wife not to have entered such a contract. It was not for the English courts, by means of the 1984 Act, to mend a bad contractual bargain, and it would have been surprising if they had done so.
fulfilling the requirement of the Muslim Family Laws Ordinance. In each scenario, the public policy for denying recognition of these overseas divorces was predicated on a desire to provide financial provision to the wife following an overseas divorce. Following the amendments contained in the Matrimonial and Family Proceedings Act of 1984, this policy is no longer valid. Under section 12(1) of the act, parties must dissolve the marriage overseas by means of "judicial or other proceedings." Courts determined that both the ordinance *talaq* and the Jewish *get* constitute "other proceedings."

The preferred solution in the case of transnational divorces is to acknowledge the process as perfected in the foreign country, but to allow the wife to recover financial provision in England in accordance with the Matrimonial and Family Proceedings Act of 1984. That should have been the outcome in *Berkovits*, where the husband effected the divorce in Israel by the delivery of the *get* to the wife. In the converse situation, courts should not recognize a divorce where the husband writes the *get* document in Israel but the wife receives it in England. In that scenario, the parties perfect the divorce in England, and, therefore, a court of competent civil jurisdiction cannot recognize it given the entrenched conflicts policy rule of dissolution.

**C. Non-Judicial Divorce Recognition Based on International Comity**

Even foreign divorce decrees by means of judicial proceedings are not accorded the "Full Faith and Credit" of U.S. domestic law. The most important question U.S. courts must address is whether the foreign court had jurisdiction. A similar jurisdictional inquiry is only pertinent in the domestic interstate setting where the out-of-state divorce was ex parte. Inter partes divorces, where both parties participate in the proceeding, however, preclude a collateral attack under the principles as outlined in the cases of

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145. The legislation, however, limited its aim. Encouraging applications to English courts to act, in effect, as courts of appeal from courts of another country, is not appropriate.
147. *Id.*
149. SCOLES & HAY, *supra* note 112, at 514.
150. *Id.*
Sherrer v. Sherrer,151 Coe v. Coe,152 and Cook v. Cook.153 Because a party had the opportunity to challenge jurisdiction before the initial forum state, she is estopped from raising jurisdictional objections. The landmark decision of the New York Court of Appeals in Rosenstiel v. Rosenstiel,154 however, extended recognition ascribed to inter partes divorces to a foreign context where U.S. domiciliaries traveled consensually to that town.

In Rosenstiel, the parties deliberately traveled from New York to Mexico to acquire an inter partes divorce, taking advantage of the easy jurisdictional requirements, which included the signing of the municipal register and a divorce obtained on local grounds within a period as short as twenty-four hours. The New York Court of Appeals recognized this Mexican divorce. The court stated quite categorically that

[...]he state or country of true domicile has the closest real public interest in a marriage but, where a New York spouse goes elsewhere to establish a synthetic domicile to meet technical acceptance of a matrimonial suit, our public interest is not affected differently by a short residential formality than by a larger one.155

Balanced public policy required that courts recognize bilateral divorces.

The Rosenstiel decision is restricted to consensual foreign judicial divorces acquired by U.S. domiciliaries.156 The underlying premise, however, directly relates to the correct path that both U.S. and English courts ought to follow regarding transnational, non-judicial divorces. The Rosenstiel court was prepared to recognize a foreign divorce provided, as a matter of comity, it did not offend the public policy of the forum.157 This approach shows a paramount concern to avoid the deleterious consequences of limping marriages. By an ex silentio argument derived from Rosenstiel, a U.S. court should recognize a Jewish divorce by a get where the document is delivered formally to the wife within the overseas jurisdiction perfecting the divorce. International comity

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151. 334 U.S. 343 (1948).
152. 334 U.S. 378 (1948).
155. Id. at 712. Note a powerful dissenting opinion by Justice Scileppi. Id. at 715.
156. Id.
157. Id. at 713.
requires that courts adopt a wider perspective over concomitant obligations and demonstrate a greater understanding of the *get* and *talaq* processes. The concept of international comity is rather nebulous, but the reference of the U.S. Supreme Court in *Hilton v. Guyot* remains the best description:

[It is] neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.

It is self-evident that the means by which a foreign court system implements and enforces its orders does not have to emulate the English or U.S. systems. Axiomatically, equitable results over family law matters should be the basis for prevailing comity between countries.

V CONCLUSION

The current state of the law, denying recognition to all transnational divorces, is wholly regrettable. It is the apotheosis of absurdity to unilaterally deny recognition where any element of the total proceedings takes place in the forum. In *Berkovits*, the court ignored the fact that only the actual physical delivery of the document to the wife perfected the Jewish *get*, an event which took place completely within Israeli jurisdiction, and that Israel regarded the divorce as effective. The current approach shows no regard for the egregious financial implications involved. A wealthy spouse able to travel to Israel can achieve marital dissolution, whereas a financially debilitated spouse, where the other party is abroad, cannot obtain a religious divorce in accordance with the tenets of a faith he has followed throughout his life. This is neither

158. It is helpful to bear in mind the statement of Lord Penzance, which courts in England and in the United States quote extensively:

different communities have different views and laws respecting matrimonial obligations, and a different estimate of the causes which should justify divorce. It is both just and reasonable, therefore, that the differences of married people should be adjusted in accordance with the laws of the community to which they belong, and dealt with by the tribunals which alone can administer those laws.

159. 159 U.S. 113, 163-64 (1894).
equitable nor justifiable. The courts create limping marriages, which benefit no one. Also, a grave danger exists that the wife, forced to obtain civil divorce but also impelled by religious considerations to undergo a second religious ceremony, is open to blackmail by the husband, resulting in a seriously detrimental financial settlement for the wife.160

Courts also ignore cultural differences followed by members of the Jewish and Muslim communities.161 Imposing uniform western principles is inappropriate and shows a failure to recognize the bigger picture involved here. A further policy issue, however, is at stake. The current approach is untenable because its ultimate outcome, as demonstrated by cases such as Berkovits, is a limping marriage and consequential “acute misery and frustration.” Because such problems result from the current processes that deny recognition to all transnational divorces where an element in the process transpires in England or the United States, an urgent need exists for statutory legislation to cure the current lacuna.

161. See Quazi v. Quazi, 1980 App. Cas. 744, where Justice Wood stated most appropriately, that “it is important that the courts in this jurisdiction should appreciate that we have living in our community persons who have a religion different from those with which we are familiar and with its own particular devout customs, obligations and rights.” Id. at 782.