YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**GEMARA GITTIN 5779**

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Dedicated in memory of Rabbi Jack Sable *z”l* and

Ambassador Yehuda Avner *z”l*

By Debbie and David Sable

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**Shiur #1: Daf 82A
Except for Ploni**

**by Rav Ezra Bick**

**Sources for this shiur:**

1.       Gittin 82a, Mishna and Gemara until 82b "…*issur kehuna shaini*"

2.       Tosafot 82a s.v. "*hamegaresh*", Rashba s.v. "*Uvachutz*" (until "… *d'leka shiura baget*")

3.       Yerushalmi 9,1, Gemara until "…*etzel acher*"

4.       Tosafot 82b s.v. "*afilu*" (the first half), Tosafot HaRosh s.v. "*afilu*"

5.       Rashba 82b s.v. "*ha d'amrinan kidushei Reuven*" (until "… *kana"l"*), Ritva s.v. "*Batar*" (until "… *harei hi k'pnuya*")

We are beginning the study of *Masechet Gittin*. We will begin with the 9th chapter, which, even though it is the end of the *masechet*, deals in the most fundamental manner with the definition of divorce – the concept of *kritut*. It therefore makes sense to begin with fundamentals, and only afterward will we move to the beginning of the *masechet*, where we will investigate the act of giving a *get* as well as the laws of the *get* as a document.

82a Mishna: One who divorces his wife

1. *Chutz* and *Al Menat*

The first Mishna in the ninth chapter starts with the dispute between *Rabbanan* and R. Eliezer regarding someone who divorces his wife and makes her permitted to everyone, but excludes one person from the general case. If the *get* takes effect, the woman will be divorced, and permitted to all men, except for that one person (Ploni), to whom she will be forbidden, with the status of a married woman. R. Eliezer permits this – that is to say, the woman is permitted to every man, and forbidden to Ploni. And the *Chakhamim* forbid – that is to say, the *get* does not take effect, and the woman is forbidden to all men, as a married woman.

The language of the *mishna* is “you are permitted to all men other than (*elah*) Ploni.” The term *elah* lead to an uncertainty in the gemara. As far as halakhic mechanisms go, there are two possibilities: “except for,” that is to say, something is not included in the act of divorce itself, or “on condition that,” that is to say, a stipulation, you are divorced on condition that you do not have relations and do not marry Ploni. The result is the same in these two cases – in effect the woman cannot marry Ploni, but there is a difference in principle between them. “Except for” means that the *get* takes effect partially; it makes her permitted to everyone and makes her forbidden to Ploni. The woman is **simultaneously** divorced and not divorced. “On condition that” means that there are two **alternative** situations: if the condition is fulfilled (if she does not have relations with Ploni) the *get* takes effect and she is permitted to everyone (including, in principle, Ploni) and if she does not satisfy the condition (she does have relations with Ploni), then the *get* does not take effect, and she is forbidden to everyone.

The gemara says that if the dispute between the *Rabbanan* and R. Eliezer is about “except for,” then in the case of “on condition that,” the *Rabbanan* agree with R. Eliezer. *Tosfot* (s.v. *hamegaresh*) explain that since her prohibition is framed only in conditional terms, “it is as if she was made permitted to all.” The *Rashba* explains “for nothing at all was excluded from the *get*; he (the husband) is not saying that she is not permitted to this man, but rather she (the wife) is permitted to everyone, **including this man**, and she is divorced in relation to him too, but he makes a condition regarding her from another angle, on condition that she not have relations with him, neither by marriage nor promiscuously.” We interpret this as follows: if he says “except for,” this limits the power of the *get* – in the *Rashba’s* words, there is something excluded from the *get* – and this invalidates the *get* according to the *Rabbanan*. The term “on condition that,” on the other hand, means that the *get*’s power is unlimited, and if the *get* takes effect, it makes her permitted to that Ploni also; however, if she has relations with him, the *get* becomes invalid retroactively, like any condition in general. **As a result** of the invalidation of the *get*, the woman becomes prohibited retroactively as well, but this is not an exlusion in the power of the *get*, but an invalidation of the *get* under certain conditions. According to this opinion in the *gemara*, this is not an exclusion which invalidates the *get*.

That is to say, this position in the *gemara* claims that the *Rabbanan* invalidate a *get* whose internal power to make the woman permitted is limited. In “on condition that,” in practice there is no permission for Ploni (to marry her), but this is not because of any lack in the power of the *get*, but because of the condition, as an external factor.

There is an opposite opinion in the *gemara* – the dispute is in the case of “on condition that;” and in “except for,” even R. Eliezer concedes to the *Rabbanan*. According to this opinion, the *Rabbanan* claim that since in practice the *get* does not fully succeed in making the woman permitted to everyone, there is a deficiency in the *kritut* (severance) of the giving of the *get*[[1]](#footnote-1).

The disputing opinions in the *gemara* can be explained as follows: According to both opinions, the *Rabbanan* require that the divorce be absolute, with nothing left out. In the language of the *gemara* further on, we require *kritut*, severance, which it seems means a total action which doesn’t leave any loose ends. The first opinion holds that this requirement relates to the **act** of divorce, that the *get* effect a complete separation. Therefore, in the case of a condition, we claim that the act of divorce was absolute, and the woman is forbidden to Ploni not because of any deficiency in the *kritut* power of the *get*, but rather because of the condition. The second opinion claims that the *get* must engender a **situation** of *kritut*, that as a result of the get the woman be released from the bonds of marriage. Therefore, in the case of a condition as well, although the *get* itself acted to make her permitted entirely, nevertheless, since the desired result was not achieved, there is a deficiency in the status of the woman as a divorcee, and thus the *get* completely does not take effect. That is to say, the first opinion examines the **act** of divorce itself, and the second opinion examines the **result** of the divorce on the personal status of the woman.

In practice, most *Rishonim* rule that the dispute is about “except for,” and in “on condition that,” *Rabbanan* agree with R. Eliezer that the woman is divorced. The *Ramban* rules that according to the halakha, the *tannaim* disagree both on “except for” and on “on condition that,” (*Ramban*, s.v. *ha*); that is to say, although the logical distinction between the two cases is clear, nevertheless the *Rabbanan* invalidate the *get* in both cases, and R. Eliezer validates it in both cases.

1. That You Do Not Have Relations, and That You Do Not Marry

The above presentation reflects the opinion of most *Rishonim* (*Tosfot* in their conclusion, the *Ramban*, the *Rashba*, the *Ritva*, the *Ran*) that the case of “on condition that” means “on condition that you do not have relations.” The simple basis of this opinion is that “except for” and “on condition that” are in parallel, that is to say, in both cases, the husband makes her forbidden, one way or another, to have relations with Ploni (and of course, not to marry him). *Tosfot*, in the beginning of their words, raises the possibility that “on condition that” means on condition that you do not **marry** Ploni, but promiscuous relations would not make the condition unfulfilled. According to this, the distinction between “except for” and “on condition that” is not a learned distinction in the basis of the forbidding factor, but a simple distinction. In the “except for” case, she is forbidden to Ploni; in the “on condition that” case, she really in practice is permitted to Ploni (in regard to sexual relations), but she just may not marry him. According to this, the *Rabbanan* agree in the “on condition that” case (that the *get* is valid) for the simple reason that the releasing action of the *get* is not partial at all. The woman is divorced, on the practical level as well, since she is permitted to every man.

The question according to this position concerns the second possibility in the *gemara*, that the *Rabbanan* disagree in the “on condition that” case. Why should a condition that the woman **not marry** Ploni invalidate the *get* according to the Rabbanan? The answer is clear: the dispute between R. Eliezer and the Rabbanan ‒ the first of whom invalidates the case “except for” (and also in the case of “on condition that you not have relations”) but validates the *get* in the case of “on condition that you not marry,” and the second of whom invalidates the *get* even on the basis of a limitation in practice to marry ‒ is: what is considered the essential function of the *get*? Is the function of the *get* to permit and release, that is to say, to cancel the prohibition of *eshet ish*, a married woman, which is a prohibition of sexual relations, or does the essential function of the *get* include changing *baalut*, enabling the woman to be in her own domain (*reshut)* and allowing her to enter into a relationship with another man and put herself into his *reshut*? Both agree (since R. Eliezer agrees that in the case of “on condition that,” there is no valid *get*) that a partial get is not a *get*. The question is, does preventing marriage to someone else also constitute leaving something out of the essential action of the *get*, or does only preventing relations do so?

On the face of it, we are speaking about a question in principle about *gerushin*. Does *gerushin* act in the realm of *issur v’heter* as a determinant of personal status, or in the realm of *kinyan*? That is to say, does the *get* change the status of the woman from a married woman to an unmarried one, or does it undo the relationship between the woman and her husband? (We will not enter here into a discussion of the meaning of the term “*kinyan*” in regards to *kiddushin*; this question in principle relates to the first *mishna* in *Masechet Kiddushin*. We are using the term *kinyan* here to describe the relationship between a husband and wife, and *issur* to describe the status of the woman.)

Under the reasonable, although not absolutely necessary, assumption that there is a converse parallelism between *kiddushin* and *gerushin*, there is a question in principle about *kiddushin* as well. Does a man who is *mekadesh* a woman make her forbidden (in the words of the *gemara* in *Kiddushin* 2b: You are hereby *mekudeshet*, that is to say, forbidden to the whole world like *hekdesh)*, and as a result of this she is considered his wife, or does the man performing *kiddushin* make a *kinyan* which connects the two parties, whereby she is his wife, as a result of which she becomes forbidden to everyone? It is clear that in *kiddushin* and *gerushin,* there are ramification in both of these realms (*kinyan* and *issur*); the question is, what is the immediate and direct action, and what is the accompanying aftereffect? In our *sugya*, this *hakira* expresses itself in our understanding of the position of the Rabbanan, who oppose the idea of partial *gerushin*. Does “partial gerushin” mean *gerushin* which effect a partial *kinyan*, or *gerushin* which effect only a partial *heter*, only partially negating an *issur*?

1. *Heter* or *Kinyan*?

The *gemara* (82b) asks: what is R. Eliezer’s reasoning? We should pay attention to the fact that the *gemara* does not ask a similar question regarding Rabbanan. From this it seems that R. Eliezer has an innovative position, which requires a Biblical source, unlike Rabbanan, for whom it is sufficient that they reject R. Eliezer’s derivation to justify their position. However, further on in the *gemara*, it turns out that the *Rabbanan* base themselves on the significance of the Biblical word “*kritut*,” which appears in the Biblical verse as the definition of a *get* – “and he will write her a bill of *kritut*.“ The *gemara* on 83a it says explicitly regarding the position of R. Elazar ben Azarya, who supports the position of Rabbanan in the *mishna*, that it is based on the wording of the verse “*sefer kritut.*” Nevertheless, at least on the explicit level, our *gemara* relates to the position of the Rabbanan as simpler than that of R. Eliezer.

In contrast, the Yerushalmi at the beginning of our chapter asks a double question – what is the reasoning of R. Eliezer, and what is the reasoning of Rabbanan? The Yerushalmi answers the second question “and she **left** his house... and **became** the wife of another man”: the verse links *yetzia* (leaving) to *havaya* (becoming). Just as “*havaya*” excludes becoming the wife of anyone else, so too “*yetzia*” excludes leaving anyone else out.

The simple meaning of the Yerushalmi indicates that simply by logic, without any textual source and without dispute, it is impossible to have partial *kiddushin*. Rabbanan use the textual linkage(*hekesh*) of “*havaya*” and “*yetzia*,” the fact that the verse says “and she left... and she became someone else’s wife,” to conclude that there is also no partial *gerushin*. It seems from this that R. Eliezer agrees that there cannot be partial *kiddushin*, but he does not accept, for this purpose, the *hekesh* of *havaya* to *yetzia*.

What is the basis of the simple reasoning that there is no partial *kiddushin*? It seems that the Yerushalmi holds that the very essential meaning of the concept of *kiddushin* is that she is forbidden to others – that she cannot become the wife of anyone else. There is a contradiction, it seems, between the concept of *kiddushin* and the possibility of becoming the wife of anyone else, other than her husband. This point does not need any proof or source – it simply is the meaning of the concept *kiddushin*. *Kiddushin* is *yichud*, exclusive designation (indeed, the *gemara* mentions the words “*harei at meyuchedt li*” as an alternative to “*harei at mekudeshet li*.”) Logically, on the other hand, I could imagine that someone could divorce his wife partially, until the verse came and explained that *gerushin* is the converse parallel of *kiddushin*. Just as it impossible to exclusively designate a woman as one’s wife without her becoming forbidden to everyone else, so too, cancellation of the *kiddushin* must make her permitted to everyone. R. Eliezer, in opposition to the view of the Rabbanan, holds that if *kiddushin* means that she is designated to him and forbidden to everyone else, nullifying this situation begins with making her permitted to one or two people, and there is not necessarily a need to do the diametric opposite.

In our gemara, in contrast to the Yerushalmi, the relationship between *kiddushin* and *gerushin* is the opposite. The dispute between Rabbanan and R. Eliezer is stated regarding *gerushin*. R. Abba asks, "*b’kiddushin mai*, what is the law regarding *kiddushin*?," and the question is interpreted by the *gemara* on *daf* 82b as a question of whether we derive *kiddushin* from *gerushin*? That is to say, there is a possibility that even if *gerushin* must be total and absolute (because of the terminology of *kriutut* used regarding *gerushin*), *kiddushin* may possibly be partial. If we don’t say that *havaya* is linked to *yetzia*, this is precisely the opposite of the relationship between *kiddushin* and *gerushin* as stated in the Yerushalmi.

1. R. Eliezer’s source

The *gemara* brings two sources for R. Eliezer’s position. R. Yannai cites the verse “and she left his house, and went and became someone else’s wife” – (the *get* is valid) even if it made her permitted to only one man. R. Yochanan cites another verse: “And a woman divorced from her husband they will not take (marry)” (said in regards to *kohanim*), and quotes the *drasha* of the Sages, “Even if she is divorced only from her husband, she becomes invalid to marry into the priesthood - therefore, it (such a *get*) is a *get*."

The two derivations may be easily explained on the basis of the above *hakira*. The derivation of R. Yannai may relate to *issur v’heter*. “'And she left ... and became the wife of another man' – it is sufficient that she becomes **permitted** to even only one man. R. Yochanan’s *drasha*, on the other hand,explicitly relates to the realm of *kinyan*. Even if she is divorced from only her husband, and she is forbidden to the whole would, nevertheless she is considered a divorcee insofar as she is forbidden to a *kohen* (even after the death of her husband). What does the expression “a woman divorced from her husband only” mean? Just that she is cut off from him, was sent away by him, even though she is permitted to no one. R. Eliezer proves, according to R. Yochanan, from the fact that such a woman is forbidden to a *kohen* (as a divorcee), that there is a *get* which has no *heter* consequences, but only *kinyan* significance, and from this he deduces that there is such a thing as a partial *get*. The logic is that if a *get* is only *matir*, it is reasonable that it could not be *matir* partially. However, now that we see that the *matir* may be disconnected from the *kinyan*, the *heter* must be the result of the *kinyan*, which is the basic action of the *get*, and this result is dependent on the intention of the husband who gives the *get*. If so, he can also make her permitted to some people, and leave her forbidden to others.

There is a third source for R. Eliezer in the Yerushalmi. “Death is *matir*, and a *get* is *matir*. Just as death may be *matir* partially, so too a *get* may be *matir* partially.” The commentaries explain that death is “*matir* partially” because although through her husband’s death a woman becomes permissible to the world, she remains forbidden to her husband’s close relatives (that is to say, there remains the prohibition of incestual relationships of an *eshet ach* (brother’s wife) even after the husband’s death. Therefore – R. Eliezer concludes – a partial *get* may be given; that means to say that the woman is permitted to one person, and forbidden to another.

This derivation may be interpreted only in regards to the realm of *issur v’heter*. The Yerushalmi demonstrates that the personal statusof *eshet ish* may be partial. A woman is considered Reuven’s wife even after his death in regard to Reuven’s brother, and not be considered Reuven’s wife any longer in regard to the rest of the world. From this, R. Eliezer comes to the conclusion that the *status* of *eshet ish* may be split, and therefore a woman may a forbidden woman and a permitted woman simultaneously, in regards to two different men. There is no way this derivation can be formulated in the realm of *kinyan*, since death is not an act of *kinyan*.

1. *Kinyan* Without *Issur* or *Heter*

As was said, the *gemara* mentions, as a source for R. Eliezer, the derivation from the verse “a woman divorced from her husband they will not take (marry)” – even if she is only divorced from her husband, she is invalid for marriage into the priesthood. From this, R. Eliezer deduces “therefore, this *get* is a *get.*” Rabbanan indeed reject this proof, because “prohibitions of the *kohanim* are different;” that means to say, there is a special law that even a *get* which is not a *get* may invalidate a woman from marrying a *kohen*: this is the law of “*rei'ach* (scent of a) *ha-get*” which invalidates a woman from marrying a *kohen*. According to R. Eliezer, although this status applies only in regards to *kohanim*, nevertheless it proves that in this case the *get* is a valid *get.* That means to say, the definition of *rei'ach haget* is an act of *gerushin* without a result (*challot*) of *gerushin*. From this, R. Eliezer proves that an act *of gerushin* without any *heter* at all is nevertheless considered an act *of gerushin* (for, on the other hand, if a man were to give his wife a *get* not written *lishma,* his wife would not therefore be invalidated from married a *kohen*, since that does not constitute an act of *gerushin*), and if so R. Eliezer deduces that an act of *gerushin* with even only a partial *heter* is considered an act of *gerushin,* and the partial *heter* takes effect.

*Tosfot* (s.v. *afilu*) writes about this case, in which no *heter* to anyone takes effect, that “it is obvious that, even according to R. Eliezer, this not a *get* at all in general, and if the husband dies, his wife may be *mityabemet* (become the wife of her husband’s brother), even though she becomes invalidated from marrying a *kohen*.” The phrase “it is obvious” indicates that *Tosfot* has no source for his position, but derives it from pure logic, “from the stomach.” *Tosfot* claims that there is no significance to a *get* that is not *matir* at all. Therefore, *Tosfot* conclude that if, after the *get* was given, the husband dies, his wife may be *mityabemet*, even though one may not perform *yibum* with a woman whom his brother divorced, for in this case there was no *gerushin* at all. (In accordance with this reasoning, *Tosfot* finds it difficult to explain how R. Eliezer deduces from here that a *heter* to one man would be *chal* if such a condition were made, because in our case, in which there is no *heter* to anyone, this is not a *get* at all. However, we do not need at this point to explain *Tosfot*’s answer to this question.) It seems that *Tosfot* understands **as something obvious**thatthe function of *gerushin* is to create a *heter,* and *gerushin* without any *heter* is meaningless. In opposition to *Tosfot*, the *Rosh* (*Tosfot* *HaRosh*, s.v. *afilu*) asserts that “according to the opinion that R. Eliezer deduces his position from prohibitions of *kohanim*, such a woman is considered a divorcee even if she was divorced only from her husband (and not permitted to others) – if her husband died, she cannot be *mityabemet*, since she is considered the *grusha* of the *yavam’s* brother.” It seems that according to the *Rosh*, it *is* possible to be divorced from one’s husband without a *heter* to anyone. That is to say, that *gerushin* may be expressed by leaving the husband’s domain alone, by severing the existing relationship, even without any *issur* content at all. In other words, according to *Tosfot,* *gerushin* is an act in the realm of *issurim*, while according to the *Rosh*, it is in the realm of *kinyanim*.

(One must state two reservations about this conclusion: a) The *Rosh* asserts what he does only according to one who bases R. Eliezer’s position on this verse, that is, R. Yochanan. According to R. Yannai, who derives R. Eliezer’s law from the verse “and she left... and she became someone else’s wife,” this conclusion is not necessarily valid, and this is emphasized in the *Rosh*’s words. b) It is sufficient to conclude that *gerushin* may be defined as an act of *kinyan* without *issur*. This does not preclude the possibility that regular *gerushin* include both elements.)

We find a parallel dispute regarding *kiddushin* further on in the *gemara*. Abba Shaul asks, what is the law regarding partial *kiddushin*? Further on in the gemara, after the conclusion that the *din* of *kiddushin* is the same as the *din* of *gerushin*, according to both Rabbanan and R. Eliezer, Abbaye brings up a case in which Reuven is *mekadesh* a woman to the exclusion of Shimon, and Shimon is *mekadesh* her to the exclusion of Reuven. According to R. Eliezer, who allows partial *kiddushin*, on the face of it both acts of *kiddushin* take effect. The *gemara* says about this case that Shimon’s *kiddushin* “*lo ahanu*,” have no effect. The *Rashba* (s.v. *ha amrinan*) writes that not only do both *kiddushin* take effect, but each act of *kiddushin* prohibits the other man to the woman, even though he was explicitly excluded. When Shimon is *mekadesh* the woman to the exclusion of Reuven, Reuven is forbidden to her (being excluded from Shimon's *kiddushin* allows his *kiddushin*, but not relations with the woman.) The *Ritva* disagrees with the *Rashba* on two points: a) “to the exclusion of“ permits relations as well; b) if Shimon is *mekadesh* the woman to the exclusion of Reuven, the *kiddushin* do not take effect at all, because he did not make her forbidden to anyone who was not forbidden previously. He did not make her forbidden to everyone, since Reuven had already made her forbidden to everyone other than Shimon, and he did not make her forbidden to Reuven, because Shimon stipulated “to the exclusion of Reuven.” That being the case, Shimon’s *kiddushin* are null and void, since *kiddushin* which do not prohibit are not *kiddushin*.

It is clear that that the *Ritva* (and his teacher, the *Raah*, in whose name this position is cited) holds that *kiddushin* are an act in the realm of *issur*. *Kiddushin* which do not prohibit anything are meaningless, hence null and void – similar to the position of *Tosfot* we cited, that *gerushin* which are not permit anything are null and void. This also explains the first position of the *Ritva*. Since *kiddushin* are an act of prohibition, *kiddushin* “to the exclusion of” are *kiddushin* which prohibit partially, and that which was excluded from the prohibition is indeed permitted, since no *issur* applies to it. Therefore, Reuven is permitted to the woman after Shimon was *mekadesh* her to the exclusion of Reuven.

The *Rashba* holds the opposite. The *Rashba* explains that even if Shimon was *mekadesh* to the exclusion of Reuven, Reuven is forbidden to her “because he uses the side of her which is *mekudeshet* to Shimon.” The *Rashba* regards a woman partially *mekudeshet* as having two “sides,” one side *mekudeshet* to Shimon, and another one not (and in our case the side not *mekudeshet* to Shimon is *mekudeshet* to Reuven, who was *mekadesh* her previously, to the exclusion of Shimon). The phrase “uses the side” is taken from the law of a woman who is half a *shifcha cnaanit*, a caananite slave, and half a free woman, who in practice is forbidden to a Jew because of her slave side. That is to say, the *Rashba* explains that partial *kiddushin* leave room for *kiddushin* by someone else – on the side left out of the original partial *kiddushin* – but sexual relations, which perforce relate to the whole woman, are forbidden to anyone else. Thus it turns out that the *Rashba* holds that partial *kiddushin* are partial only insofar as the *kinyan* goes, and a woman with a partial *kinyan* is entirely forbidden. If so, the *Rashba* does not agree with the *Ritva*’s claim that *kiddushin* which do not prohibit are null; according to him, they are valid in respect to the *kinyan* of the man who is *mekadesh* her. According to the *Rashba,* *kiddushin* are an act of *kinyan*, and according to the *Ritva,* they are an act of *issur*.

(In principle, the *Ritva* need not necessarily agree with *Tosfot*, because we may distinguish between *kiddushin* and *gerushin*, but basically we should see these in the same light, particularly since our *gemara* is based on the fact that *havaya* and *yeztzia* are linked, and the very *din* of *shiyur* *b*’*kiddushin*, partial, incomplete *kiddushin*, is based in the concept that *kiddushin* and *gerushin* are parallel.)

We will return to this distinction, between the act of *kinyan* and the act of *issur*, further on in the gemara in regards to the *tannaim’s* derivation as to the basis of the Rabbanan’s position, and other laws further on as well.

**Sources for next week's shiur:**

1. Gemara 82b "Ba'ee Rabi Abba... " until 83a "teiku"

2. Rashba 82b s.v. "*ha d'amrinan kideish*"

3. Ritva 82b s.v. "*Batar*"

1. The Torah defines a *get* as "*sefer kritut*," a bill of severance. [↑](#footnote-ref-1)