YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**GEMARA GITTIN**

**Daf 18a:**

**“When do we start counting regarding Gittin?”**

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**Sources and questions for preparation**

A.18a – “It was said [in the *beit midrash*]: when do we start counting... and the law is, from the time of writing.” Why do some think that we count from the time of writing? What is the reasoning of those who disagree? For help, see Tosfot, s.v. “*hasholeach*.”

B. Background to the Talmudic discussion – The law of “distinguishing” [between the offspring of the husbands in question] Yevamot 41a, the second mishna, and the gemara until “ola l’chalitza’; 42a – “*v’chen shaar... dlo lifga b’hu erva*” [and so too the others, so as not to encounter a woman forbidden because of an incestuous relationship]. What is the difference between Shmuel and Rava as far as the nature of the law of “distinguishing?” is concerned? Regarding Shmuels’s position, consider Tosfot in regard to Rashi’s comment (s.v. “*ul’zaracha acharecha*”), beyond the simple meaning of the discussion (compare to the Rambam, *Gerushin* 11:18).

C. *Yevamo*t 41b: “The Rabbi learned: A *yevama* with whom *chalitza* was performed... not R. Shimon”; there Tosfot s.v. “*mai shna*”, and the Rashash on the Tosfot there. In light of the Rashash’s fundamental principle, try to explain the reasoning behind the dispute in our discussion.

**A**

In *Gittin* 18a a dispute of the amoraim is cited regarding the question “when do we start counting in *gittin*?” This is to say, from when do we start counting the three months which the Sages obligated a woman who becomes divorced to wait until remarrying – from when the *get* was written, or from when it was given. In order to understand the reasoning behind this dispute, we must first examine the definition of this obligation – the law of “*havchana*” – distinguishing.

It is said in the mishna in *Yevamot*:

The *yevama* must not perform *chalitza* or *yibum* until she has [waited] three months, and so too all other women [whose marriage terminates] must not undergo *erusin* or *nissuin* until they have waited three months, whether they are *betulot* or not, whether they became divorcees or widows, whether they were originally *n’suot* or *arusot*.” (41a)

In regards to *yibum* the prohibition is clear – lest it becomes know that she was pregnant from her deceased husband and she bears a viable child, and it turns out that [if the brother performs *yibum*] the yavam has violated the biblical prohibition of marrying his brother’s wife [if she is not childless]. And the same applies to *chalitza*, since she cannot do *yibum*, she cannot do *chalitza* (41b). However, regarding other women, the gemara there (42a) cites two opinions:

**a. Shmuel**

Shmuel explains that the problem is that the Torah says: “...to be your God and your seed [descendants] after you” – to distinguish between the descendent of the first husband and the descendent of the second husband. There are two possible ways to understand this obligation:

1. From the simple reading of the text, apparently there is a law that every person must have a pedigree [his or her father must be known], as the Sheiltot writes (12a) whose version of the text is “what does “*v’acharecha*” [after you] mean? ...to distinguish.” That means to say, the essential derivation is that your “descendent” must be “after you” [known to be yours] (and so it seems from the language of the Rambam (*Gerushin* 11:18).
2. Rashi there adds: “for the Divine Presence only rests on those whose pedigree is certain, whose children are known to be theirs”, and as a source for this Rashi cites the *gemara* in *Nedarim* 20b, “and I rejected from among you those who rebelled against me and sinned against me” “these are the children of mixed (i.e. uncertain) parentage.”

This is more extensively explained in *Bamidbar Rabba*:

“Hashem does not have His presence dwell other than on those in Israel who are *meyuchasim* [whose parentage is certain], as so it says [in the Torah] ‘...to your God, and that of your descendants after you’ – when your descendants are recognized [certain], the Holy One, blessed be He is your God, and when your descendants are not recognized [uncertain], because they mix their seed with the wives of their friends, He is not your God.”

This implies that the basis of the obligation is to make possible the dwelling of the Divine Presence on every individual in the community of Israel.[[1]](#footnote-1) In any event, according to this reason, the derivation is from “... to be your God, and that of your descendants after you.”

The Radvaz (1:264) discusses the question as to whether, according to this explanation, this law is biblical [*midioraita*] or rabbinic [*midirabbanan*], and he writes that it is possible that the Rishonim are in dispute on this question: Tosfot wrote that this is only an *asmachta*, while it is possible to deduce from the Rambam that this is a biblical prohibition, for while regarding women who cannot be pregnant the Rambam writes (*Gerushin* 11:20), they are forbidden to remarry [during the *havchana* period] by decree of the Rabbis, however, regarding those who may be pregnant he wrote without elaboration that they are forbidden, and it is possible to deduce that they are forbidden to remarry *midioraita*. However, the Beit Shmuel wrote (Even HaEzer 103) that according to Shmuel as well this is a *asmachta*.

**b. Rava**

Rava’s position is that the prohibition [to remarry during the *havchana* period] is a rabbinic decree – lest someone marry his sister from his father, or perform *yibum* with the wife of his brother from his mother, for the child born will think that he is the child of the second husband, and will come to marry the daughter of his mother’s first husband, whom it is possible is his sister, and so on. The prohibition is thus a result of the consequences which may be the result of the fact that the child’s family identity is not known.

We will further note that the gemara asked a question on Shmuel’s reason [for the prohibition], which on the face of it is not relevant regarding a man and his wife who converted who must also wait three months [before remarrying as Jews] - here, on the face of it, the suspicion of “your seed after you” is not relevant, for it is clear who the father is. The gemara explains that by converts as well “we should distinguish between seed sown in holiness [as Jews] and seed sown [conception] not in holiness [as non-Jews].”

**B**

Tosfot Yeshanim there, as well as additional Rishonim (Ramban, Rashba, Ritva and others) discussed the question why the gemara searched for a source for the prohibition of *havchana*, for further on in the *sugya* the gemara says that a man is forbidden to marry a pregnant woman or one who is nursing [her previous husband’s child]; regarding a nursing mother there is a chance that she will become pregnant [by her second husband] and this will dry up her milk [endangering the child she was nursing] (and since this child is not the child of her present husband, he would not give her the expenses of “milk substitutes” and therefore the Rabbis also decreed against marrying a pregnant woman; and if there is a prohibition to marry a pregnant woman, then it should be forbidden to marry any woman who we suspect may be pregnant [thus, any widow or divorcee].

They answer that it is sufficient to forbid a certainly pregnant woman by extension of the law regarding a nursing one, and we do not forbid [on this basis] marrying a woman whom we merely suspect may be pregnant.

The Noda b’Yehuda (First edition, Even HaEzer 18) argues that the gemara applies the prohibition of *havchana* to a married couple who convert as well. However, the prohibition not to marry a pregnant woman would not apply in this case. Hence, the law of “*havchana’* is necessary to cover the case of converts. However, the Avnei Miluim (EH 13:1) rejects the position of the Noda B’Yehuda, and claims that that regarding converts *havchana* is a separate law, and thus in any event it is not necessary that the reason for the prohibition for Jews be relevant to converts as well.

It seems that the Noda B’Yehuda’s opinion is that the reason for the prohibition to remarry [during the *havchana* period] is the same for converts and for Jews, for the need to distinguish “between seed sown in holiness and seed sown not in holiness” is a law in *yichus* *mispachti* [family lineage], since a non-Jew “has no *yichus,*” and the need to know when the child was conceived [i.e. before or after conversion] is to make considering him the halakhic child of his biological father possible. This understanding also emerges from the wording of the Sheiltot (12), who wrote that according to the conclusion of the *gemara* regarding converts that “in holiness, the child is his seed, otherwise, it is not his seed” (that means to say, only a child conceived after the conversion is considered the child of the convert) and all is one reason [for *havchana*]. However, in the Avnei Miluim’s opinion, who sees the reason for *havchana* by converts as a separate one, it seems that the requirement in the *sugya* (according to Shmuel) is to know who the biological father is, and not necessarily the halakhic paternity [in regards to a convert].

**C**

Now we will return to the *sugya* in *Gittin*, and to the dispute whether we count the three months from the time the *get* is written, or from the time it is given. We note that this is a matter of dispute in terms of the halakha as well: the Rif, according to his version of the text of the gemara “and the law is, from the time the *get* is written” rules that this is the halakha, while the Rosh (2:6) rules like Rav, that we count from the time the *get* is delivered, for we rule like Rav in *issurim*, prohibitions, and according to his version of the text of the gemara the above words do not appear. The Shulchan Arukh (Even HaEzer 13:1) rules like the Rif, and the Rama is stringent like the Rosh.

What is the reasoning behind the dispute? Simply, the opinion that we count from the time the *get* is written is very understandable, for since there is a prohibition to divorce by means of a *get yashan* (that means to say, a *get* after whose writing the husband was alone with his wife, lest people say “the *get* preceded her son”; see *Gittin* 39b), we should not suspect that the husband was alone with his wife after the *get* was written, and since the law of *havchana* depends on the couple being alone together, we can count from the time the *get* is written, and so the Rif explained why we ruled, according to his opinion, that we count from the time the *get* is written, even though we maintain that the husband continues to eat of the fruit of his wife’s property until the *get* is actually delivered. These two questions (from when do we start counting the *havchana* period, and until when does the husband eat the fruits of his wife’s property) are not connected to one another, and the question as to when we start counting the *havchana* period is connected only to the question as to from when it is clear the husband did not have relations with his wife (and so wrote the Tosfot Rid here).

We can understand the opinion that we count from the time the get is delivered in three ways:

**1**.

Simply, we can say that according to this opinion we suspect that the husband was alone with his wife even after the get was written, for she still is permissible to him, and although it is reasonable to assume that he would not want to invalidate the get, nevertheless we have not eliminated all doubt, and since there are those who maintain that we are dealing with a biblical [midioraita] prohibition (see the opinion of the Radvaz above), we should count only from the time the get was delivered on the basis of a *sefek* *dioraita* [a doubt regarding a biblical prohibition].

**2.**

The gemara asks on Shmuel’s opinion, that we start counting the *havchana* period from the time the get was written, “People will say that two women live in the same courtyard, this one is forbidden and this one is permitted?” (Rashi: we are speaking of a case of a man who went overseas, and delivered two *gittin* to his two wives on the same day; however, one *get* was written a month before the other; according to Shmuel one wife is permitted to remarry two months after receiving her *get*, and the other one only after three months). Tosfot (s.v. *hasholeach*) understood that precisely for this reason Rav maintains that we don’t start counting, from the time the *get* is written.

This claim itself “People will say two women...” can be understood in two ways:

a. Rashi, at the end of his explanation, writes “people who saw that the two wives were given a *get* on the same day would be puzzled,” which implies that the problem is peoples’ puzzlement itself; the halakha may be seen as ridiculous, since the delivering of the *get* is a public event, in contrast to its being written, and thus we should not start counting from the time the *get* is written.

b. Tosfot in *Yevamot* 42a (s.v. *mai shna*) wrote that the problem is lest people who observed the delivering of the *get* will think that the *gittin* were written in the same day as well, and since they will see that one of the wives remarried after only two months, they will come to permit the other one to remarry after two months as well, even though three months did not pass since the *get* was written in her case.

On the face of it, this explanation is explicit on our *sugya*, and it is a convenient way to explain this opinion. However, this explanation is difficult in light of the sugya in Yevamot (42a). The gemara there regards as equivalent the law of *havchana* in regards to *gittin* and the law of *havchana* in regards to a *yevama*, and asks on Rav, who maintains that in regards to a *get* the woman must start waiting to remarry from the time the *get* was given: according to Rav’s opinion it would be appropriate that a yevama we should start counting from the time of *chalitza* and not from the time of the husband’s death, and yet in regards to a *yevama* everyone agrees that we start counting from the time of the husband’s death?! The gemara there gives a tangential answer (that since after the death of her husband the woman becomes permissible even to the *yavam* – even though if the woman is pregnant by her husband she is forbidden to the *yavam* with an *issur karet* – it is not reasonable to forbid her at that time to marry someone else). Nevertheless, from the gemara’s question we see that it understands that Rav’s reason should be relevant to a *yevama* as well, and the reason “people will say two women” certainly does not seem applicable to a *yevama*!

Tosfot there related to this problem[[2]](#footnote-2) and explained that in regards to *chalitza* this reason is relevant, for in the case of two women, wives of two brothers who died at different times, and the *yavam* performed *chalitza* on both at the same time – one within three months of her husband’s death, and one after three months – we could come to permit both of them at the same time.

However, this answer is difficult, (and indeed Tosfot HaRosh and the Rashash object) for this concern is only if the *yavam* performed *chalitza* with one of the *yavamot* within three months of her husband’s death – something that is, on the face of it, forbidden, and how is it possible that the Rabbi made a *takana* lest one violated a prohibition and create a concern for a mistaken impression?!

**3**.

Because of this question, the Rashash wrote:

“In my humble opinion Rav’s reason is not because of “two women...”, only R. Natan bar Hoshaya asked on Shmuel there on the basis of this reason, and Abbaye answered well “the date written in the *get* proves it, etc.” And as for Rav’s reason, we can explain that the Rabbis established the *takana* of three months from the time the woman becomes permitted to remarry, and thus the gemara objects well that here too we need three months from the time that she becomes permitted, that is to say, from the time of *chalitza*.

The Rashash gives a novel explanation that the reason of the one who maintains that we start counting from the time of the delivery of the *get* is essential and fundamental, and not merely based on the concern that “people will say, two women...” It is clear from the Rashash that although the reason for the Rabbinic decree is based on distinguishing parentage at birth, which is connected to the question of the couple being alone together, the content of the *gezeira* was extended, and now its essence is to distinguish between, and separate, the previous marital connection [*zika*] and the new one, and thus we begin counting only from when the first marriage connection was completely concluded. And this is the fundamental basis of the comparison of a divorcee and a *chalutza*, and the reason that in principle it is required to wait three months from precisely from the time of *chalitza*.

And it is possible that two proofs to this approach, which understands that one who maintains that *havchana* starts from when the *get* is delivered as an obligation to separate the two marriage connections, without a direct connection to the possibility of pregnancy, may be brought:

1. The gemara in *Yevamot* 42b cites a list of women who with certainty are not pregnant (a woman anxious to return to her father’s house, a woman whose husband was imprisoned, a barren woman who cannot become pregnant, an elderly woman [beyond childbearing age], a minor, or an *aylonit* [a female with male characteristics who cannot become pregnant]) who, in R. Meir’s opinion, must also wait three months to remarry. Rashi there and the Rambam (1:20) explain this as a *gezeira* because of the similarity to women who are likely to become pregnant. However, it is possible, based on the approach of the Rashash, that we are dealing with a prohibition in principle of separating the marriage connections, which exists even when there is not concern regarding pregnancy (and thus the Marcheshet (2:2) essentially wrote).
2. The Rif (8b in the pages of the Rif) cites someone who rules like Reish Lakish that the husband has the right to the fruits of his wife’s property only until the *get* is written, since we accept the opinion that *havchana* starts from the time of the writing of the *get[[3]](#footnote-3)* And it is possible that this opinion, which compares these disputes, also maintains that the essential basis of this *takana* is to separate the two marriage connections, and therefore there is room to compare the law of *havchana* and thelaw of the husband’s right to fruits of his wife’s property, and thus it is possible to adduce a proof from the ruling regarding “from when do we count in regards to a *get*” to the ruling regarding “fruit.” According to this opinion, in his opinion, the marriage connection concludes, on a certain level, already at the time the *get* is written (similar to the opinion of Beit Shammai that if someone wrote a *get* and changed his mind and did not divorce his wife, the woman nevertheless if forbidden to marry a *kohen* – see *Gittin* 81a in the mishna; and even in the opinion of Beit Hillel who disagree, it is possible that if the husband did not change his mind, the process of divorce already begins when the *get* is written), and therefore the determining time in regards to the two laws is the time that the *get* is written.

If we accept this explanation, we may possibly go further and say that according to the opinion cited in the Rif, the nature of the *takana* is, according to all opinions, distinguishing between the marriage connections, and the dispute whether we start counting the *havchana* period from when the *get* is written or from when it is delivered is a dispute as to when the marriage connection terminates – at the beginning of the process of divorce, or at its conclusion.

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

**נמצא אחד מהם קרוב או פסול**, מאת הרב משה ליכטנשטיין

גיטין יח: "איתמר אמר לעשרה וכו'. רש"י ד"ה נמצא.

מכות ה:, המשנה השנייה. רי"ף שם (ב: מדפי האלפס) "וחזינן לגאון... שלא מדעת חברו". רמב"ם הל' עדות פ"ה ה"ה-ה"ו.

בבא בתרא קסב: "דתניא הרחיק את העדים... פוסל בארבעה". תוד"ה נמצא (עד סוף העמוד).

[חידושי רבנו חיים הלוי על הרמב"ם, הל' עדות פ"ה ה"ו, ד"ה ובעיקר]

1. Is it obvious that the rule that if one witness is disqualified, the entire testimony of all the witnesses is invalidated, applies to *shtarot*? Try to answer, with reference to the various possibilities concerning the nature of a *shtar*, and the role of *testimony* in a *shtar*.

2. What is the answer to this question that arises from the *sugya* in BB 162b? What do the *Rishonim* hold?

3. Is there an alternative to Rashi in explaining the law of *nimtza echad karov o pasul* in Gittin 18b?

1. Similarly,Rashi (*Sanhedrin* 39b s.v. “*mipnei mah*), wrote, in regard to the question of the gemara why Ovadyahu merited prophecy “for he was a convert, and the Divine Presence dwells only on the *meyuchasim* in Israel, as it is written “...and to be your God, and that of your descendants after you.” [and converts are not considered *meyuchasim*] [↑](#footnote-ref-1)
2. [In the Tosfot as we have there seems to be a typographical error, and the beginning of their words should read “For certainly he did not have relations with her between the writing of the *get* and its delivery” see Tosfot HaRosh and the Rashash there; Tosfot’s statements are explained clearly in Tosfot Yeshanim in Rav Shoshana’s edition there.] [↑](#footnote-ref-2)
3. (As was said above, the Rif himself rejects this claim, for in his opinion we do not compare these two disputes, since the question of when we start counting the three months depends on the practical question of concern regarding the couple being alone together and pregnancy). [↑](#footnote-ref-3)