Part I: a Judaic chronology of wife-initiated divorce

Rabbinic (70-620 CE)

(1) A husband divorces his wife for whatever reason and pays her dower.[1]
(2) A rabbinic court compels a husband to divorce his wife[2] and pay the dower because the husband:
   a. has physical defects[3]
   b. imposes unreasonable restrictions or behavior[4]
   c. is sterile, impotent, or refuses to provide conjugal rights[5]
   d. works in a profession considered disgusting[6]
   e. or because the wife has made a vow prohibiting her husband from touching her
(3) A husband divorces his wife and does not pay the dower because the court has declared the wife to be recalcitrant (i.e., a *moredet* or in breach of contract)[7] or because the wife
   a. apostatized, ignored a Jewish precept, or acted immorally[8]
   b. refused sexual relations with her husband or performance of "wifely duties"[9]
   c. has blemishes or physical defects that impinge the marital relationship[10]

Geonic (620-1050 CE)

(1) A husband divorces his wife for whatever reason and pays her dower.[11]
(2) A rabbinic court compels a husband to divorce his wife and pay the dower because the husband[12]:
   a. has physical defects
   b. imposes unreasonable restrictions or behavior
   c. is sterile or impotent
   d. works in a profession considered disgusting
(3) A husband divorces his wife and does not pay the dower because the court has declared the wife to be recalcitrant (i.e., a *moredet* or in breach of contract) or because the wife
   a. apostatized, ignored a Jewish precept, or acted immorally
   b. refused sexual relations with her husband or performance of "wifely duties"
   c. has blemishes or physical defects that impinge the marital relationship
(4) A wife divorces her husband, receiving either her full dower or part of it and without waiting twelve months. In practice, it is unclear if the wife actually received the dower or relinquished it.[13]

Rishonim (1050-1400 CE)

Is Geonic decree on wife-initiated divorce based on Talmud or is it an innovation?

- Talmud: Rashi (d. 1105 ce, France); Maimonides (d. 1204 ce, Spain/Egypt); Eastern rabbinic Jews before 16th century
- Innovation, but valid: Rashba (d. 1310 ce, France)
- Innovation and invalid: Rabbenu Tam (d. 1171 ce, France); Rabbenu Asher (d. 1327 ce, Spain); majority of Western rabbis after 14th century

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[1] The House of Shammai's argument to limit a husband's ability to divorce was refuted by the House of Hillel. See *Mishnah*, Gīṭṭīn 9:10. But the *ketubbah* payment was perceived as an impediment to the husband's otherwise unencumbered right to divorce. See *Babylonian Talmud*, Ketubbot 11a and Yebamot 89a.

[2] *Mishnah*, Gīṭṭīn 9:8. See also Babylonian Talmud, Gīṭṭīn 88b (a Jewish court may compel a divorce, but a non-Jewish court may only do so based on the decision of a Jewish court; specific type of divorce decree, גט מעושה). See also *Mishnah*, Arakhin 5:6 (a husband is compelled to give a writ of divorce to his wife until he says he wills it).

[3] *Mishnah*, Ketubbot 7:9.

[4] *Mishnah*, Ketubbot 7:1-5.

[5] *Mishnah*, Ketubbot 5:6. See also *B. Talmud*, Ketubbot 91a.

[6] *Mishnah*, Ketubbot 7:10.

[7] *Mishnah*, Ketubbot 5:5-7 (defining a recalcitrant wife). *Palestinian Talmud*, Ketubbot 5:8 (a "writ of rebellion" is a charge against or a deduction of the wife's ketubbah payment). *B. Talmud*, Ketubbot 63a (the ketubbah of a recalcitrant wife is reduced to depletion and she is divorced).

[8] *Mishnah*, Ketubbot 7:6.

[9] *Mishnah*, Ketubbot 5:7.

[10] *Mishnah*, Ketubbot 7:8.

[11] But note that Rabbenu Gershom (d. 1028 CE, Germany) "enacted a decree which made it impossible for a husband to divorce his wife against her will." Shlomo Riskin, *A Jewish woman's right to divorce: a halakhic history and a solution for the agunah* (Jersey City: KTAV Pub. House, 2006), xii, 109.

[12] These grounds for compelling a husband to divorce his wife are discussed in Geonic responsa. See, for example, Albert Harkavy, *Teshuvot ha-geonim: sheelot u-teshuvot* (New York: Menorah, Makhon le-mehkar ule-hotsaat kitve-yad u-sefarim `atikim, 1959), sec. 451.

[13] Goitein notes that the Genizah contains numerous documents indicating that Jewish wives initiated divorce proceedings by renouncing their financial claims (i.e. their dowers) against their husbands. Samuel D. Goitein, *A Mediterranean society: the Jewish communities of the Arab world as portrayed in the documents of the Cairo Geniza*, 6 vols. (Berkeley: University of California Press, 1967-1993), v. 3, p. 265.

Part II: an Islamic chronology of wife-initiated divorce

Legal circles (610-750 CE)

(1) The most frequently discussed situation is of a husband divorcing his wife and paying a divorce settlement.[14] According to some jurists, he could avoid paying the post-divorce alimony if she was deemed recalcitrant.[15]
(2) A husband offers his wife the option of choosing divorce or staying with him; if she chooses divorce, he pays her the full divorce settlement.[16]
(3) A wife divorces her husband and she pays some form of divorce settlement by relinquishing part or all of her dower.[17]
(4) A court divorces a couple because the husband is unable to provide his wife with sufficient maintenance,[18] is missing,[19] or is impotent.[20]

Professionalization of legal schools (750-1050 CE)

(1) A husband divorces his wife for whatever reason and pays the divorce settlement in full.
(2) A husband divorces his wife and pays less than the divorce settlement under the category of *khulʿ*, possibly because the wife is recalcitrant or immoral.[21]
(3) A court declares a wife divorced and the husband pays the divorce settlement for the following reasons:
    a. if the husband is impotent or has a severe defect or disease[22]
    b. if the husband deserts the wife, fails to provide her maintenance, or is cruel[23]

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[14] ʿAbd Allāh ibn Muḥammad Ibn Abī Shaybah (d. 849; Iraq), *Al-kitāb al-muṣannaf fī al-aḥādīth wa-al-āthār*, ed. Muḥammad ʿAbd al-Salām Shāhīn, 9 vols. (Beirut: Dār al-Kutub al-ʿIlmīyah, 1995), v. 4, kitāb al-talāq, passim. Muḥammad ibn Idrīs al-Shāfiʿī (d. 820; Arabia/Egypt), *al-Umm*, 11 vols. (al-Manṣūrah: Dār al-Wafāʾ lil-ṭibāʿah wa-al-nashr wa-al-tawzīʿ, 2001), v. 6, passim.

[15] Muḥammad Rawwās Qalʿah'jī, *Mawsūʿat fiqh Sufyān al-Thawrī*, Fī sabīl mawsūʿah fiqhīyah jāmiʿah; Silsilat mawsūʿat fiqh al-salaf, 10 (Beirut: Dār al-Nafāʾis, 1990), p. 780-781 (recalcitrant wife does not receive post-divorce alimony; no mention of dower reduction or loss).

[16] This is based on a Prophetic precedent. Yaʿqūb ibn Ibrāhīm al-Anṣārī al-Kūfī Abū Yūsuf (d. 798; Iraq), *Kitāb al-āthār* (Beirut: Dār al-Kutub al-ʿIlmīyah, 1978), 139-141. ʿAbd al-Razzāq ibn Hammām al-Ḥimyarī al-Ṣanʿānī (d. 827; Yemen), *Muṣannaf fī al-ḥadīth*, ed. Ḥabīb al-Raḥmān al-ʿAẓamī, 11 vols. (Beirut: al-Maktab al-Islāmī, 1970-), v. 6, p. 515-526 and v. 517, p. 518-515. Ibn Abī Shaybah (d. 849; Iraq), *Muṣannaf*, v. 4, p. 92-94. Muḥammad ibn Yazīd Ibn Mājah (d. 887; Iran), *Sunan al-Muṣṭafá*, ed. Abī al-Ḥasan Muḥammad Ibn ʿAbd al-Hādī al-Sindī Ḥanafī, 2 vols. (Beirut: Al-Fikr, 1975), v. 1, p. 632 (Prophet offered his wives divorce option). Muḥammad ibn Yazīd al-Qazwīnī Ibn Mājah (d. 887; Iran), *Sunan Abī ʿAbd Allāh Muhammad ibn Yazīd al-Qazwīnī Ibn Mājah*, ed. Muhammad Fuʾād ʿAbd al-Bāqī, 2 vols. (Cairo: Dār Ahyāʾ al-Kutub al-ʿArabīyah, 1952-54), v. 1, p. 661-662 (Prophet gave wives option to divorce and receive full dower). See also the following late antique jurists who validated giving a wife the option to divorce without relinquishing her dower: Muḥammad Rawwās Qalʿah'jī, *Mawsūʿat fiqh ʿAlī ibn Abī Ṭālib*, Fī sabīl mawsūʿah fiqhīyah jāmiʿah; Silsilat mawsūʿat fiqh al-salaf, 4 (Damascus: Dār al-Fikr, 1983), p. 440-443. Muḥammad Rawwās Qalʿah'jī, *Mawsūʿat fiqh ʿUthmān ibn ʿAffān*, Min al-turāth al-Islāmī; al-kitāb 32 (Mecca: Jāmiʿat Umm al-Qurá, Kullīyat al-Sharīʿah wa-al-Dirāsāt al-Islāmīyah, Markaz al-Baḥth al-ʿIlmī wa-Iḥyāʾ al-Turāth al-Islāmī, 1983), p. 257. Muḥammad Rawwās Qalʿah'jī, *Mawsūʿat fiqh ʿAbd Allāh ibn ʿUmar: ʿaṣruhu wa-ḥayātuh*, Fī sabīl mawsūʿah fiqhīyah jāmiʿah; 7 (Beirut: Dār al-Nafāʾis, 1986), p. 562-564. Muḥammad Rawwās Qalʿah'jī, *Mawsūʿat fiqh Zayd ibn Thābit wa-Abī Hurayrah*, Fī sabīl mawsūʿah fiqhīyah jāmiʿah; Silsilat mawsūʿat fiqh al-salaf (Beirut: Dār al-Nafāʾis, 1993), p. 197-198. Qalʿah'jī, *Sufyān al-Thawrī*, p. 614-616. Muḥammad Rawwās Qalʿah'jī, *Mawsūʿat fiqh ʿAbd Allāh ibn ʿAbbās*, Fī sabīl mawsūʿah fiqhīyah jāmiʿah; Silsilat mawsūʿat fiqh al-salaf (Beirut: Dār al-Nafāʾis, 1996), p. 510.

[17] al-Ḥimyarī al-Ṣanʿānī (d. 827; Yemen), *Muṣannaf*, v. 6, 490-491, 494-495, 500-506. Ibn Abī Shaybah (d. 849; Iraq), *Muṣannaf*, v. 4, p. 120-123, 128-129. Qalʿah'jī, *ʿUthmān ibn ʿAffān*, p. 162 (the first four caliphs all permitted khulʿ divorce). See also Muḥammad ibn Ismāʿīl Bukhārī (d. 870; Khurāsān), *Ṣaḥīḥ al-Bukhārī = The translation of the meanings of Ṣaḥiḥ al-Bukhārī, Arabic-English* [Jamiʿ al-sahih], trans. Muhammad Muhsin Khan, 9 vols. (Medina: Dar al-Fikr, 1981), v. 7, p. 149-151. ʿAlī ibn Jaʿfar Madanī (d. 825), *Masāʾil ʿAlī ibn Jaʿfar wa-mustadrakātuhā*, Silsilat maṣādir biḥār al-anwār, 8 (Beirut: Muʾassasat Āl al-Bayt li-Iḥyāʾ al-Turāth, 1990), 283 (Imāmī Shīʿī: a woman relinquishes any monetary claims against the husband in wife-initiated divorce). (There was a minority opinion that prohibited forfeiture divorces and another minority opinion that only permitted it with judicial intervention; but neither of these positions was normative. ʿAblah Kaḥlāwī, *al-Khulʿ: dawāʾ mā lā dawāʾ la-hu: dirāsah fiqhīyah muqāranah* (Cairo: Dār al-Rashād, 2000), 68-69.)

[18] Ibn Abī Shaybah (d. 849; Iraq), *Muṣannaf*, v. 4, p. 174-175. Qalʿah'jī, *ʿAlī ibn Abī Ṭālib*, p. 456 (a judge may issue divorce if husband is unable/unwilling to provide maintenance). But see Qalʿah'jī, *Sufyān al-Thawrī*, p. 781 (a judge does not divorce a couple if the husband is unable to provide sufficient maintenance for the wife).

[19] Qalʿah'jī, *ʿAbd Allāh ibn ʿAbbās*, p. 520 (a judge may issue divorce with sufficient grounds, such as abandonment).

[20] Qalʿah'jī, *ʿAlī ibn Abī Ṭālib*, p. 454-455 (divorce granted if husband is impotent or cannot provide wife with conjugal rights).

[21] Many late antique jurists and Aḥmad ibn Ḥanbal prohibit a husband from taking more than the wife's dower; Ḥanafīs do not recommend his taking more; Mālikīs, Shāfiʿīs, and Imāmī Shīʿīs permit husbands to take as much as, less than, or more than the dower amount he gave her. The two main juristic opinions (for and against a husband taking more than the dower in a *khulʿ* divorce) are summarized in Kaḥlāwī, *al-Khulʿ*, 140-143.

[22] "An impotent husband must be allowed a year's probation after which divorce takes place" and the wife is entitled to keep the entire dower. ʿAlī ibn Abī Bakr Marghīnānī (d. 1197; Farghāna), *The Hidaya: commentary on the Islamic laws*, trans. Zahra Baintner, 2 vols. (Karachi: Darul Ishaat, 2007), v. 2, p. 217 (Ḥanafī). By the early modern period, Ḥanafī jurists identified sexual impotence as the only valid grounds for a woman to demand a divorce, but also permitted women to include numerous marriage contract stipulations that would facilitate their divorce rights. See also ʿAbd al-Raḥmān Jazīrī, Muḥammad Gharawī, and Yāsir Māziḥ, *Kitāb al-fiqh ʿalá al-madhāhib al-arbaʿah wa madhhab ahl al-bayt*, 5 vols. (Beirut: Dār al-Thaqalayn, 1998), passim.

[23] See footnote 18. See also Abī Zakarīyā Muḥyī al-Dīn ibn Sharaf al-Nawawī (d. 1277; Syria), Abū Isḥāq Ibrāhīm ibn ʿAlī ibn Yūsuf Fīrūzābādī al-Shīrāzī (d. 1083; Iran), and Taqī al-Dīn ʿAlī ibn ʿAbd al-Kāfī Subkī (d. 1355; Cairo/Damascus), *al-Majmūʿ, sharḥ al-*

c. if the husband is insane[24]

(4) A wife divorces her husband[25] and forfeits the divorce settlement (dower) partially, completely, or even in excess under specific circumstances. According to many jurists, the husband's consent is required.[26]

(5) Less prevalent than in an earlier period, a husband offers his wife the option of choosing divorce or staying with him; if she chooses divorce, he pays her a divorce settlement.[27]

Consolidation (1050-1400 CE)

Ibn Rushd summarizes the five main juristic perspectives: "Five opinions are, thus derived for *khulʿ*. First, that is not permitted at all. Second, it is permitted in all circumstances, that is, even under duress. Third, it is not permitted unless fornication is witnessed. Fourth, it is permitted when there is fear that the limits imposed by Allāh will not be maintained. Fifth, that it is permitted in all circumstances, except under duress, which is the most widely accepted (*mashhūr*) opinion." (Duress here refers to a husband forcing his wife to accept less than the divorce settlement.)

Legal taxonomy: Jurists continued to debate the permissibility of a husband taking more than the dower from the wife in *khulʿ*. Ibn Rushd summarizes the prevalent taxonomy: "The term *khulʿ*, however, in the opinion of the jurists is confined to her paying him all that he spent on her, the term *ṣulḥ* to paying a part of it, *fidya* to paying more than it, and *mubāraʾah* to her writing off a claim that she had against him."

Still, there is a difference of opinion on the possibility of a husband taking more than the divorce settlement in *fidya*. See: The majority Shāfiʿī opinion permits a husband to take more than the dower as part of the *khulʿ* divorce settlement, whereas the minority Shāfiʿī opinion disapproves of this practice.

Muhadhab, ed. Zakarīyā ʿAlī Yūsuf, 18 vols. (Cairo: Maṭbaʾat al-ʿĀṣimah, 1966-69), v. 17, p. 110-112 (Shāfiʿī: if a husband cannot support his wife, they are divorced).

[24] But, there is a Ḥanafī opinion that a woman cannot demand judicial divorce if her husband is mentally incompetent or has a serious disease. Marghīnānī (d. 1197; Farghāna), *The Hidaya*, v. 2, p.219 (Ḥanafī).

[25] A wife can demand *khulʿ* if (a) wife finds husband disgusting (incompatibility); (b) husband is abusive; (c) wife fears that she cannot be faithful. Muḥammad ibn Aḥmad Shams al-Dīn Sarakhsī (d. 11th cent; Transoxania), *Kitāb al-Mabsūṭ*, 30 vols. (Beirut: Dār al-Kutub al-ʿIlmīyah, 1993), v. 6, p. 171 (Ḥanafī: chapter on khulʿ begins with quote "if a woman divorces her husband..."). Ibn Ḥazm synopsizes juristic opinions by noting that some jurists prohibit *khulʿ*, while others make it conditional upon one of the following factors: (a) a political leader permits it; (b) the wife is having an affair; (c) the husband is abusive; (d) she refuses to purify herself; (e) she claims that her husband is repulsive; (f) she dislikes him and he is not compelling her (to relinquish her dower). ʿAlī ibn Aḥmad Ibn Ḥazm (d. 1064; Spain), *Marātib al-ijmāʿ fī al-ʿibādāt wa-al-muʿāmālat wa-al-iʿtiqādāt* (Beirut: Dār al-Kutub al-ʿIlmīyah, 1970), p. 74-75 (Ẓāhirī). See also ʿAlī ibn Aḥmad Ibn Ḥazm (d. 1064; Spain), *al-Muḥallā*, ed. Ḥasan Zaydān Ṭulbah, 12 vols. (Cairo: Maktabat al-Jumhūriyah al-ʿArabīyah, 1967-1971), v. 10, p. 286-297 (Ẓāhirī).

[26] While all the legal schools accept the validity of *khulʿ*, most legal schools view it as a negotiated settlement. Ibn Ḥazm (d. 1064; Spain), *al-Muḥallā*, v. 10, p. 286 (Ẓāhirī: khulʿ only by mutual consent). Ḥanafīs require the husband to accept the wife's *khulʿ* offer in order for a divorce to be valid. Jazīrī, Gharawī, and Māziḥ, *Kitāb al-fiqh*, v. 4, 494. This resembles the common – although likely not universal – rabbinic perspective that a husband must deliver a *get* for a divorce to occur.

[27] Mālik Ibn Anas (d. 796; Arabia), *Muwaṭṭaʾ al-Imām Mālik*, ed. ʿAbd al-Wahhāb ʿAbd al-Laṭīf, 2nd ed. (Beirut: al-Maṭbaʿah al-ʿIlmīyah, 1979), p. 191-192 (giving wife divorce option with full dower). Abū Yūsuf (d. 798; Iraq), *Kitāb al-āthār*, p. 139-141 (Ḥanafī: women given choice to divorce and receive dowers). Bishr ibn Ghānim al-Khurāsānī al-Ibāḍī (d. ca. 815; Khurāsān), *Mudawwanah al-kubrá*, 2 vols. (Oman: Wizārat al-Turāth al-Qawmī wa-al-Thaqāfah, 1984), v. 2, p. 56-67 (Ibāḍī). Sarakhsī (d. 11th cent; Transoxania), *al-Mabsūṭ*, v. 6, p. 210-223 (Ḥanafī: giving wife divorce option with full dower). Yūsuf ibn ʿAbd Allāh Ibn ʿAbd al-Barr (d. 1070; Spain), *Kitāb al-kāfī fī fiqh ahl al-Madīnah al-Mālikī*, ed. Muḥammad Muḥammad Aḥīd Wuld Mādīk Mūrītānī, 2 vols. (Riyadh: Maktabat al-Riyāḍ al-Ḥadīthah, 1980), v. 2, p. 587-591 (Mālikī: giving wife divorce option with full dower). But see Ibn Ḥazm negating the possibility of a woman being given the option of choosing divorce. Ibn Ḥazm (d. 1064; Spain), *al-Muḥallā*, v. 10, p. 144-153 (Ẓāhirī).

1	**Babylonian Talmud, Ketubbot 63b** In the case where a woman "rebels" against her husband, her *ketubbah* (dower) may be reduced by seven denarii a week. R. Judah said: seven tropaics. Our Masters went back and deliberated that an announcement regarding her shall be made on four consecutive Sabbaths and that then the court shall send her [the following warning]: "Be it known to you that even if your ketubbah is for a hundred maneh you have forfeited it"	**תלמוד בבלי מסכת כתובות דף סג עמוד ב** המורדת על בעלה - פוחתין לה מכתובתה שבעה דינרים בשבת, רבי יהודה אומר: שבעה טרפעיקין. רבותינו חזרו ונמנו שיהו מכריזין עליה ארבע שבתות זו אחר זו ושולחין לה ב"ד: הוי יודעת, שאפי' כתובתיך מאה מנה הפסדת.
2	**Babylonian Talmud, Ketubbot 64a** We also make her wait twelve months, a [full] year for her divorce, and during these twelve months she receives no maintenance from her husband.	**תלמוד בבלי מסכת כתובות דף סד עמוד א** ומשהינן לה תריסר ירחי שתא אגיטא, ובהנך תריסר ירחי שתא לית לה מזוני מבעל
3	**Geonic responsa: Rav Sherira Gaon (d. 1038, Babylon)** Originally, the legal requirement was that we do not coerce the husband to divorce his wife if she requests a divorce, except in those [cases] in which the Rabbis stated that they do coerce him to divorce her… Later, they made another decree that they would make an announcement concerning her for four consecutive weeks… Finally, they decreed that they announce about her for four weeks and she would forfeit everything. Nevertheless, they did not coerce the husband to write her a divorce document… And they decreed that they make her wait for a divorce for 12 months (from the time she asks for a divorce) because they might reconcile and if they do not reconcile after 12 months, they coerce the husband and he writes a divorce document for her. After our Sabboraic rabbis, when our sages noticed that the daughters of Israel were going and relying upon Gentiles to acquire for them divorce documents by force from their husbands and there would be those who write divorce documents by coercion and it would be doubtful whether it was a legal or illegal divorce and this would lead to calamity… They decreed in the time of Mar Rav Rabba son of Rav Hunai (may they rest in Eden) about a recalcitrant wife who requests a divorce, that all of the *nikhsei tzon barzel* (type of dowry) that she brought with her [into the marriage] he must pay for and that even what was destroyed or lost he must pay her… And they coerce him and he writes for her a divorce document immediately and and she receives one or two hundred [the standard dower]. By this custom we practice today as we have for three hundred years and more. So should you do as well.	**תשובות הגאונים שערי צדק חלק ד שער ד סימן טו** **רב שרירא גאון**. (במודפסות בקיצור סימן רע"א) וששאלתם: אשה שהיא יושב תחת בעלה ואמרה לו גרשני איני רוצה לישב עמך, חייב ליתן לה כלום מכתובתה או לא, כגון דא הויא מורדת או לא. כך ראינו: ששורת הדין היתה מעיקרא שאין מחייבין את הבעל לגרש את אשתו אם בקשה גירושין, חוץ מאותן שאמרו רבותינו בהן שכופין אותן להוציא. ובשהאשה נמנעת מתשמיש ומן המלאכות שחייבת לעשות לו זו היא המורדת (כתובות סג ע"א) שפוחתין לה מכתובתה כלום בכל שבת ושבת וצריכה התראה. ואחר כך התקינו תקנה אחרת (שם /כתובות/ ע"ב) שיהו מכריזין עליה ארבע שבתות זו אחר זו ושולחין לה מבית דין הוי יודעת שאפילו כתובתיך מאה מנה הפסדת. ואמרינן עלה אמר ראמי בר אבא פעמים שולחין לה +(א"ע ע"ז א' ב' ג', פ' ט"ו)+. (כאן חסר לשון, וצריך לומר כמו דאיתא בגמרא: מבית דין אחת קודם הכרזה ואחת לאחר הכרזה.) ומהנכסים שקבלם בעלה על עצמו ואינו מצוי בעינו או מה שבלה ואבד מן נדוניא שלה ומן תכשיטיה שהן נכסי צאן ברזל שצריך הבעל לשלם לה דמיהן, משום שאחריותן עליו, היו פוחתין לה מאשר על האיש שבעה דינרין בשבת. לסוף התקינו שמכריזין עליה ארבע שבתות ומפסידה את כולן. ואף על פי כן, לא היו מחייבין את הבעל לכתוב לה גט. ואם מת נפטרו יורשיו מכתובתה מאשר הוא עליו כחוב, אבל הנמצא בעינו והוא קיים בין מן תכשיטיה דתפוסה לא מפקינן מינה ודלא תפוסה לא יהבינן לה. והתקינו שמשהין אותה כשתובעת גירושין שנים עשר חדש שמא יתפייסו ואם לא יתפייסו לאחר שנים עשר חדש כופין את הבעל וכותב לה גט. ואחרי רבנן סבוראי כשראו חכמים שבנות ישראל הולכות ונתלות בגויים ליטול להן גטין באונס מבעליהן ויש כותבין גיטין באונס ומסתפק גט מעושה בדין או שלא בדין וקא נפיק מינה חורבא (עיין להתוספות ז"ל בפרק אף על פי, כתובות דף ס"ג ע"ב, שכתבוה לתקנה זו, א"ח: עיין בהגהת אשירי פרק אעפ"י) תקינו בימי מר רב רבה בר מר הונאי נוחם עדן למורדת ותובעת גירושין, שכל נכסי צאן ברזל שהכניסה לו משלה תשלם ואפילו מה שבלה או אבד ישלם לה תחתיו, מה שכתב לה על עצמו, מה שאינו מצוי לא ישלם לה, ומה שהוא מצוי נמי אע"ג דתפוסה לה מפקינן מינה ומהדרינן ליה לבעל. וכופין אותו וכותב לה גט לאלתר ויש לה מנה מאתים. ובזאת אנו מתנהגין היום כשלש מאות שנה ויותר. אף אתם עשו כן. עד הנה.
4	**Geonic Responsa** (Harkavy sec. 19) A married woman who says to her husband, "divorce me, I do not want to be with you" he is liable to give her nothing and she is a recalcitrant wife…	**תשובות הגאונים - הרכבי סימן יט** [הא]ש' שהיא יושבת תחת בעלה ואמרה לו [גרשני איני רוצ]ה לישב עמך חייב ליתן לה כלום וכול' מורדת
5	**Geonic Responsa**	**תשובות הגאונים שערי צדק חלק ג שער ב סימן כו**

	…for when she "rebels" and forfeits her *ketubbah*, he needs to record it in court that she forfeited to him her *ketubbah*…	שמא מורדת היא והחזירה לו כתובתה וצריך להודות בבית דין שהחזירה לו כתובתה
6	**Geonic Responsa** (Harkavy sec. 71) After the gemara, our rabbis decreed that even what she seizes **we** take to him from her and **we** give her a divorce immediately…	**תשובות הגאונים - הרכבי סימן עא** בתר גמרא תקינו רבנן דאפילו מאי דתפיסא **מהנפקינן** ליה מינה **ויהבינן** לה גיטא לאלתר...
7	**Geonic Responsa** As for what you asked: If a man marries a second wife and his wife rejects this, she is recalcitrant and she is divorced without a *ketubbah* for Rava said that a man may marry several women in addition to his wife as long as he can provide his marital obligations…	**תשובות הגאונים - קורונל סימן סו** וששאלתם מי שנשא אשה על אשתו במרצה אחת ולא רצתה אשתו בכך היא מורדת ותצא בלא כתובה דאמר רבא נושא אדם כמה נשים על אשתו והוא דאיפשר למיקם בסיפוקיה...
8	**Halakhot Gedolot (9th century), sec. 36, laws of marriage** And now in the two yeshivas they rule on the recalcitrant wife that even though she seized something from her *ketubbah*, **we** take it from her and **we** give it to the husband and **we** give her a divorce document immediately.	**ספר הלכות גדולות סימן לו - הלכות כתובות** והאידנא בתרתין מתיבתא הכין פסקין במורדת דאף על גב דתפישא מידעם מכתובתה קא **מפקין** ליה מינה **ויהבין** ליה לבעל **ויהבינן** לה גיטא אלתר...
	al-Ḥimyarī al-Ṣanʿānī (d. 827; Yemen), *Muṣannaf*, v. 7, p. 174 12660 – A woman from Ḥīrah became Muslim and her husband did not become Muslim. ʿUmar bin al-Khaṭṭāb decreed (literally, wrote) about this situation: They should let her choose; if she wants, she divorces him; and if she wants, she stays with him.	**مصنف الصنعاني 7:174** 12660— أَسلمت امرأَة فِي أَهل الحيرة, ولم يسلم زوجها, فكتب فيها عمر بن الخطاب: أَن خيِّروها, فإِن شاءَت فارقته, وإِن شاءَت قرَّت عنده.
	Ibn Abī Shaybah (d. 849; Iraq), *Muṣannaf*, v. 4, p. 109-110	**(٨٣) ما قالوا في المرأة تُسلِمُ قبل زوجها،** **من قال: يفرق بينهما** **١٨٢٩١ ــ حدّثنا** أبو عبد الرحمٰن بقي بن مخلد قال: نا أبو بكر عبد الله بن محمد بن أبي شيبة قال: نا عباد بن العوام عن خالد عن عكرمة عن ابن عباس قال: إذا أسلمت النصرانية قبل زوجها فهي أملك بنفسها. **١٨٢٩٢ ــ حدّثنا** أبو بكر قال: نا معتمر بن سليمٰن عن أبيه أن الحسن وعمر بن عبد العزيز قالا في النصرانية تُسلِمُ تحت زوجها، قالا: الإسلام أخرجها منه. **١٨٢٩٣ ــ حدّثنا** أبو بكر قال: نا عباد بن العوام عن حجاج عن عطاء في النصرانية تُسلِمُ تحت زوجها قال: يفرّق بينهما. **١٨٢٩٤ ــ حدّثنا** أبو بكر قال: نا عبد الرحمٰن بن محمد المحاربي عن ليث عن عطاء وطاوس ومجاهد في نصراني تكون تحته نصرانية فتُسلِم قالوا: إن أَسْلَمَ معها فهي امرأته وإن لم يُسلِم فرّق بينهما. **١٨٢٩٥ ــ حدّثنا** أبو بكر قال: نا علي بن مسهر عن الشيباني عن السفاح بن مطر عن داود بن كردوس قال: كان رجل من بني ثعلب يقال له عباد بن النعمان بن زرعة كانت عنده [امرأة] من بني تميم وكان عباد نصرانيًا فأسلمت امرأته وأبى أن يُسلِمَ ففرّق عمر بينهما. **١٨٢٩٦ ــ حدّثنا** أبو بكر قال: نا ابن علية عن يونس عن الحسن قال: إذا أسلمت المرأة قبل زوجها انقطع ما بينهما من النكاح. **١٨٢٩٧ ــ حدّثنا** أبو بكر قال: نا عباد بن العوام عن الشيباني عن يزيد بن علقمة أن رجلاً من بني ثعلب يقال له عباد بن النعمان فكان تحته امرأة من بني تميم فأسلمت فدعاه عمر فقال: إما أن تُسلِمَ وإما أن أنزعها منك فأبى أن يُسلِمَ فنزعها منه عمر. **١٨٢٩٨ ــ حدّثنا** أبو بكر قال: نا محمد بن فضيل عن مطرف عن الحكم في اليهودي والنصراني تُسلِمُ امرأته عنده: يفرّق بينهما. **١٨٢٩٩ ــ حدّثنا** أبو بكر قال: نا غندر عن شعبة عن ابن شبرمة عن عمرو بن مرة قال: سألت سعيد بن جبير عن رجل نصراني وامرأته نصرانية فأسلمت، قال: فرّق. **١٨٣٠٠ ــ حدّثنا** أبو بكر قال: نا وكيع عن سفيٰن عن سالم عن سعيد قال: يفرّق بينهما. **(٨٤) من قال: إذا أسلمت ولم يُسلِمْ لم تنزع منه** **١٨٣٠١ ــ حدّثنا** أبو بكر قال: نا محمد بن فضيل عن مطرف عن عامر عن علي قال: إذا أسلمت النصرانية امرأة اليهودي أو النصراني كان أحق ببضعها لأن له عهدًا. **١٨٣٠٢ ــ حدّثنا** أبو بكر قال: نا وكيع عن هشام وشعبة عن قتادة عن سعيد بن المسيب عن علي قال: هو أحق بها ما داما في دار الهجرة. **١٨٣٠٣ ــ حدّثنا** أبو بكر قال: نا وكيع عن يزيد عن ابن سيرين عن عبد الله بن يزيد الخطمي أن عمر كتب: تخيّرْن. **١٨٣٠٤ ــ حدّثنا** أبو بكر قال: نا وكيع عن إسمٰعيل عن الشعبي قال: هو أحق بها ما كانت في المصر. **١٨٣٠٥ ــ حدّثنا** أبو بكر قال: نا وكيع عن سفيٰن عن مغيرة عن إبراهيم قال: يقرّان على نكاحهما. **١٨٣٠٦ ــ حدّثنا** أبو بكر قال: نا وكيع عن شعبة عن الحكم أن هانيء بن قبيصة الشيباني وكان نصرانيًا كان عنده أربع نسوة فأسلمن فكتب عمر بن الخطاب أن يقرون عنده. **١٨٣٠٧ ــ حدّثنا** أبو بكر قال نا ابن علية عن يونس عن الحسن أن نصرانية أسلمت تحت نصراني فأرادوا أن ينزعوها منه فرحلوا إلى عمر فخيّرها.

9	**Saḥnūn (d. 854/5 CE, Tunisia),** *al-Mudawwanah al-kubrá li-imām Mālik Ibn Anas al-Aṣbaḥī* (v. 2, 212-213) If he converts during her waiting period, a [non-Muslim] husband has a right to his [Muslim] wife, but [if he does not convert] he has no right to her if her waiting period concludes, even if he converts afterwards.	**سحنون , المدونة الكبرى** الزوج أملك بالمرأة إذا أسلم وهي في عدتها, فإذا انقضت عدتها فلا سبيل له عليها وإن أسلم بعد ذلك.
10	**Rabbeinu Gershom (d. 1028, France), Responsa sec. 41** Our Savoraic rabbis, after the "instruction," they decreed that the "practical law" is to take from her what she seized from his property and give it to him and he gives (her) a divorce document immediately so that the daughters of Israel do not go out to evil culture.	**שו"ת רבינו גרשום סימן מא** רבנן סבוראי בתר הוראה תקינו הלכה למעשה למשקל מינה מאי דתפסה מדיליה ומיהב ליה ואיהו יהיב גיטא לאלתר כדי שלא תצאן בנות ישראל לתרבות רעה.
11	**Rashi (d. 1105, France), Ketubbot 63b** **One who says "I want him**" – we should force her by reducing her ketubbah **But if she said "He is repulsive to me"** – I do not want either him or his ketubbah **No pressure is placed on her** – to delay her, but rather he gives her a divorce document and she is divorced without a ketubbah	**רש"י כתובות דף סג עמוד ב** **דאמרה בעינא ליה כו**' -- שיש לכופה על ידי פחיתת כתובתה **אבל אמרה מאיס עלי** -- לא הוא ולא כתובתו בעינא **לא בייפינן לה --** להשהותה אלא נותן לה גט ויוצאה בלא כתובתה
12	**Rabbeinu Tam (d. 1171, France),** ***Ṣefer ha-yashar*****, Responsa, sec. 24** (see also *Toṣafot, Ketubbot 63b*) The Geonim decreed that we do not delay her 12 months for a divorce document, but rather we coerce him (to give it). Heaven forbid that our rabbis should increase the mamzerim in Israel, for we established that Ravina and Rav Ashi were the end of the "instruction." And granted that the Geonim were able to establish that the *ketubbah* of a woman could be collected on movable property [whereas in Talmudic times it was only collectable on immovable property], based on halakhah or their own opinion, that is the monetary issues. But to permit an invalid divorce document, we do not have the authority from the days of Rav Ashi to to the days of the messiah.	**ספר הישר (חלק התשובות) סימן כד** שתקנו הגאונים דלא משהינן תריסר ירחי שתא אגיטא אלא כופין אות. חלילה לרבנו להרבות ממזרים בישראל דק"ל רבינא ורב אשי סוף הוראה. ונהי דהגאונים יכולים לתקן כתובת אשה על המטלטלין או על פי הלכה או על פי דעתם דהיינו ממונא, אבל להתיר גט פסול אין כח בידינו מימות רב אשי ועד ימות המשיח.
13	**Maimonides (d. 1204, Spain/Egypt),** ***Hilkhot Ishut*****, 14:14** The Geonim reported that in Babylonia they have different customs pertaining to the recalcitrant wife, but those customs did not spread to the majority of Israel and many great scholars in many places disagree with them. We ought to recognize and to rule according to Talmudic law.	**רמב"ם הלכות אישות פרק יד הלכה יד** ואמרו הגאונים שיש להם בבבל מנהגות אחרות במורדת, ולא פשטו אותן המנהגות ברוב ישראל ורבים וגדולים חולקין עליהם ברוב המקומות ובדין התלמוד ראוי לתפוש ולדון
	Maimonides (d. 1204, Spain/Egypt), ***Hilkhot Gerushin*****, 2:20** If a man who may be legally compelled to divorce his wife refuses to do so, a Jewish court in any place and at any time may scourge him until he says "I consent." He then writes a divorce decree (get) and it is valid. Similarly, if it is non-Jews who whip him and say to him, "Do what the Jews tell you to do," so that Jews exert pressure on him at the hands of non-Jews until he divorces (her), the divorce decree is likewise valid. But if non-Jews on their own initiative exert pressure upon him until he writes the divorce decree, insofar as the law does not obligate him to write it, it is invalid. And why is this divorce decree not null and void, seeing that it is the product of duress, whether exerted by non-Jews or by Jews? Because duress only applies to him who is compelled and pressed to do something that the Torah does not obligate him to do; for example, one who is lashed until he consents to sell something or give it away as a gift. But, he whose evil inclination induces him to violate a commandment or commit a transgression, and who is lashed until he does what he is obligated to do, or refrains from what he is forbidden to do, cannot be viewed as a victim of duress; rather, he has brought duress upon himself by submitting to his evil intention. Therefore, this man who refuses to divorce his wife, inasmuch as he desires to be of the Jews, to abide by all the commandments, and to keep away from transgressions, it is only his inclination that has overwhelmed him; once he is lashed and his inclination is weakened and he says "I consent," it is the same as if he had given the divorce decree voluntarily. When the law does not require him to divorce (his wife) and a Jewish court or laypeople compel him to divorce her, this is is an invalid divorce decree. Since, however, it was Jews who coerced him, he should complete the divorce. But if non-Jews compelled him to divorce and it was not required by law, it is not a (valid) divorce decrre. Even though he tells the non-Jews, "I consent," and he says to the Jews, "write and sign it," since the law does	**רמב"ם הלכות גירושין פרק ב** מי שהדין נותן שכופין אותו לגרש את אשתו, ולא רצה לגרש--בית דין של ישראל בכל מקום ובכל זמן, מכין אותו עד שיאמר, רוצה אני; ויכתוב הגט, והוא גט כשר. ובן אם הכוהו גויים ואמרו לו, עשה מה שישראל אומרין לך, ולחצו אותו ישראל ביד הגויים, עד שגירש--הרי זה כשר; ואם הגויים מעצמן אנסוהו עד שכתב--הואיל והדין נותן שיכתוב, הרי זה גט פסול ולמה לא בטיל גט זה--שהרי הוא אנוס, בין ביד גויים בין ביד ישראל: שאין אומרין אנוס, אלא למי שנלחץ ונדחק לעשות דבר שאינו חייב מן התורה לעשותו, כגון מי שהוכה עד שמכר, או נתן; אבל מי שתקפו יצרו הרע לבטל מצוה, או לעשות עבירה, והוכה עד שעשה דבר שחייב לעשותו, או עד שנתרחק מדבר שאסור לעשותו--אין זה אנוס ממנו, אלא הוא אנס עצמו בדעתו הרעה לפיכך מי שאינו רוצה לגרש--מאחר שהוא רוצה להיות מישראל, רוצה הוא לעשות כל המצוות ולהתרחק מן העבירות; ויצרו הוא שתקפו. וכיון שהוכה עד שתשש יצרו ואמר, רוצה אני--כבר גירש לרצונו לא היה הדין נותן שכופין אותו לגרש, וטעו בית דין של ישראל, או שהיו הדיוטות, ואנסוהו עד שגירש--הרי זה גט פסול: הואיל וישראל אנסוהו, יגמור ויגרש. ואם הגויים אנסוהו לגרש שלא כדין, אינו גט; אף על פי שאמר בגויים, רוצה אני, ואמר לישראל, וכתבו וחתמו--הואיל ואין הדין מחייבו להוציא והגויים אנסוהו, אינו גט

	not compel the divorce and the non-Jews pressured him, it is not a divorce decree.	
14	**Cairo Geniza** TS 13 J 3, fol. 22, copied from S.D. Goitein's Typed Texts. 07-09-90, N.H. (p). Document of a full-fledged bara'a (release of spouse from obligations upon divorce) in which husband and wife from al-Mahalla appear before the court of Fustat, Ab 4973/Ab 1524/August 1213. [spouse is husband]	
15	**Rabbi Yitzhak Ben Moshe (d. 1250, Vienna), Ṣefer or zaruʿa, Section 1, Responsa section 4354** The Geonim of the yeshivas of Babylonia, our Savoraic rabbis who were after the "instruction", decreed that they coerce a husband to give a divorce document to a recalcitrant wife immediately and also the Baʿal of Halakhot Gedolot wrote and also Rav Hai and Rav Sherira wrote and all the Geonim, that for more than 300 years from their days this decree was decreed and there is no deviation from this. And thus also Rav Alfasi wrote his legal opinion and there is no one who can uproot the decree of the great bet din of Babylonia. Therefore, this divorce document is legitimate and there is no questioning it. And, moreoever, she has a strong claim that he cannot have sex with her and since he agreed to give her a divorce document even though by coercion, then his divorce is valid. For we have here a commandment to obey the words of the sages, the decree of the great bet din…	**ספר אור זרוע חלק א - שאלות ותשובות סימן תשנד** גאוני הישיבות של בבל רבנן סבוראי שהיו אחר ההוראה תקנו שיכופו את הבעל ליתן גט למורדת מיד וכ"כ בה"ג וכך כתבו גם רב היי /האי/ ורב שרירא וכל הגאונים שיותר מג' מאות שנה היה בימיהם שנתקנה זו התקנה ואין לזוז ממנה וכ"כ גם רב אלפס הפסק ואין מי שיכול לעקור תקנת ב"ד הגדול שבבבל הלכך גיטה של זו גט כשר הוא ואין לפרכס עליו וכ"ש שיש לה טענה גדולה שאינו יכול להזקק אליה וכיון שנתרצה ליתן גט אפי' ע"י עישוי גיטו גט דיש כאן מצוה לשמוע דברי חכמים תקנת ב"ד הגדול
16	**Rashba (d. 1310, Spain), Responsa, Part 2, sec. 276** Nevertheless, if it is their custom in those places to do as Maimonides, let them. Because even Geonim, you know they said: we coerce (him) to divorce (her) as long as she is recalcitrant. And in the places where they follow that tradition, we have no authority to disagree with them or to void their words.	**שו"ת הרשב"א חלק ב סימן רעו** ומכל מקום, אם נהגו באותן המקומות, להיות עושין כהרמב"ם ז"ל, הנח להם. כי גם הגאונים ז"ל, ידעת שאמרו: שכופין לגרש, כל שהיא מורדת. ובמקומות שנהגו על פיהם, אין בנו כח לחלוק עליהם, ולבטל דבריהם
17	**Yaʿqov ben Asher (d. ca. 1349 ce, Spain), Ṭur, Even Haʿezer, marriage laws, section 77** The woman who refuses her husband sex there are many decrees enacted on the subject… We saw a Geonic (text) that states to give her (a recalcitrant wife) her essential *ketubbah* of 100 or 200 so that the daughters of Israel do not become illicit (i.e., engage in immoral sexual behavior)… The Rosh, according to the words of Rav Alfasi, said that when they saw the denigration among the daughters of Israel and that if they waited 12 months for a divorce document they would rely upon idol-worshippers and go out to evil culture… The sages of Ashkenaz and Sefard agreed that in the case of "he is repulsive to me" it is not permissible to coerce the husband to divorce so every judge should be careful not to coerce a divorce in the case of "he is repulsive to me." And also they do not coerce her to be with him…	**טור אבן העזר הלכות כתובות סימן עז** והאשה שמרדה על בעלה מתשמיש הרבה תקנות תקנו בה בתחילה... וחזינא לגאון דקאמר יהיב לה עיקר כתובה מנה מאתים כי היכי דלא ליהוי בנות ישראל הפקר.. הרא"ש ז"ל על דברי רב אלפס אפשר לפי שראו הקילקול בבנות ישראל ואי משהי תריסר ירחי שתא אגיטא תולות עצמן בעכו"ם ויוצאות לתרבות רעה בטלו... והסכימו חכמי אשכנז וצרפת שבטענת מאיס עלי אין לכוף לבעל לגרש לכן יזהר כל דיין שלא לכוף לגרש בטענת מאיס עלי וכן אין כופין אותה להיות אצלו...