YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**GEMARA GITTIN**

**Introduction and**

**Shiur #01: DAF 17A - 18A**

**The Requirement of Dating a Get**

**by Rav Moshe Taragin**

Dear talmid,

 Masechet Gittin begins in a very 'intriguing' manner. We might have expected a frontal description of the texture of a 'get' and the manner of delivering this contract to a woman. After grasping these more basic issues we would then be prepared to deal with the unique circumstances of a 'get' issued overseas and delivered by an agent. Instead the Masechet begins with the latter issue, deferring the more fundamental questions for later discussions. Given this phenomenon our shiurim will commence with the Mishna (17a) that signals the start of the discussion of the foundations of 'geirushin.'

 The first shiur will address the role and function of the 'date' within a 'get.' Though we might have expected the date to constitute a cardinal element, the gemara's discussion implies a subsidiary role. Keep in mind that as a 'get' is not primarily employed in collecting funds the need for a date is less than obvious.

Mekorot:

1) Mishna Gittin (17a), gemara... two dots (18a).

2) Gittin (26a) mishna, Ramban s.v. ka pasik ve-tani "aval lo hini'ach zeman...mukdam"

3) Tur Even Ha-ezer 123 ...pikei'ach, Beit Yosef s.v. ve-toref

4) Rambam's commentary to the mishnayot - on the mishna (17a)

5) Rambam Geirushin 1:25, Ra'avad, Ran (8a in pagination of Rif) s.v. u-linyan

6) Rashi (18a) s.v. lo shanu, Ran (8b in pagination of Rif) s.v. ketuva "ve-nir'a li...chiyuv"

7) Ran (8a in the Rif) s.v. ve-de'amrinan "amar lei ravina le-Rav Ashi" ...end of the piece; Rashba (18a) s.v. Gittin

8) Bava Batra (172a) Ha-hu Shetara...le-nefila, Rashbam s.v. dilma

Questions:

1) Why should zemna be necessary only to solve the technical problems of peirot and shema yechapeh? Shouldn't it be of a more essential nature? 2) After the Rabanan issued their decree does the date have to be written 'lishma?'

3) Why should a 'get me-uchar' be invalid?

4) Can the condition of asukin be-oto inyan validate a false shetar?

5) Does Rebbi Elazar (who maintains 'eidey mesira karti') disqualify an incorrectly dated 'get?'

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 The Mishna (17a) addresses situations in which the 'get' was dated significantly prior to the actual signature. If this discrepancy falls over two different calendar days, the 'get' is invalid (at least according to the majority opinion). The mishna does not trace the origin of 'dating' a 'get'; this task is assigned to the gemara. Inferring the need to date a 'get' from the first mishna, the gemara ponders the root of this law. It assumes that 'dating' a 'get' is merely a Rabbinical decree and then searches for the rationale of this law.

It is indeed striking that the gemara regards the date of a contract (presumably a fundamental aspect of any legal document) as so peripheral that it stems merely from a Rabbinical decree!! After all, verbal witnesses must 'date' their testimony - if for nothing else than to allow cross-examination (known as derisha ve-chakira - see Sanhedrin 40a). This anomaly convinced Rav Chayim Brisker that a 'shetar' is not merely a written form of testimony, but entails an entirely novel halakhic entity in few ways similar to verbal testimony. Had written and verbal testimony been symmetrical, we would demand that a shetar facilitate the cross-examination we demand of witnesses who testify verbally. Such a stance would assign a more basic role to the date. Our gemara clearly rejects this perspective, by attributing the date of a shetar to more marginal functions.

 Returning to the gemara: two reasons are suggested for including a date in a shetar. According to Rebbi Yochanan, the Chakhamim sought to guard against a husband 'protecting' his wife from legal punishment in the event of illicit sexual relations. Imagine a scenario where a woman commits this crime and subsequently persuades her husband to issue a date-less divorce. She can then claim that the divorce was issued prior to her crime and thereby escape punishment. To prevent this, the Rabanan demanded that all 'gets' be dated. According to Reish Lakish, a different concern motivated the decree. A husband enjoys all profits from his wife's estate during the term of their marriage (this privilege is known as 'peirot nikhsei melug'). Obviously, these rights expire at the point of divorce. To ascertain exactly when the divorce occurred (and thereby avoid future legal wrangling), the Rabanan instituted that every 'get' be dated.

 An important question readily presents itself: having been awoken to include zeman because of the aforementioned concerns, what exactly was the nature of the decree? Did they merely attach a 'tag' to avoid these problems by recording the moment of issue, or did the Rabanan effectively revamp the entire bill of divorce and add a new element to the 'ingredients' of the 'get'? Said otherwise: after this decree was made, do we view the date as an indicator attached to the 'get' to solve certain technical problems, or do we view it as an integral aspect of the text of the 'get?'

 Possibly, the clearest nafka mina to this question can be found in the gemara (26a) which raises the rule of 'lishma.' Unlike some other legal documents, a bill of divorce cannot be mass produced, and must be written specifically for the individuals involved (see especially the mishna 24a). As a result, the heart of the 'get' cannot be filled in until the husband specifically commissions the writing of a 'get' for his wife. The remainder of the text (containing issues of more peripheral nature), however, can be pre-filled by a scribe. The mishna includes the date as an element which cannot be pre-filled but instead must be added 'lishma' - for this particular divorce. This gemara suggests - convincingly - that although fundamentally a 'get' does not require a date, once the Rabanan established its necessity it becomes an integral component of the contract and must even be composed with particular design (lishma). This indeed is the manner by which the Beit Yossef explains the Tur (Even Ha-ezer 123), who cites this gemara. The Ramban (commentary to Gittin 26b), however, suggests that if a lishma requirement exists, it does not indicate the date's integration into the document, but rather a more technical concern: allowing pre-filled documents will facilitate a slip into using predated and postdated documents. To secure this area, the Rabanan demanded that dates be filled only after the husband directly requests the writing of the 'get.' The Ramban's explanation does not necessarily view the zeman as an integral aspect of the contract, even though it must be technically written lishma.

 A second halakha which might reflect the status of the date in a 'get' is the question of a predated 'get' mentioned in the mishna. The gemara doesn't ever address the specific case of a predated 'get,' but instead provides the background for the Rabbinic decree of the 'date.' Ostensibly, a predated 'get' would be disqualified because it fails to adequately solve the dual problems of 'peirot' and 'shema yechapeh.' Keep in mind, however, that the gemara never actually attributed the disqualification to these concerns; it only presented these issues as the source for the general requirement of 'zeman.' Notably, the Yerushalmi (to our mishna) does directly attribute the disqualification of a predated 'get' to the failure to facilitate smooth transfer of the peirot.

 Interestingly, the Rambam, in his commentary to the mishnayot, explains the disqualification based upon the predated contract being a 'false' document. Indeed, before the Rabanan established their decree, no date was necessary. Once, however, the decree was instituted, the date incorporates itself as a fundamental component of the document; a document with an incorrect date is considered a 'shetar sheker' and is invalid.

 A parallel notion can be glimpsed within the Rambam in Hilkhot Geirushin 1:25. The Rambam invalidates a 'get' which was postdated (a date AFTER the actual signing was affixed). The Raavad objects, because the classic problems of peirot and shema yechapeh do not apply. It is certainly not in the woman's interest to delay the assumed date of her divorce, and doing so will in no way assist her in dodging a deserved penalty. The Raavad develops a novel schedule for the cessation of peirot which is not negatively affected by a postdated 'get.'

 The defense of the Rambam's position can take two possible forms. We might still discover certain technical problems with a postdated 'get.' Indeed, the woman cannot illegally acquire peirot, but she can cast aspersions on the 'get' by claiming the divorce occurred before her betrayal. "After all," she will say, "don't infer too much from the date of the 'get' since we all know it to be inaccurate!" The Ran agrees with the Rambam and bases his invalidation of a postdated 'get' upon this exact scenario.

The Lechem Mishna proposes a different defense of the Rambam. Indeed, a postdated 'get' does not invite the types of problems that triggered the Rabbinic decree of zeman. Yet, this document (though it might be trouble-free) is still invalid since it is a false document. Though no particular problems exist, we cannot process a divorce with a false shetar. Again, we witness that according to the Rambam, the date – though only the product of a Rabbinic decree - becomes part of the essential document; any falsifying of this component – even if no particular problems are created – sinks the shetar.

The situation of a 'get me'uchar' (a postdated 'get') is structurally significant because it seems to provide an instance in which the technical problems of 'peirot' or shema yechapeh (which served as the motivation for the takana of zeman in the first place) do not apply, but we still might disqualify the 'get' because it contains false information. Such a stance would certify that after the decree to include zeman was issued, it becomes an integral aspect of the document. Two additional instances emerge from the gemara's discussion - two more cases in which technical problems do not necessarily exist and yet we still might invalidate an incorrectly dated contract because of false information. The gemara (18a) validates a contract which was signed the night after it was dated (which, according to halakha, signifies the start of a new day), so long as the parties were involved in the processing of the contract the entire time. For example, if they began issuing the 'get' and dated it Sunday afternoon, but continued to discuss and process the divorce through nightfall and signed it only at night, this 'get' is valid since - as the gemara states - they were 'asukin be-oto inyan' (dealing with the issue of the 'get' throughout the duration). Many Rishonim explain this exception as due to the presence of a 'kol' - widespread knowledge of the circumstances of this divorce. Since the witnesses were ready to sign Sunday afternoon but were merely withheld a few hours due to the ensuing processing of the 'get,' everyone is aware of the impending 'get' and will therefore be wary of purchasing peirot from the husband. Similarly, everyone will remember this 'get' and prevent the woman from lying about a 'get' delivered earlier than it actually was (the following night). Does this gemara not suggest that if we can generate a 'kol' (public knowledge) and thereby avoid the technical problems of peirot and shema yechapeh, we are allowed to issue a false document? Would this not suggest that in fact the zeman does not become an integral aspect of the document, and a false date does not render the document a false 'get'?

 The Rishonim present two alternate ways of understanding this gemara. Rashi explains that the gemara was not validating a predated 'get' in the case of asukin be-oto inyan. Rather, the gemara, at this stage, was discussing other types of contracts in which the date plays a less pivotal role. See the Ran, as well, who delimits the gemara's allowance of asukin be-oto inyan and avoids validating a false 'get' simply because a 'kol' was created. These positions might maintain that indeed the zeman does become an inherent element of the shetar, and we cannot accept a falsely dated contract simply because people will uncover the discrepancy, thus avoiding potential legal problems.

 A second approach toward understanding this gemara is presented by the Beit Yossef in Choshen Mishpat (43). He claims that if the witnesses are prepared to sign but are delayed for technical reasons, we consider them as having already signed, since during the interim all parties continued to discuss the 'get.' Halakha very often supplies the tools to manipulate actual time. If someone eats bread on Rosh Chodesh and his meal lasts into the night (after Rosh Chodesh has ready expired), he nonetheless recites 'yaaleh ve-yavo' in birkat ha-mazon because we consider him as reciting birkat ha-mazon during the preceding day; he began his meal during the afternoon and did not interrupt the meal until nightfall. Similarly, according to the Beit Yossef, witnesses who are prepared to sign are considered as having signed even if forced to wait for the final details of the 'get' to be ironed out. Hence, this 'get,' though dated before the eidim actually sign, is not considered a false document, because Halakha considers the 'get' as having been signed during the afternoon - an accurate reflection of the date which appears on the 'get.'

 A second example of a false 'get' which might avoid the legal pitfalls of shema yechapeh and peirot can be induced from the gemara (18a) regarding a 'get' written in a different country and sent to our location with a shaliach. Even though the 'get' was only issued months after the signing (allowing for the travel time of the shaliach), since any document coming from abroad generates a 'kol,' people will thoroughly investigate the matter and avoid mistakes in any potential litigation. The Rishonim pose the following question: if a 'get' delivered from abroad generates public awareness and does not complicate future litigations, why not validate even predated documents, as long as they were written abroad and delivered through a shaliach? The Rashba in fact does accept this logic and allows a 'get mukdam' (a predated 'get') - technically a false document – brought from a different country, since no legal issues will arise. The Ran disagrees and disallows the use of a 'get mukdam' from abroad, even though the public is aware of the timing discrepancies. He doesn't articulate the reason for his disapproval, but we might suggest that he views the 'get mukdam' as a shetar sheker, and cannot validate this type of document simply because legal complications will not arise. A properly dated 'get,' however, delivered from overseas, which undergoes a delay between its signing and delivery, is not falsely signed or dated and can be issued if public awareness exists.

We have witnessed thus far two situations in which a falsely dated document might be invalidated even though the legal concerns of peirot and shema yechapeh do not exist.

 A final example might emerge from the gemara in Bava Batra (172a) which cites the position of Abba Shaul allowing a 'get' whose text reads "I divorce her TODAY," even though no specific date appeared on the 'get.' The gemara ultimately ascribes Abba Shaul's position to Rebbi Elazar, who maintains that eidei mesira karti (the critical witnesses are the ones who view the delivery of the 'get'). The Rashbam explains that as Rebbi Elazar requires witnesses to the delivery, they will testify as to the time of the delivery, and therefore no legal complications will ensue. The entire need for a date on the shetar was only considered according to Rebbi Meir, who does not necessarily demand witnesses to the delivery of a 'get.' An accurate date is therefore necessary to provide information as to when the 'get' was delivered. What is clear from Rebbi Elazar is that the Chakhamim never instituted 'zeman' as a fundamental aspect of a 'get.' Rather, they demanded some scrutiny or mechanism for ascertaining the date of issue. Generally, this can best be accomplished by dating the actual document. According to Rebbi Elazar, however, once we are certain that witnesses will view the actual issue, we can dispense with the actual date written on the contract.

Sources for the next shiur will be mailed separately.