YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**GEMARA GITTIN 5779**

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In loving memory of Rabbi Dr. Barrett (Chaim Dov) Broyde ztz"l

הוֹלֵךְ תָּמִים וּפֹעֵל צֶדֶק וְדֹבֵר אֱמֶת בִּלְבָבוֹ

Steven Weiner & Lisa Wise

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**Shiur #03**

**Gittin Chapter 9**

**Four Elderly Sages (83a)**

**by Rav Ezra Bick**

**Sources:**

1. Gemara 83a “*Tam Rabbanan* …” until 83b “…*zaken echad ka matni*,” Rashi.

2. Rashba 83a s.v. “*Nimtza*,” Rama s.v. “*tanu rabbanan*.” (Ofek ed: p. 309, Mossad HaRav Kook ed. of the Ritva, p..365).

3. Tosafot 82b s.v. “*kigon*”

4. Rashba s.v. “*ve-avra*.”

The gemara (83a) quotes a *braita* which preserves a discussion of the *tannaim* regarding R. Eliezer’s position. Four elderly Sages (the list lengthens in the end to six elderly Sages) entered the discussion to dispute R. Eliezer’s statements, each one with a different claim or question. We will discuss each claim, in an attempt to deduce the logical claim or the halakhic concept which lies behind the opposition to allowing excluding someone from *gerushin*.

1. **R. Tarfon**

**R. Tarfon spoke up and said: Behold, if this woman went and got married to the brother of one she was forbidden to, and he died childless, would that not constitute uprooting something written in the Torah? Thus, you can learn from this that this is not “*kritut*” (“severance” - an essential element of *gerushin*).**

The intention of the question is that by giving a *get* and excluding a certain individual, a situation is possible in which the mitzva of *yibum* will be nullified, because if the one excluded from the *gerushin* is the brother of the divorced woman’s new husband, *yibum* cannot be performed, since the woman, insofar as the surviving brother is concerned, is still the wife of the first husband (the one who gave the *get*). It seems that this situation, of uprooting a mitzva of the Torah, is undesirable, and this alone constitutes a reason not to allow exclusion from *gerushin le-chatchila*. The question is, obviously, why? Even if the result is undesirable, how does this constitute a reason to invalidate the *get*?

Rashi (s.v. *she-ain*) writes: "The Torah did not write (i.e., define) *kritut* which uproots something from the Torah." On the face of it, Rashi’s intention is that uprooting the mitzva of *yibum* is an external reason from which we can deduce that the Torah apparently does not approve the *gerushin*. It is unreasonable to believe that the Torah is in favor of a halakhic action which acts to uproot something desirable. It seems to me that this kind of reasoning must be based on the idea that we need an explicit source to allow *gerushin* with an exclusion. (And, as we saw in the previous *shiurim*, the gemara does not ask what is the reasoning of the Rabbanan, and requires a source only for R. Eliezer’s position.) Therefore, R. Tarfon concludes that it is unreasonable that the Torah would expend effort to allow this exceptional law if it could have negative implications.

According to this, the phraseology of R. Tarfon’s conclusion – “Thus you can learn from this that this is not “*kritut*“ – does not express reasoning specifically connected to the concept of “*kritut*.” Rashi does not explain how the concept of *kritut* contradicts *gerushin* with an exclusion; the gemara just claims that the Torah, in general, opposes institutions which uproot the laws of the Torah. Thus, the Rashba concludes, regarding the meaning of the words “this is not *kritut*”:

Thus you can learn from this that this is not “*kritut*“: this means, this is not a *get*, and he used the phraseology of the Torah, which wrote *sefer kritut*. (Rashba, s.v. *nimtza*)

This means to say, there is no special significance to the expression “this is not *kritut*,” and this is nothing other than synonymous with “this is not a *get*.” This interpretation is puzzling to some degree, for *Masekhet Gittin* is full of halakhic decisions phrased as “this is not a *get*” or “she is not divorced.,” and only here, it was said about a certain case that “this is not *kritut*.” Suddenly the *tannaim* decide to use the biblical phraseology! We must remember that on the previous *amud*, R. Ami used the expression “*kritut*” to articulate a special law and reasoning which necessitates total severance. But here, according to the Rashba, there is no significance to the expression?

The reason that Rashi and the Rashba interpret the *gemara* in this way is that it seems that, in their opinion, there is no alternative. What could be the reasoning that because there may not be *yibum* after a subsequent marriage, the *get* should not be valid now? Why is there now, at the time that the *get* takes effect, a defect in the *get*, a lack of *kritut*? Therefore, the Rashba explains that indeed there is a principle that the Torah does not approve processes which cause complications further on, and this is the whole reason that this *get* is not valid.

In my opinion, it is possible to suggest an explanation of R. Tarfon which will understand the expression “this is not *kritut*” as expressing a logical reason to invalidate the *get* (and indeed the Rashba will thus explain regarding other cases of the expression). That is, the phenomenon R. Tarfon pointed to, uprooting a future *yibum*, shows that there is a defect in the *kritut* and severance of the woman at the time the *get* is coming into effect. There is here a *drasha*, based on the expression *sefer kritut*, which requires that the *gerushin* be total and remove all limitations from the woman. R. Tarfon demonstrates that in the case of a *get* with exclusion, a limitation exists, and therefore, literally and simply, this is not *kritut*.

The requirement of "*kritut*" which must be achieved in regards to the woman is, obviously, in the realm of marriage. A *get*, R. Tarfon claims, must enable a woman to marry someone else. R. Tarfon’s claim, I maintain, is that preventing *yibum* **after** the new husband’s death without children is a flaw in the subsequent marriage itself. Such a marriage is not a full one. Thus, on the basis of this *get*, the woman is restricted in entering into a full marital relationship, and therefore “this is not ***kritut***.”

What is the reasoning behind the concept that a future levirate marriage is a component of the wholeness of the present marriage? The answer is that *yibum* complements the original *nissuin* in the realm of having children. This involves two assumptions:

A – that having children is one of the designated goals of marriage, and it implements the completeness of the *nissuin*.[[1]](#footnote-1)

B – that *yibum* continues and fulfills the marriage of the deceased brother. Regarding the birth of a child, this is explicit in the biblical text – “and the first born which she will give birth to will stand in the name of his deceased brother.” There is also a line of reasoning, into whose details we will not enter here, that the very marriage of the *yavam* to the woman is a continuation of the marriage of the deceased brother, and not a new marriage.

If we accept these two assumptions, it turns out that *nissuin* which are not fit for *yibum* are unable to fully implement their mission. R. Tarfon’s claim is that a *get* which does not enable full *nissuin*, but rather only *nissuin* which are restricted in their ability to implement their mission, is a *get* which lacks the full degree of “*kritut*.”

In the gemara, Rava noted, regarding the four elderly sages, that “there is a refutation of all of them, except for R. Elazar ben Azaria.” Regarding R. Tarfon, the gemara says that the refutation is, “if so, a man should not marry the daughter of his brother, lest his brother die without children and thus he causes something of the Torah to be uprooted.” This works out well according to the commentary of Rashi and the Rashba. Here, we are not talking about the *get* at all, but the original marriage of someone with a woman who will not be subject to *yibum*. According to Rashi, the gemara’s question is that the Torah did not say that here too the *kiddushin* uprooted something from the Torah, that Torah does not approve dependencies that contradict its principles. According to the interpretation that I suggested, this is not a refutation. In *gerushin*, there is a particular problem that there is no possibility of *yibum* in the marriage after the *gerushin*. But in *kiddushin*, there is no requirement that the *nissuin* be complete. Indeed, the Yerushalmi cites an answer to this refutation: “There is a reasonable explanation: the reason is that there, the Torah prohibits her to him, but here, he makes her prohibited to him.” It is possible to interpret this to say that this is precisely the answer – someone may do things which have a limited implementation, since that is the law of the Torah. But someone may not limit the ***gerushin*** by a condition he makes.

According to the Bavli, which accepts Rava’s refutation of R. Tarfon, we must say as follows: the gemara just proves from the case of *nissuin* with one’s brother’s daughter that there is indeed no defect in these *nissuin*. Even from the outset, there is nothing to prevent one from marrying his brother’s daughter (and there is no reason to believe that *kiddushin* in this case would not be valid). It seems that there is no defect here (and it is known that the gemara indeed **praises** one who marries his brother’s daughter). Hence, there is no basis for R. Tarfon’s reasoning.

**B. R. Eliezer concedes**

In the course of the discussion of R. Eliezer’s position, the gemara cites a source that “R. Eliezer concedes that if someone divorced his wife and said ‘you are permitted to everyone except *Ploni*,’ and she went and married someone from the marketplace, and became widowed or divorced from this marriage, she is permitted to the man prohibited to her because of her first marriage.” The *nissuin* and *gerushin* from someone from the marketplace result in a permit to *Ploni* as well, he who was previously prohibited to. Rashi explains “Since she married someone else, she disconnected herself from the first marriage completely.” The marriage to the second husband nullifies the remnants of the marriage to the first husband which remained.

Tosfot (82b s.v. *k’gon*) wrote that the fundamental principle made clear here, that the woman cannot be married to two men, is true only regarding the process of *gerushin*. The *nissuin* to the second husband complete the *gerushin* of the first one. But this is not true (according to R. Eliezer) regarding the process of *kiddushin*. If a woman becomes *mekudeshet* to someone with the exclusion of *Ploni*, and then marries *Ploni*, the marriage of neither of them cancels out the first *nissuin*.

The explanation is based on the principles we explained in the [first *shiur*](https://etzion.org.il/en/daf-82a-except-ploni). In *gerushin* with exclusion **the relationship** between the woman and her husband is **completely** annulled. The exception is only in the realm of *issur* and not in the realm of *kinyan*. Therefore, when she marries someone from the marketplace, R. Eliezer concedes that the *shem eshet ish* cannot be applied to the first husband at the same time that she is completely in a *kinyan relationship* with the second one. It cannot be that Shimon’s wife bears a *shem issur* of Reuven’s wife. But in *kiddushin* with exclusion, we must say that there is exclusion regarding *kinyan* as well (therefore, the one excluded may be *mekadesh* her as well, even though no one may be *mekadesh* someone else’s wife). Since, this is the case, the second husband brings her into his domain partially, and also makes her prohibited, and the first one also has a (partial) *kinyan* in her, on the part of her which was excluded, and there is no contradiction between the two *kinyanim*. (See the [previous *shiur*](https://etzion.org.il/en/gittin-chapter-9-exclusion-kiddushin-82b) in regards to the dispute between Rashba and the Ritva on the subject of *kiddushin* with exception.)

**C. R. Yossi Ha-galili**

**R. Yossi Ha-galili** **spoke up and said: Where did we find someone prohibited to one and permitted to another? One prohibited is prohibited to everyone, and one permitted is permitted to everyone. From this we learn that this is not *kritut*.**

The gemara comments that there are many examplesof somethingprohibited to one person and prohibited to another, such as *truma*, which is prohibited to a non-*kohen* and permitted to a *kohen*. The gemara answers that R. Yossi Ha-galili is only speaking about *issurim* in connection with marriage. What is the logic of this seemingly arbitrary formulation? The explanation is that R. Yossi claims that the *shem eshet ish* cannot be divided. The gemara continues to question this assertion of R. Yossi: “Behold, there is *eshet ish*!” Rashi explains that every *eshet ish* is prohibited to the whole world and simultaneously permitted to her husband. This claim is relevant only if we are speaking of the *shem eshet ish*, that is to say, a woman with the *shem eshet ish* is prohibited. If we say (as the Pnai Yehoshua holds) that the prohibition of a married woman derives from the fact that there is a *kinyan* **between her and her husband** (similar to the monetary concept of theft), it is clear that it is not appropriate to ask why an *eshet* *ish* is permitted to her husband. The *issur* at the outset is to have relations with **someone else’s** wife. However, if we were to say that there is a prohibition which derives from the personal status of the woman, from the *shem eshet ish* that is part of the identity of the woman (as the prohibition of incestual relations is based on the *shem issur* on the identity of the woman), then if the status is indivisible, as R. Yossi claims, the woman should have been prohibited to the person who created that identity as well, the husband.

**D. R. Elazar ben Azarya**

**R. Elazar ben Azarya spoke up and said: *kritut*, something that disconnects him from her, thus you learn that this is not *kritut*.**

In R. Elazar ben Azarya’s claim, it is clear that *kritut* is a *gezeirat hakatuv* which defines a special law regarding the nature of *gerushin* ‒ something that disconnects the husband and the wife. The very state of *issur* to someone else, R. Elazar ben Azarya claims, demonstrates that a certain connection of the woman to the husband remains, and this is not *kritut*. On the face of it, this is a simple claim, for if there is a requirement of total severance, anything excluded contradicts the absoluteness of the *kritut*. The Rashba on the mishna explains that R. Eliezer agrees that total *kritut* is required, but claims that in a case of *gerushin* to the exclusion of *Ploni*, “the woman is **totally** *megureshet* from her husband in regards to other men.” That means to say, the *heter* which comes into effect does so totally. The claims of the other Sages attempt to undermine this point – the *heter* which comes into effect does not do so totally, and does not constitute total *kritut*. Accordingly, I attempted to explain the argument of R. Tarfon, that the *heter* to marry does not allow full *nissuin*. So too we will see regarding R. Akiva’s argument.

**E. R. Akiva**

**R. Akiva spoke up and said: Behold, if this woman went and married someone from the marketplace and had children, and then became widowed, and then she and got up and married the one she was prohibited to (by the first husband), would the *get* not be found to be null, and her children mamzerim? Thus you learn, that this is not *kritut*.**

The question to be asked here is similar to the one we asked on R. Tarfon. If someone gave a *get* on condition that the woman not marry *Ploni*, and she went and married someone from the marketplace, and after his death married *Ploni*, it turns out that the condition was not fulfilled, and of itself the *get* is null retroactively and her children are mamzerim. This is very sad, but why should this be a reason to nullify the *get* in all cases, even if she is careful to fulfill the condition? Rashi answers that this is completely parallel to what he wrote regarding R. Tarfon – “the Torah did say (institute) *kritut* which brings Israel to a defect (*pasul*).” That is to say, there is really no logical reason to invalidate the *get*, but it is not logical that the Torah should specially allow *gerushin* with problematic results. But here the Rashba departed from this path, and explained that R. Akiva bases himself on a claim of *kritut* as a special law. These are his words:

That is to say, it does not constitute *kritut* generally (and not only in relation to *Ploni*), for she is still connected to him, for if she did not fulfill his condition, the *get* is null, and her children from one to whom she became permitted are *mamzerim*, therefore, this is not *kritut* from anyone.

The Rashba explains that the very fact that the woman lives in doubt that the *get* will become invalidated retroactively constitutes a defect in *kritut*, even if in the end the *get* never becomes invalidated. (This comment of the Rashba appears directly adjacent to the comment of the Rashba (cited above) in which he explains, regarding R. Tarfon, that “*kritut*” is merely synonymous with *get*; this emphasizes that there are two different interpretations of the expression “this is not *kritut*.”)

The reason the Rashba changed his commentary between R. Tarfon and R. Akiva is clear. In the case of R. Akiva’s claim, the explanation based on the lack of *kritut* seems simple. The innovation in R. Akiva’s statements is that a case of a **doubtful**, tentative nullification of the *get* is also considered a certain lack of *kritut*, because in practice the woman is not free and released from all restrictions which are a result of her previous *nissuin*. Indeed, this restriction is serious, and relates to the very *heter* – if the *get* is nullified, she is not permitted to anyone. In the case of R. Tarfon, there is no defect in the woman’s actual ***heter***, and the explanation I suggested is based on a defect which is external, i.e. a defect in fulfilling the goal of *nissuin* which result in children. The Rashba was not comfortable with this explanation. Rashi, on the other hand, was not willing to interpret *kritut* as the source of the invalidation in R. Akiva’s case either. One can explain that Rashi looks at the condition (*tnai*) the husband makes as something external to the *geirushin*. The husband hasn’t created a single status of “conditional divorce, *geirushin al tnai*”. Rather, there exists one of two alternatives. If the condition is fulfilled, the *kritut* is complete. If the woman does not fulfill the condition, there is no *kritut* at all. This is a situation of two alternatives, and neither one affects the other. The explanation of the Rashba is based on the fact that the requirement of *kritut* is a practical situation in actual fact, and not a halakhic dependency. The very fact that there is a **possibility** that the condition will not be fulfilled causes a situation in which **in practice**, the woman lives in doubt, and this undermines the *kritut* of the *get*.

**F. An alternate statement, R. Akiva, and other *tannaim***

There are three additional claims against R. Eliezer, one in the name of R. Akiva, and two more in the names of R. Yehoshua and R. Shimon ben Elazar (83b). They must be understood, each one in its place, according to the principles we have explained in today’s *shiur* and the previous ones. I am leaving this for each student to do by himself.

The next *shiur* will deal with two cases at the bottom of *daf* 83b – “on condition that you do not drink wine,” and “today you are not my wife, and tomorrow you are my wife.”

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

1. Gittin 83b "*ba'a minei Rava... paska paska*", Rashi s.v. "*paska*", Tosafot s.v. "*Mistabra*"

2. Rama 83b s.v. "*Tiba'ee*", Rasba s.v. "*Tiba'ee*", Ritva s.v. "*ve-sham'eenan*"

3. Rasba Nedarim 29b a.v. "*ela*"

4. Responsa Rosh 35,2 (citing R. Avigdor Kohen Tzedek)

5. Nedarim 28b "*harei netiot ha-elu.... pak'a bichdi* (29a)", Tosafot 29a s.v. "*hayom*", Ran s.v. "*amar lei Abaye*"

6. Yerushalmi Kiddushin 3,1 (pg. 32a) "harei at mekudeshet li sheloshim.... ein zeh get kritut"

1. Therefore, a man will leave his father and mother and cleave to his wife, **and they will be one flesh** – Rashi explains “the child is created by both of them, and thus their flesh is as one.” [↑](#footnote-ref-1)