YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**GEMARA GITTIN**

**Daf 17b:**

**Deleting the Date Recorded in a *Get***

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### Sources

1. דף יז: "אמר ליה אביי... קלא אית להו", תוד"ה גזייה, עיין תוספות דף יז. ד"ה משום בת אחותו.

2. יבמות דף לא: "אב"א משום דלא אפשר... קאתי", תוד"ה להצלה [ערוך לנר שם].

3. דף יח. תוד"ה הנהו קלא.

4. רמב"ם וראב"ד הל' גירושין פ"א הכ"ו, חידושי הרשב"א גיטין דף יז: ד"ה גזייה לזמן [אור שמח על הרמב"ם עד "ודוק"].

[To download these sources click here](https://etzion.org.il/he/download/file/fid/227510).

### Questions to guide your study

1. From where does the Rambam learn that erasing the date does not invalidate a *get*?

2.What is the rationale for distinguishing between a *get* that lacks a date and a *get* that had a date but it was erased, the latter being valid according to the Rambam?

3. If a woman had relations with a man other than her husband, and she produces a *get* that lacks a date, why do we not pronounce her guilty of adultery, owing to the fact that she has the presumptive status of a married woman, and we do not know when she became divorced?

4. What is the difference, according to Rashi, between cutting off the date and erasing the date, and what is the rationale for this difference?

### cutting off the date

Abaye said to Rav Yosef: Three kinds of *get* are invalid, but if a woman marries again on the strength of them [and bears a child], the child is legitimate. This being so, (that one of the three is a get without zman, what have the Rabbis accomplished with their regulation [that the *get* should be dated]? That *lechatchila* *(ab initio)* she may not marry. If the husband cut off the date and gave it to her, what [have they accomplished]? He said to him: We do not consider the improbable case of blatant fraud. (*Gittin* 17b)

 The Gemara first establishes that it suffices that the enactment to date a *get* accomplishes that a woman may not remarry *lechatchila* on the strength of a *get* that lacks a date. While it is true that if a woman remarries on the strength of such a *get*, the child born from that marriage is legitimate, nevertheless the enactment that a *get* must include a date has an impact by prohibiting the subsequent marriage.

 The Gemara then asks what have the Rabbis accomplished with their enactment, since the husband might cut off the date from the *get* before he gives it to his wife. On the face of it, the fact that the Gemara raises this question implies that in such a case the *get* is not invalid, and a woman is permitted to remarry on the strength of it. For surely the Gemara already established regarding the first question that *lechatchila* the woman may not remarry; if also in the case where the husband cut off the date she is forbidden to remarry *lechatchila*, what room is there for the second question, seeing that the Gemara already answered that it is enough that the enactment accomplished that the woman may not remarry *lechatchila*?

 Against this background, the Rambam rules as follows:

A *get* is acceptable if [the husband] deleted [the portion of the *get* that contained] the date and gave it to her… (*Hilkhot Geirushin* 1:26)

Rashi, on the other hand, explains this passage in a different manner:

They accomplished that *lechatchila* she may not remarry – This being the case, if he wishes to write a *get* without a date to shield his sister's daughter, or to sell the usufruct [of his wife's *milog* property], the court scribes will not write [such a *get*] for him, nor will witnesses sign it.

According to Rashi's explanation, the Gemara does not content itself with the gain of preventing the woman from remarrying *lechatchila*, but rather it adds that since she cannot remarry *lechatchila* on the strength of such a *get*, the scribes and the witnesses will not enable the husband to write a *get* without a date. Therefore the Gemara raises another question, this time from the case where the husband wrote a date in the *get*, but then cut it off before giving the *get* to his wife. Despite the fact that in this case as well the woman is not permitted to remarry *lechatchila*, here however the scribe already wrote the *get* and the witnesses already signed it, and therefore the question arises what have the Rabbis accomplished with their enactment. Rashi writes as follows:

If the husband cut off the date and gave it to her – If after the husband wrote a date in the *get*, he cut it off to shield his sister's daughter or to sell the usufruct of his wife's *milog* property, and he gave it to her, and we say about a *get* that lacks a date, that the child [born to the woman who remarried on the strength of that *get*] is legitimate, and that when the woman produces the *get* she has the presumptive status of a divorced woman and will not be executed as an adulterous woman, what have the Rabbis accomplished with their enactment?

According to Rashi's understanding the law in the case where the husband cut the date out of the *get* is the same as the law in the case where there was never a date in the *get*, that is to say, the *get* is invalid, but if the woman remarries, the child born to her is legitimate. The only problem is that this understanding runs contrary to the plain meaning of our passage. We must understand then why Rashi rejected the simple explanation in favor of his own explanation.

The Raavad as well comments on the Rambam's ruling:

If [the husband] cut off the date from [the *get*] and gave the *get* to his wife, *lechatchila* she may not remarry [on the strength of this *get*], for this is one of the three invalid *gets*.

In other words, if the husband cuts off the date from the *get* and then gives it to his wife, he has divorced his wife with a *get* that lacks a date. And on the face of it, this *get* should be treated like any other *get* that lacks a date. We are forced then to explain the passage as did Rashi. If so, it is the position of the Rambam that is difficult and requires further explanation.

It would appear that the Rambam disagrees with the Ra'avad and understands that the date is not a law in the act of divorce, which obligates a person to divorce his wife with a *get* that is dated. Rather the enactment of a date is a law in the writing of the *get.* Therefore, a *get* that was written without a date is invalid, but if it was written with a date, and afterwards the husband removed the date and gave the *get* to his wife, the *get* is valid. Therefore the Gemara asks the question what did the Rabbis accomplish with their enactment after it established that "they accomplished that *lechatchila* she may not marry."[[1]](#footnote-1) After all, if the husband cuts the date, she may marry *lechatchila*.

### Erasing the Date

 Rashi understands that the Gemara's objection was raised even according to Rabbi Yochanan who maintains that the Rabbis enacted that a *get* must include a date because they were concerned that the husband might want to shield his sister's daughter who committed adultery – "and when the woman produces the *get* she has the presumptive status of a divorced woman and will not be executed as an adulterous woman, what have the Rabbis accomplished with their enactment?" That is to say, even though the woman has the presumptive status of a married woman, and there are witnesses to her adultery, if she has in her hand a *get* without a date, she is not executed. This is difficult; since we do not know when she was divorced, we should leave her in her presumptive status as a married woman (*chezka eishet ish*) and execute her!

 The truth is that this question applies to the very position of Rabbi Yochanan. For Rabbi Yochanan maintains that the purpose of the enactment to include a date in a *get* was to prevent the husband from shielding his sister's daughter. From this we learn that a married woman who engaged in adulterous relations can be saved by a *get* that lacks a date, despite the fact that she has the presumptive status of a married woman. See the *Tosafot*:

That he should not shield her when the *get* has no date, for we do not say that we should assign her the presumptive status of a married woman, and it is only now that she was divorced, since we see that she is a divorced woman before us. (*Gittin* 17a, s.v. *mishum bat achoto*)

In explanation of this answer, we can say that since the woman is presently divorced, a presumption is created based on her present status, and thus we have a situation in which there are two contradictory presumptions regarding the woman's status and they cancel each other out. For the principle that underlies the idea of a presumptive status is that a status that existed at some known point continued from that point onward; thus there is reason to assume also that a status that exists now existed previously as well. Hence the two presumptive statuses contradict each other, and since the matter is in doubt, the woman is exempt from judicial execution.

However, this can also be understood in a different manner, namely, that despite the fact that the woman is presently divorced, she still has the presumptive status of a married woman, but nevertheless she is not executed on the basis of this presumption. The reason for this is that there are two different types of presumptive statuses: Sometimes the presumptive status clarifies reality and thereby decides a certain doubt. On the strength of such a presumptive status, we have no doubt whatsoever as to what occurred, and the law is decided with certainty. But sometimes the presumptive status does not clarify reality and the doubt remains, but nevertheless the laws of presumptive status establish a ruling that is issued in a state of uncertainty. Regarding our case, it may be argued that in a case where the woman does not stand before us as a divorced woman, the ruling that she is a married woman is issued with certainty. But if she stands before us as a divorced woman, even if it is still possible to assign her the status of a married woman, her status is in doubt, and the presumptive status cannot clarify the matter. Therefore, even though we rule on the strength of the presumptive status that she is a married woman, this ruling is issued with uncertainty, and therefore the woman is not executed.

An objection can, however, be raised against what we have suggested from a different passage. The Gemara in *Yevamot* discusses the question why a date is not inserted into a bill of betrothal in order to prevent the husband from shielding his sister's daughter, and it explains that such an enactment would not be effective:

For how should one proceed? Were it to be left with her, she might erase it. Were it to be left with him, it might happen that the betrothed might be his sister's daughter and he would shield her. Were it to be left with the witnesses - well, if they remember they could come and tender their evidence; and if they do not, they may sometimes consult the document and then come and tender evidence orally, while the All Merciful said: "out of their mouth" but not out of their writing. If so, let the same argument be applied to divorce as well! There, it comes to save her; here, it comes to condemn her. (*Yevamot* 31b)

And Rashi explains (ad loc.):

It comes to save her – And there is reason to be concerned that perhaps she will erase it, because when witnesses come and say that she engaged in adulterous relations, if she does not produce a *get* that says she had been divorced earlier, we will assign her the presumptive status of a married woman. However, had the Rabbis not enacted a date in a *get*, he could shield her, and we cannot execute her based on an uncertainty. But now that the Rabbis enacted a date in a *get*, if she does not bring it, we assign her the presumptive status [of a married woman] and execute her.

These words of Rashi appear to contradict what we said above, that a woman cannot be executed based on the presumptive status that she is a married woman, because she stands before us as a divorced woman. According to Rashi, a woman who erased the date in her *get* is executed even though she produces a *get* that lacks a date! See the *Tosafot* who reject Rashi's explanation based on our passage:

This appears incorrect, for it is explicitly stated in the second chapter of *Gittin* (17b): "If the husband cut off the date and gave it to her, what have the Rabbis accomplished with their enactment?" And the Gemara answers: "We do not take precautions against a fraud [of this kind]," which implies that when there is no date, we do not execute [the woman].

What is the difference, according to Rashi, between a woman who erased the date in her *get*, who is executed, and the case of a husband who cut the date out of the *get*, where the *get* shields the woman. Is an eraser any worse than scissors?

We can distinguish between the two cases in a simple manner, if we accept one assumption. The *Rishonim* disagree about when a post-dated *get* (a *get*, the date recorded in which is later than the date on which the *get* was actually given) takes effect: The Ra'avad (*Hilkhot Geirushin* 1:26) maintains that regarding the woman's marital status, the *get* takes effect immediately, so that immediately upon receiving the *get*, she is permitted to other men. The *Tosafot* (17a, s.v. *Resh Lakish*)*,* on the other hand,maintain that that divorce takes effect only on the date written in the *get.*

This applies if the date was written in the *get* at the time that it was given; but if the husband cut out the date before he gave the *get* to his wife, it is clear that the *get* takes effect immediately. Thus, if no date is written in the *get*, or if the husband cut the date out, the woman stands before us as a divorced woman, since her divorce took effect when she received the *get.* But if the husband gave his wife a *get* in which a date was written, and she erased the date after having received it, the woman standing before us is not necessarily a divorced woman, since it is possible that the date in the *get* was after the current point of time, and the divorce did not yet take effect. This is indeed the answer proposed by the *Penei Yehoshua*.

### III. A *get* that was brought from abroad

It seems, however, that this is not the correct understanding of Rashi's position. For the Gemara below states (18a):

Ravina said to Rav Ashi: In the case of *gets* that are brought from abroad, which are written in Nissan but do not arrive until Tishrei, what have the Rabbis accomplished with their enactment? He said to him: People hear of such documents.

And Rashi explains there:

People hear of such documents – And both regarding adultery and regarding usufruct proof must be brought regarding when the woman received her *get*.

Here we are not dealing with a post-dated *get*, and so there is a divorced woman standing before us. Why then must she bring proof regarding when she received her divorce in order to exempt her from judicial execution? The *Tosafot* ask this question:

A question may be raised: Regarding adultery, while we know that she did not receive her *get* on the date recorded in the *get*, nevertheless the husband can shield her and say that he gave her the *get* before she engaged in adulterous relations, as was the case prior to the enactment requiring that a *get* be dated.

Thus far we have adopted the solution of the *Tosafot* that we do not assign the woman the presumptive status of a married woman because of her present situation – a divorced woman is standing before us. However, one who closely examines the words of Rashi will see that he does not accept this position, for Rashi writes at the beginning of the *sugya*:

Because of his sister's daughter – and she is his wife, and perhaps she engaged in adulterous relations while she was married to him, and he had pity on her so that she not be executed, and he wrote her a *get* without a date and gave it to her, and when they testify against her in court, she produces the *get* and says: I was divorced and not married at that time. (17a)

A close reading of Rashi's words indicates that the woman must claim that she was an unmarried woman at the time of her alleged adultery, which implies that in the absence of such a claim on her part, she is executed because of her presumptive status as a married woman. According to the *Tosafot*, however, even without any claim on her part, she is exempt from execution, because a divorced woman is standing before us!

In light of this conclusion, we must once again examine Rashi's position. It seems that according to him, only if the woman claims that she received her divorce before the adulterous relations is she exempt from execution. But if she does not make such a claim, or if her claim is suspect, she is executed, because she has the presumptive status of a married woman. Thus we can say that if the husband cut off the date and gave the *get* to his wife, there is no defect (*rei'uta*) in her claim, and if she says that she was already divorced at the time of her alleged adultery she is exempt from execution. But if she received a dated *get* from her husband, and afterwards she herself erased the date, her claim is suspect (if she did not engage in adulterous relations, why did she bother to erase the date), and it is not accepted, and she is executed because of her presumptive status as a married woman.

Also regarding a *get* that was brought from abroad (18a), Rashi writes that the woman is executed if she fails to bring proof when it was that she received her *get.* It may be suggested the here too there is a defect in her claim. People talk about every *get* that is brought from abroad. According to our approach, this talk relates to the questions when was the *get* delivered, and when did the person bringing the *get* testify that the *get* was written and signed in his presence (as is stated in the first Mishna in the tractate). If she is lying, this talk will contradict her claim. Therefore, if the woman claims that she was divorced prior to the date publicized by the people's talk, she must bring proof as to when the *get* reached her hands, and if she fails to do so, she is liable to execution because of her presumptive status as a married woman, since we do not accept her claim to contradict the people's talk.

(Translated by David Strauss)

1. See also *Chidushei ha-Rashba*, s.v. *gazyeih le-zeman*, and the *Or Same'ach* on the Rambam. [↑](#footnote-ref-1)