YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**GEMARA GITTIN 5779**

**Shiur #07:**

**Gittin Chapter 2 – Introduction**[[1]](#footnote-1)

**(17a) Divorce By Way Of A *Get***

**HaRav Aharon Lichtenstein**[[2]](#footnote-2)

Translated by David Strauss

Sources:

**גיטין פרק ב' – שיעור פתיחה**

**בעניין גירושין על ידי גט - מאת הרב אהרן ליכטנשטיין זצ"ל**

1. ירושלמי קידושין פ"א ה"א "הרי למדנו גוים אין להם קידושין מהו שיהא להם גירושין ... לפני רבי והכשיר".

2. רמב"ם גירושין פ"א ה"א, ה"ה, הי"ג.

### Introduction

 In *Parashat Ki-Tetze* it says:

… He shall write her a bill of divorce [*sefer keritut*], and give it in her hand, and send her out of his house… and she goes and becomes another man's wife. (*Devarim* 24:1-2)

 In its definition of divorce, the Torah speaks of two elements: 1) "a bill of divorce"; and 2) "and send her out of his house." So too later in the passage (v. 3), when the Torah discusses what happens when the second husband divorces the woman, both of these expressions are used. This being the case, we must examine what is the essence of the divorce process: Is it "the bill of divorce," or perhaps the sending out of the woman from the man's house?

 In order to understand the novelty that the Torah introduces in the definition of the halakhic process of divorce, let us first review the situation governing the descendants of Noach, i.e., non-Jews.

### Divorce among the descendants of Noach

Jewish marriage is comprised of two stages: *eirusin* (*kiddushin*), betrothal, and *nissu'in*, actual marriage. Regarding non-Jews, says the *Yerushalmi*, no significance is attached to betrothal, but only to marital relations:

Thus we have learned that a wife is acquired in three ways: with money, with a contract, or with intercourse. This applies to a Jew. What is the law regarding Gentiles? Rabbi Abahu said in the name of Rabbi Elazar: It is written: "Behold, you shall die, because of the woman whom you have taken; for she is a man's wife" (*Bereishit* 20:3), literally, a woman who has had marital relations with her husband (*be'ulat ba'al*). They are liable for women who have had marital relations, but they are not liable for women who were betrothed. (*Kiddushin* 1:1)

The betrothal process is abstract. It involves a formal, legalistic, contractual act. For a Jew (owing to his sanctity), this is the first stage that precedes marital relations. For a non-Jew, no significance is attached to this formal act, but only to the practical reality of a married woman.

In light of the law regarding marriage, the *Yerushalmi* is in doubt about divorce among non-Jews:

Thus we have learned that there is no betrothal for Gentiles. What about divorce? (ibid.)

The logic underlying the *Yerushalmi's* question is clear: It is possible that just as the marriage bond for Gentiles is created by the reality of marital life, so too it can be broken only by the reality of separation.

In any event, the *Yerushalmi* cities two opinions, with the first opinion raising two possibilities:

Rabbi Yuda ben Pazi and Rabbi Chanin in the name of Rabbi Chuna Ruba of Tzipori said: Either they have no divorce, or the two of them can divorce each other.

 In other words, either Gentiles do not need divorce, or they need divorce, but each party can divorce the other – the process can be initiated by either party, as opposed to divorce among Jews which depends exclusively on the husband.

 The second opinion is that of Rabbi Yochanan of Tziporiwho decides between these two possibilities and say that "To Israel have I given divorce, but I have not given divorce to the nations of the world."

 The Rambam in *Hilkhot Melakhim* (9:8) spells out two ways to effect divorce among non-Jews:

When is a gentile woman considered divorced? When her husband removes her from his home and sends her on her own or when she leaves his domain and goes her own way. They have no written divorce proceedings.

The matter is not dependent on the man's volition alone. Whenever he or she decide to separate, they may and then are no longer considered as married.

 The Rambam offers two possibilities of divorce for non-Jews:

1. The husband removes his wife from his home. This possibility is similar to the process of divorce among Jews, only that the Rambam emphasizes at the end of the *halakha*: "They have no written divorce proceedings." That is to say, among non-Jews it suffices for the husband to send his wife away with words alone (the Rambam's source for this possibility needs to be clarified).
2. The wife leaves on her initiative. Regarding this possibility the Rambam emphasizes at the end of the *halakha* that among non-Jews, "the matter is not dependent on the man's volition alone."

 The opinion in the *Yerushalmi* according to which "they have no divorce" is not entirely clear. Does this mean that they do not have any kind of divorce, as is implied by the plain meaning of the words, or perhaps this means that they have divorce, but it is carried out without a written bill of divorce, as is argued by the Rambam?

 It seems that this question can be answered based on the continuation of the *Yerushalmi*. The Gemara there adduces proof that "they have no divorce," from the fact that for a non-Jew there is no prohibition to remarry his divorced wife (who had remarried and was once again divorced), even if they both converted to Judaism: "If a non-Jew divorced his wife, and she married another man, and was divorced, and then the two of them converted to Judaism, I do not apply to her: 'Her former husband, who sent her away, may not take her again to be his wife' (*Devarim* 24:4)." The *Penei Moshe* explains that after a non-Jew converts he is considered as if he were newly born, and therefore he can marry the woman once again. This explanation, however, is puzzling, for it is not clear how this proves that non-Jews have no divorce, for even if they would have divorce, he should be permitted to remarry the woman, because he is considered as having been newly born.

 It seems therefore that the explanation is that the whole concept of divorce does not apply to non-Jews. The Torah teaches that when a Jew divorces his wife, "and she goes and becomes another man's wife," he cannot remarry her. Regarding a non-Jew, however, the idea of "and he sent her out of his house" does not exist, and thus there is also no problem of remarrying his divorced wife (for there is no concept of "divorce"). This is the proof concerning the matter in question, that "they have no divorce" means that the whole concept of divorce does not apply to them.

### Divorce among Jews

 Thus far we have discussed the laws regarding divorce for a non-Jew within the framework of what we know about divorce for a Jew. Let us now examine the matter in the opposite direction: in light of the situation in the case of a no-Jew, let us try to understand what is new about the situation in the case of a Jew.

 Among Jews divorce is executed by way of a written document ("a bill of divorce"), known as a *get*. The nature of divorce can be understood in two ways, as was mentioned above:

1. The bill of divorce works as a bill (*shtar*) of acquisition: Several passages suggest that a bill of divorce is sort of a bill of acquisition by way of which the woman acquires herself. This is what is stated in the Mishna in *Kiddushin* (2a): "A woman… acquires herself with a bill of divorce." So too the Gemara ad loc. (5a) relates to a bill of divorce as a contract.

2. The divorce is executed by way of sending the woman out from the husband's house. If we understand divorce in this manner, this is the similarity between divorce among Jews and divorce among non-Jews (of course, there is still a major difference between them, in that in the case of a Jew only the husband can initiate the divorce, whereas in the case of a non-Jew, "the matter is not dependent on the man's volition alone"). According to this, the requirement that in the case of a Jew the sending away of the woman must be accompanied by a bill of divorce is sort of a second floor on top of the ground floor applying to non-Jews.

 Various proofs can be adduced in support of the second understanding, that in the case of a Jew, the focus of the divorce is sending the woman out of the husband's house, only that this must be accompanied by the writing of a bill of divorce:

1. The Gemara in *Yevamot* (113b) discusses the question whether a woman of diminished mental capacity can be divorced by Torah law. At first the Gemara thinks that she can be divorced, but in the end this conclusion is rejected for two reasons:

1. A woman of diminished mental capacity does not have a "hand" to receive her bill of divorce (the plain understanding of this is that she does not comprise a full and independent legal entity who is capable of executing actions of a legal nature, e.g., accepting a bill of divorce.
2. Divorce requires that the husband "send [his wife] out of his house" – that is to say, that "he sends her away and she does not return." Since a woman of diminished mental capacity does not properly understand the situation, and since she lacks shame, she will presumably return to her husband's house after the divorce. This explanation suggests that divorce is not a purely acquisitional act, but rather a process of sending the woman away. The *Tosafot* expand this principle based on the Gemara in *Gittin* (78a) which says that if a man gives his wife a bill of divorce without telling her that it is a bill of divorce, she is not divorced. The *Tosafot* explain that since the woman does not know that she has received a bill of divorce, she will not leave the house, and thus there is no fulfillment of "and he send her out of his house."

As for the proof brought earlier for the first understanding (from the wording of the Mishna in *Kiddushin*), it may be argued that while it is true that the Mishna speaks of a woman who "acquires herself," this may be understood to mean that the woman acquires herself as **a result** of her having been sent away (and the bill of divorce is not a bill of acquisition). Support for this understanding may be brought from the fact that in that very same sentence in the Mishna it says that the woman acquires herself through the death of her husband, and it is clear that the death of the husband is not itself an act of acquisition, but rather the acquisition is merely a result of his death.

2. Several passages in the Rambam also incline toward the second understanding:

1. At the beginning of *Hilkhot Gerushin* the Rambam does not define a bill of divorce as a contract, but rather he writes: "This writing is called a *get*."
2. In *Hilkhot Gerushin* 1:5 the Rambam emphasizes that the woman is divorced from the moment that she receives the bill of divorce, even if she has not yet physically left the house. Thus the Rambam dispels the possible understanding that if the woman does not leave her husband's house, she is not divorced. This understanding, according to which divorce requires the actual sending away of the woman, and not just a formal act, is based on two assumptions: 1) Divorce is a process of sending the woman away, 2) The sending away must be executed through the woman's physical leaving of her husband's house.

The Rambam's ruling can disagree with one of these assumptions. 1) He can maintain that divorce is not a process of sending the woman away, but rather an acquisitional act (as according to the first understanding). 2) He can agree that divorce is a process of sending the woman away, but he maintains that the husband send his wife away by way of "a bill of divorce," and there is no need for her physical removal from his house (that is to say, it suffices that he tell her in writing that he is sending her away).

1. In *Hilkhot Eidut* 3:4 the Rambam writes that by Torah law we do not accept testimony other than orally from the witnesses, and that written testimony recorded in legal documents is accepted only by Rabbinic law. The Ramban (*Sefer ha-Mitzvot*, end of the second principle) raises an objection from a bill of divorce, which is effective by Torah law; how then is it possible that contracts bearing the written testimony of witnesses are valid only by Rabbinic law?

If we understand that, according to the Rambam, a bill of divorce is not a bill of acquisition, but a means for executing the sending away of the woman, then the Ramban's question falls away, for according to this understanding a bill of divorce is not a contract.[[3]](#footnote-3) According to this, the second understanding does not say that the divorce process is an act of sending the woman away that is accompanied by a bill of divorce, but rather that the sending away of the woman is executed by way of writing words in a bill of divorce.

1. In *Hilkhot Gerushin* (1:13) the Rambam writes that the bill of divorce must be handed to the woman in the presence of witnesses, because it is impossible that on one day a woman will be considered to be forbidden, and on the next say she should be permitted to any man, unless the divorce is observed by witnesses.

The *Imrei Moshe* (no. 16) explains this Rambam based on Rav Chayyim's principle regarding contracts. The Rambam writes (*Hilkhot Malveh ve-Loveh* 11:2) that if a borrower writes by himself in a document that he owes money to the lender, it is a valid promissory note, even without the signatures of witnesses. Rav Chayyim understands that this is because a bill of acquisition – that is to say, a bill that is intended to create a transaction when it is delivered from one party to the other – does not require witnesses. Only a bill of proof – a bill that is intended to serve as proof for the execution of a transaction – requires witnesses.[[4]](#footnote-4) The *Imrei Moshe* explains that this is also what the Rambam means in *Hilkhot Gerushin*. A bill of divorce is essentially similar to a bill of transaction in that it comes to create a status, and thus fundamentally it does not require witnesses. Witnesses are required only so that the bill of divorce can serve also as a bill of proof that the woman is no longer a married woman.

 It is possible to reject Rav Chayyim's proof with the argument that it is only when the borrower writes the bill in his own hand that there is no need for witnesses, but in a regular bill of transaction witnesses are necessary. But if we do not adopt Rav Chayyim's approach we will be forced to find a different explanation as to why the Rambam in *Hilkhot Gerushin* does not explain that witnesses are required in a bill of divorce because it is a contract.

 Indeed, Rav Soloveitchik offers in the name of his father, Rav Moshe, a different explanation of the Rambam in *Hilkhot Gerushin*. He argues that it is possible to say that even if other contracts require witnesses, a bill of divorce fundamentally does not require witnesses. This may be understood as follows: The objection is based on the assumption that a bill of divorce works as a regular contract (like the first understanding). If, however, we understand that a bill of divorce is a tool for sending the woman away (i.e., the husband does not send his wife away physically, but rather he writes her a bill of divorce that says that she is permitted to all men), we can then understand that it is not like a regular contract, and therefore fundamentally it does not require witnesses. If so, we have an additional proof that the Rambam accepts the second understanding.

3. It may be possible to bring additional proof from the text of the bill of divorce. In general, contracts are formulated in the first person of the party to the transaction (for example: "My field is given to you"), but they can also be formulated in the first person of the witnesses ("We are witness to the fact that So-and-so sold his field to So-and-so" – as we find in the text of the *ketuba*). Regarding a bill of divorce, the *Rishonim* disagree whether it can be written in the first person of the witnesses. The Rif (45b in the Alfasi) opens the bill of divorce with the word "*eikh*," "how" (so too the Rambam, in *Hilkhot Gerushin* 14:12). The Rosh (at the end of the tractate, p. 114a) concludes from this that, according to the Rif, a bill of divorce can be written in the first person of the witnesses; he himself disagrees and says that the husband must write the bill of divorce in his first person.[[5]](#footnote-5)

 If a bill of divorce is a bill of transaction, it is possible that it can be written in the first person of the witnesses. But if the bill of divorce is part of the process of sending the woman away from the husband's house (that is to say, it is the means of executing that sending away), it stands to reason that only the husband can write that he is sending his wife away.[[6]](#footnote-6)

4. The Mishna in *Gittin* (86a) list three bills of divorce that are invalid *a fortiori*, but if a woman already remarried based on them, her children are fit (and not *mamzerim*), because the bills are not disqualified by Torah law. One of them is a bill of divorce that the husband "wrote in his hand, but there are no witnesses on it." Rashi, ad loc., explains the bill's validity by Torah law in two ways: a. Writing the bill in his own hand is "like the admission of a litigant which is like a hundred witnesses." b. A bill of divorce is valid by Torah law even without witnesses, because of a Scriptural decree: "And he shall write – and he shall give."

 According to Rashi's first explanation there is room to apply this law to other contracts as well that are written in the party's own hand (as was mentioned above). However, according to the second explanation, the implication is that this law is unique to a bill of divorce.[[7]](#footnote-7) The reason to distinguish between a bill of divorce and other contracts is readily understood according to the second understanding, that a bill of divorce is but a tool for executing the husband's sending his wife away, and therefore only in the case of a bill of divorce is a bill written in the husband's hand but without witnesses valid.

### Comments

1. A bill of betrothal – So too regarding a bill of betrothal, there is room to discuss whether it is a bill of acquisition like other contracts or perhaps it is a "bill of marriage." The Gemara in *Kiddushin* (9a) discusses the question who writes a bill of betrothal. It concludes that in contrast to the sale of a field, where the seller writes: "My field is sold to you," in betrothal it is the husband (who parallels the buyer in the betrothal process) who writes: "You are betrothed to me." This might imply that this is a "bill of marriage."

2. Other ways of dissolving the marital bond: The Gemara in *Kiddushin* (8a) raises the possibility (but then rejects it) that divorce can be executed by way of money. It is not clear from the Gemara who, according to the initial understanding, would give money to whom – the husband to the wife, or the wife to the husband.

If the Gemara had in mind that the woman would give money to the husband, it is clear that this is a pure act of acquisition, and it stands to reason that according to this initial understanding a bill of divorce is a bill of acquisition. It is possible, however, that according to the Gemara's initial understanding, it is possible to divorce a woman either by way of an act of acquisition (with money) or by way of sending her away (by way of a bill of divorce), and the Gemara's conclusion is that divorce is possible only by way of sending the woman away, and not by way of an act of acquisition, and therefore a bill of divorce is required.

If the Gemara had in mind that the husband would give money to his wife, it is clear that this is not an acquisition (for the husband corresponds here to the seller), and then it is possible that this understanding was rejected in the conclusion.

### Brief Summary

 The proofs regarding the nature of a bill of divorce:

1. That it corresponds to the process of acquisition: The plain meaning of the Mishna in *Kiddushin* (2a): "And she acquires herself with a bill of divorce."

2. That it is a tool for sending the woman away:

a. *Yevamot* 113b: If, when the husband sends his wife away, she returns, it is not a valid bill of divorce, and therefore when the husband fails to inform his wife that the document is a bill of divorce, she is not divorced, because she returns to his house (*Tosafot*, *Gittin* 78a).

b. Rambam:

1. "This bill is called a *get*."

2. The Gemara's initial understanding that the woman must be sent away from her husband's house (the Gemara's conclusion might reject this understanding).

3. Even if other contracts are valid only by Rabbinic law, a bill of divorce is valid by Torah law.

4. Fundamentally, a bill of divorce does not require witnesses. Witnesses are required only in order to prevent confusion (according to Rav Chayyim, this is not a proof, for this may be like other bills of acquisition, which in his opinion, do not require witnesses).

c. The text of a bill of divorce: Rosh – a bill of divorce cannot be formulated in the first person of the witnesses, but only in the first person of the husband.

d. A bill of divorce written in the husband's hand is valid by Torah law. According to the second explanation of Rashi, this law is unique to a bill of divorce (this stands to reason if we understand that a bill of divorce is not a bill of acquisition, but rather a tool for removing the woman from her husband's house).

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

1. We will begin our study with the Mishna on p. 17a. We have chosen to start here because here begins the discussion of most of the central issues regarding the writing and delivery of a bill of divorce. [↑](#footnote-ref-1)
2. This *shiur* was summarized by Rav Yosef Zvi Rimon. It was not reviewed by HaRav Aharon Lichtenstein. [↑](#footnote-ref-2)
3. Nobody disputes the fact that a bill of divorce has components found in the world of contracts, but this does not contradict the second understanding, because the role of a bill of divorce may not be to create an acquisitional state, but rather to execute the husband's sending away of his wife. [↑](#footnote-ref-3)
4. This position of Rav Chayyim is exceedingly novel, and it constitutes a revolution in the world of contracts. Thus, for example, it was obvious to the *Ketzot ha-Choshen* that there is no such thing as a contract without witnesses. [↑](#footnote-ref-4)
5. As is implied by the plain sense of the Mishna in *Gittin* (85a) which states that the main body of the bill is: "You are permitted to all men." [↑](#footnote-ref-5)
6. This distinction, however, is not absolutely necessary, for it is possible that even the Rif accepts the second understanding, but nevertheless he maintains that the husband can formulate the bill of divorce using the formulation "how." So too it is possible that the Rosh maintains that there are two aspects to a bill of divorce – both an aquisitional aspect and an aspect of sending the woman away, and it is the aspect of sending the woman away that dictates the requirement that the bill of divorce be written in the first person of the husband. [↑](#footnote-ref-6)
7. The Rashba and the Ritva in *Yevamot* and in *Kiddushin* discuss whether a bill like this without witnesses is valid for betrothal. [↑](#footnote-ref-7)