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

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**Shiur #06:**

**Gittin Chapter 9**

**(84b) What should he do? Take it from her**

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Translated by R. Shalom Mashbaum

**Sources:**

מסכת גיטין פ"ט יטלנה הינמט

1. גמרא פ"ד: "כיצד ,עשה ... ליפסל בו לכהונה.

2. דף ע"ח "תניא נמי הכי אמר לה ... צריכא".

3. רשבא פ"ד: ד"ה כיצד (עד סוף דבריו על הסוגיא).

4. גמ' פ"ד: "כתבו בתוכו ... אינו פוסל בכתב". תוס' ד"ה כל.

5. מלחמות (דף מ"ד: דבפי הרי"ף ד"כ כל התנאים "... אבל כל פירושו מתני. רבי היא ... כרית היה מתחילתו".

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**Part 1**: **What should he do? Take it from her (84b)**

A. The *pshat* of the gemara – Rashi

According to the Rabbanan, a *get* with a *shiyur* (exclusion) is invalid. The mishna (82a) asks “what should he do?” The mishna answers: “Take it away from her and give it to her again, and say to her: ‘You are permitted to everyone.’”

This ruling is parallel to the opinion of R. Shimon be Elazar on *daf* 78a, in the case in which the husband said “Take possession of this promissory note,” and only afterward she discovers that it is a *get*. This act of giving the wife a *get* is invalid, and a dispute is cited in the gemara there. Rebbe holds it is sufficient to tell her, while the *get* is in her hands “this is your *get*,” and the woman is divorced from the time of the corrected statement. R. Shimon ben Elazar disagrees and holds that it is necessary to take the *get* from her and give it to her again, together with saying “this is your *get*.” In our gemara, Chezkia comes to the conclusion that our mishna follows the opinion of R. Shimon ben Elazar. R. Yochanan says that in our case, Rebbe also would agree that it is necessary to take the *get* from her [and give it to her again]. The distinction between the case on *daf* 78a and that of our mishna is that here, “she acquired it [the *get*] in regards to disqualifying her from marrying a *kohen*.” This statement is obscure and require explanation.

In general, Rebbe’s opinion needs to be clarified. If there is a deficiency in an undifferentiated giving of the *get*, and an explicit statement that it is for the purpose of divorce is necessary, how can saying so after the *get* has been given be effective? If the document was given as a promissory note, how can this be corrected retroactively? We perforce must say that the act of giving the *get* is not finished, as least as long as the *get* is still in her hand, and therefore his corrective statement may still define the act of giving the *get* to the woman.

How can we say that even after the *get* left the husband’s hand and reached that of the wife, the act of giving the *get* is not yet complete? The answer to this is that there are two components to giving a *get* – the husband’s giving of the *get*, and the wife’s receiving it. Even though a woman may be divorced against her will, nevertheless an act of receipt on her part (which in itself may be against her will) is required. This act of receipt must be that of **receiving a *get***, that is to say, that she must be aware that the document being given to her is a *get* by which she is divorced. Therefore, if the husband says “take possession of this promissory note,” and in fact it is not a promissory note but rather a *get*, even though the *get* is in her hands, there was not an act on her part of **receiving a *get***. Thus, the giving of the *get* was not completed, and thus it follows that according to Rebbe, the husband can then say to her “this is your *get*,” and then the act of receiving the *get* is performed by the woman, and the entire act of giving the *get* is then concluded.

According to this, our gemara here is well-explained. In the case where the husband says “you are permitted to everyone but Ploni,” the Rabbanan hold that this is not *kritut*, and therefore the *get* is invalid. However, they agree that the *gzeirat hakatuv* cited in *daf* 82b, that the wife is nevertheless prohibited from marrying a *kohen* in this case, is valid (according to most Rishonim, as is implied by the simple reading of the gemara there, this disqualification is *d’oraita*). “They [the *kohanim*] may not marry a woman divorced from her husband” – even if she is divorced from her husband alone [and not permitted to marry any other man], *kohanim* may not marry her. This is the “*rei'ach ha-get*” which disqualifies a woman from marrying a *kohen*. The definition of *rei'ach ha-get* is an act of giving the *get* (*maase*)without a resulting *gerushin* (*challot*). The Torah says that a woman who participated in an act of giving a *get* is disqualified from marrying a *kohen* even if there was no *challot* of *gerushin*. Thus, the gemara proves from this that giving a *get* with an exclusion is an act of giving a *get* (otherwise she would not thereby be disqualified from marrying a *kohen*), and therefor R. Yochanan concludes that it is impossible to correct, by way of a later statement, the lack of *kritut*. The complete action of giving the *get* was for the sake of only a partial *kritut*, and therefore cannot effect full *kritut*, that is to say, to create a *challot* of *gerushin*.

Chizkia, as we said, did not accept this distinction, and claims that Rebbe would disagree in our mishna as well. It is possible that Chizkia holds that the act of receipt never ends, because in contrast to **giving** the *get*, which is a positive action, **receiving** is a passive action. It is more similar to a “state” that an action. Therefore, so long as the document is in the woman’s hand, there is an “extended receipt" (*kabala arichta*) and therefore according to Rebbe, the husband can always correct his statement. Alternately, Chizkia holds that since the giving of the *get* is against her will, we should not consider receipt of the *get* in her hand as an act of receipt of hers unless it has a result (*challot*). Only a *challot* of *gerushin* completes the action. (This is of course the opposite of the usual order. In general, we require an action, and subsequently this action causes a *challot*, as a cause and effect relationship).

In any event, R. Yochanan disagrees and holds as we explained above, that the deficiency in “this is your *get*” is a deficiency in the act of receipt, and therefore in the act of giving the *get*, and a lack of *kritut* is a deficiency in *challot* alone. According to this, the expression in the gemara “she acquired it” does not mean that she gained monetary ownership of the *get*, but rather that she took possession of the *get* insofar as she received it, and this completed the act of giving the *get*.

**B. The objection of the Rashba**

The Rashba asked a question on this position (which is our version of the gemara, according to Rashi). If we say that she took possession of the *get* insofar as disqualifying her from marrying a *kohen* is concerned, and therefore we need a new act of giving the *get*, then, on the contrary, we should require writing a completely new *get*, in keeping with the principle that one *get* cannot be used twice. Precisely because the *get* already succeeded in disqualifying the woman from marrying a *kohen*, it is not reusable in order to make her permitted to remarry. Therefore, it is not sufficient to merely take the *get* from her and to give it to her again, but it should be necessary to write a new *get*, and give it to her and say “you are permitted to marry anyone.”

This principle that the Rashba mentions, that a woman cannot be divorced twice with the same *get*, does not appear explicitly in the gemara in regards to *gittin*. The gemara in Baba Metzia determines, regarding a financial document, that if the document was used once, “*batel shiabudo*,” its lien has lapsed, and it can’t have any further effect. A bill of acquisition has tremendous power, and it is similar to a single-fire weapon which has been loaded – once it is fired, it can’t be fired again (without loading it again – that is to say, writing a new bill. The Ramban (82b in the “*Milchamot*”) extended this principle to *gittin* as well, and the Rashba based himself on the Ramban.

According to our explanation, the Rashba's question is easily dismissed. The fact that a woman become disqualified from marrying into the *kehuna* on the basis of “the scent of a *get*” is not a *challot* of the *get*, but a result of the action of giving the *get*. The *get* did not create any *challot* at all (in terms of the metaphor, the *get* didn’t “fire” at all). The woman was not prohibited from marrying a *kohen* by the activation of the *get*. Rather, there is a *gzeirat hakatuv* that a woman who has received a *get*, even though the *get* was not *chal* at all, and the woman is not *megureshet* at all, is prohibited from marrying a *kohen*. This is the result of an action, and not the result of power and *baalut*. This is stated explicitly in Tosfot above (82b s.v. *afilu*), who wrote that a woman divorced from her husband only is not divorced at all, but is only prohibited from marrying a *kohen*, for “prohibitions of the *kohanim* are different.” (Indeed the Rosh there disputes this determination of Tosfot, but not because the prohibition to marry a *kohen* constituted a partial *challot* of *gerushin*, but because he maintains that a woman’s being divorced from her husband without permitted to anyone constitutes a partial *gerushin*. If a *get* is partially ***chal*** (such as according to R. Eliezer “except for Ploni,” since this is *chal* on everyone except for Ploni) it cannot be used to release the woman again (according to R. Eliezer, the husband cannot take the *get* back, and give it to her again and permit her to that Ploni). However, *rei'ach ha-get* is not one that has half the effect of a regular *get*, and not even one percent. The *get* did nothing; it did not use any of its power at all. The Torah makes this woman prohibited to a *kohen* after an act of *gerushin* alone, the same way it prohibits a *zona* and *challala* from marrying a *kohen*. The husband did not make the woman prohibited, but rather the act she participated in. Therefore, she is prohibited to marry a *kohen*, and therefore, according to Rebbe, he cannot release her without a new giving of the *get* [i.e., after taking it back], because the original act of giving the *get* has ended, but the *get* itself did not “fire” even once [and therefore still can be used].

The Rashba does not just ask on Rashi, but rather he rejects his explanation explicitly. The language of his question is “For this *get* was already ***chal* partially**, and **through it** *gerushin* took effect, to disqualify [the wife from marrying a *kohen*] ... and yet a woman cannot be divorced twice with one *get*.” The Rashba calls a disqualification from marrying into the *kehuna* “*challot*,” and writes that the woman was already “divorced” through the *get* once. The answer to the Rashba’s question is that according to Rashi, the woman was not divorced at all. Even though she is indeed prohibited from marrying a *kohen*, since a *get* was given to her, nevertheless, [since she was not divorced,] there is nothing to prevent using the *get* again – in reality for the first time – to divorce her.

**C. The position of Rabbeinu Hananel**

The Rashba cites, as an alternative commentary to Rashi, the version of the text and the commentary of Rabbeinu Hananel, which is the opposite of that of Rashi. The gemara says “it is different **there** [“accept this promissory note”], since she acquired it...” The Rashba explains that “she acquired it” means that the lack of his saying “this is your *get*” is not a deficiency in the actual giving of the *get*, since a *get* may be given against the wife’s will. There is no need for the wife’s acquiescence in the course of giving a *get*, so therefore there is no requirement to tell her that the document is a *get* in order to perform an act of giving a *get*. The law of saying “this is your *get*” is an additional law (which the Rashba here does not explain – see his statements in *daf* 78a), and therefore need not come before the conclusion of the giving of the *get*. A person may give a *get* and **then** say “this is your *get*,” and thus the divorce is valid (according to Rebbe). But “excluding Ploni” is a deficiency in the *get* itself, and therefore a new giving of the *get* for the sake of *kritut* is required,. The Rashba asked many questions on this explanation of the gemara. The crucial point is explaining the gemara’s requirement to say “this is your *get*,” which is a separate issue in the previous chapter of *Gittin*, so we will not expand on it now.

**Part 2**: **All conditions disqualify a *get***

This *sugya* is very complicated *halakha l’maaseh*, since it includes several level of rabbinic injunctions (*gzeirat d’rabbanan*) with many *shittot* among the *amoraim*, the exact relation between which is not clear. We will concentrate on the *d'oraita* laws which arise from the *sugya*.

Rav Safra and Rava disagree regarding the case which the gemara calls “*al* *peh*” (verbally), that is, at the time that the *get* is written, the husband said to the witnesses that he wishes to divorce his wife except for Ploni [who is to remain forbidden to marry her]. The condition or *shiyur* (exclusion) was not written in the *get*, but the witnesses know that this is the intention of the husband – to divorce his wife on this condition. Rav Safra says that the *get* is valid in this case, and Rava says it is invalid. Tosfot (s.v. *mahu*) explains that the one who says that the *get* is invalid holds that “the *get* was written on this condition, and this is not *kritut*.” Furthermore, Tosfot write that R. Safra agrees with the logic of this argument for invalidation, but he holds that the scribe in actuality does not write the *get* with this condition in mind, but rather “on the condition the husband states at the end.” That is to say, no one disputes that if the scribe in fact wrote the *get* in order that the husband divorce his wife excluding someone (*shiyur*), the *get* is invalid “for this is not *kritut*.” Thus it turns out that the intention of the scribe is embodied in the *get*, as if he wrote the condition explicitly.

From this we may conclude that *kritut* is the essential power of the *get* to effect divorce, which is embued into the *get* by the intent with which it is written. That is to say, the capability of the *get* to effect *kritut* is in accordance with the power which the writer injected into it. Therefore, if the *get* was written with intent of *shiyur*, even though the text is unconditioned and the giving of the *get* is unconditioned, the *get* is incapable of effecting *kritut* beyond that of “to everyone except Ploni,” and therefore it is invalid, since (according to Rabbanan who disagree with R. Eliezer) this is not *kritut*. According to this, in this case, according to R. Eliezer, even if the *get* was written unconditionally and given unconditionally, the *get* will take effect with the exclusion of Ploni.

On the face of it, this law is connected to the law of *lishma*. The *get* must be written for the intended purpose of *gerushin*, aside from being written for the intended use of the husband and wife. It seems that this is not merely a technical requirement, that a certain intent be present at the time that the *get* is written, but rather, the content of the *get* and the power of the *get* to effect divorce are dependent on the intent of the one who writes it. The *get* must be written for the sake of *gerushin*, for otherwise it does not have the power to effect divorce. The intent of *lishma* is the “loading” we spoke about previously (in regards to the fact that person may not divorce his wife twice with one *get*). Therefore, if the *lishma* is with exclusion, the power of the *get* is limited by that exclusion, and thus it is not possible to divorce with it at all, because the *get* does not include “*kritut*,” that means to say, the power to separate the husband and the wife.

Further on in the gemara, a *braita* is cited: “All conditions invalidate a *get*, so says Rebbe” (the *Chakhamim* disagree). Rashi explains according to the simple meaning: no condition may be **written** in a *get*, not even a condition unconnected to *shiyur*, such as “on condition that you give me 200 *zuz*.” [If a condition is written in the *get*] the *get* is invalid, even if the condition is fulfilled. However, if the husband **gave** the *get* with a condition, the condition takes effect, and the *get* takes effect if the condition is fulfilled.

What is the reason for this invalidation? Tosfot (s.v. *kol*) assumes that this must be a *d’rabbanan*, an enactment lest he write a condition of exclusion (*shiyur*) in the *get*, which is invalid on the basis of [lack of] *kritut*. Nevertheless, Tosfot disagrees with Rashi, because even d’rabbanan it is difficult to understand how and why the Rabbanan made an enactment against all conditions because of their similarity to the condition of “except for” [Ploni]. Therefore, Tosfot explains the gemara differently. We are speaking of a regular condition which is written in the *get*, and then the husband changed his mind and erased the condition, and gave the *get* unconditionally. Rebbe’s position is that the erasure does not have any effect, and therefore **if the condition is not fulfilled**, the *get* would not take effect [because of non-fulfillment of the condition, even though it was erased]. In short, erasing a condition from the *get* does not have any effect (and this is parallel to the mishna, which says that erasure does not have any effect regarding a condition of “except for” [Ploni]). It turns out from Tosfot that this invalidation is also *mi-d’rabbanan*, because of its similarity to a condition of “except for” [Ploni]) for which erasure does not have any effect, “since the *get* was not written for the sake of kritut.” Regarding a condition of “except for” [Ploni], erasure does not have effect **d’oraita**, for the reason that we explained above. If the *get* was written with the intent of exclusion, and all the more so if this condition was written in the *get*, the very *kritut* of the *get*, its power to effect divorce, is from the outset limited by this writing. According to the Rabbanan, this *get* does not have the power to separate the couple and effect divorce. Erasure of the limiting words cannot **add** *kritut* power to a *get* which lacks it, and therefore the erasure has no effect *mi-d’oraita*.

However, Tosfot hold that a regular condition does not limit *kritut* – as proof, we can cite the fact that one can give a *get* and make a condition when doing so. In the language of the Rishonim, “a condition is something else” [an external factor], it is not a type of *kritut*, but an external stipulation regarding full *kritut*. Even if the condition is written in the *get*, the *get* has full *kritut* power; it’s fully loaded, but an external condition is linked to it. Erasing the condition erases the external limitation, and leaves the original *get* with full *kritut* power. Rav who is stringent, if so, is stringent only *mi-derabanan*, because of the similarity to erasing an “except for [exclusion]” condition.

The Ramban (in Milchamot) cites a *svara* (which he attributes to the Yerushalmi) according to which Rashi’s *shitta* can be *mi-d’oraita*. If a condition is written in the *get*, the ability of the *get* to effect divorce is made doubtful. It could be that even if the *get* is given entirely according to the law, nevertheless, if the woman does not fulfill the condition, for example if she does not give him 200 *zuz*, the *get* will not take effect, and the woman will not be separated from her husband [divorced]. If so, Rebbe holds, the *get* does not have the full power of *kritut*, the woman is not “*krut gitta*” [divorced by virtue of the *get*]. The very existence of this doubt constitutes a deficiency in the power of the *get*.

It seems to me that the Ramban does not disagree with the idea that a condition is a “*milta achrita*,” an external limiting factor. Rather, the Ramban suggests that the Torah requirement of "*sefer kritut*" demands actual *kritut* in practice. The *get* is not measured by its theoretical power alone, but by the fact that through giving it to the woman she is thereby divorced (*kruta*) from her husband. This is the meaning of the expression the Ramban uses – “*krut gitta*.” The moment the *challot* of the *get* is dependent **in actuality** on another factor, the *get* cannot in actuality effect the divorce, cannot remove all connections between the husband and the wife. Thus, this condition comes back and invalidates the *get* itself, because we need a *sefer kritut*.

It would be possible to distinguish between the approach of Rashi and that of Tosfot in regard to this position. There are two assumptions in the Ramban’s approach: a) that a doubt in the *challot* of the gerushin constitutes a deficiency in “*kritut*” and b) that this deficiency is embued in the *get* itself and limits its power*.* It is possible to dispute the first assumption. A condition is a *milta achrita*, an external factor, and therefore a conditional *get* is considered to have full *kritut* power, and if so, there is no reason to invalidate the *get* if the condition is fulfilled. However, we may say that erasure of the condition has no effect *mi-d’oraita*. The doubt regarding the *challot* of the *get* is embued in the power of the *get* itself. This is not a deficiency in *kritut*, but nevertheless the power of the *get* itself is dependent on fulfillment of the condition. In the terms of the metaphor, the *get* is loaded with full power – but it is loaded with that power on condition. Erasure of the condition cannot add what is lacking. The *lishma* of the *get* is “for the sake of conditional *gerushin*” which is full *kritut*. However, even if we erase the condition, the *lishma* remains “for the sake of conditional *gerushin*,” and the *get* can take effect only conditionally. This is similar to what was claimed above, that according to R. Eliezer, a *get* which was written with the intention of *shiyur* (excluding someone), (without the *shiyur* being written explicitly in the *get*), and then given *stam* (without exclusion) will take effect with that exclusion. There is no problem of a lack of *kritut* (for R. Eliezer is not concerned with a lack of *kritut* [in a *get* with *shiyur*]), but nevertheless the exclusion has an effect on the essential power of the *get*. If so, it is possible that according to the Rabbanan, if the condition is not one of “except for” (exclusion) there is no problem of *kritut*, but nevertheless the condition is *chal* on the essential power of the *get* to effect *gerushin*.

Tosfot indeed reject this distinction. It seems that Tosfot think that if the limitation of the condition is embued in the essential power of the *get* to effect *gerushin*, we must again say that the power of the *get* is limited, and this would be a problem of a lack of *kritut* (according to the Rabbanan).

As stated above, we will not discuss the *gzeirot d’rabbanan* at the conclusion of the *sugya*, and the disputes of the Rishonim *halakha l’maaseh.*

[Sources for the next *shiur* will be sent separately.]