YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**GEMARA GITTIN**

Daf 21a - Conveying Ownership of a *Get* to a Woman[[1]](#footnote-1)

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**Sources and questions:**

1. Gittin 21a, “Rava stated, ‘*amar Rava katav lah get*…’” to the end of the *amud*.
2. Gittin 77b, “*ha’hu shekhiv mera*… *ahai ma’aseh amerah*.”

Commentaries: Rashi, Tosafot s.v. “*mah*”; Ran on the Rif (39b), s.v. “*ve-ha*”, toward the end, “*u-mikol makom mi-din chatzerah hi mitgareshet*…”

1. Rashba 21, s.v. “*ha*”

**Questions**

1. Is there a distinction between utilizing a *kinyan agav* (“transaction of ownership by force of” – a secondary *kinyan* effected together with a separate, primary act of *kinyan*) and utilizing *kinyan chatzer* (“*kinyan* by means of [real estate] property”) when conveying ownership of a *get* to a woman? What is this distinction and what are the reasons for it?
2. Does Rashi on *daf* 77b indeed understand that *kinyan agav* alone is sufficient in issuing a *get*?
3. At the end of *daf* 21b: What is the significance of a father receiving his minor daughter’s *get* without her consent, if in the instance of issuing a *get* by means of *kinyan chatzer* this is not effective independent of the woman’s consent (“*bein mi-da’atah, bein ba’al korhah*”).

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**Her *Get* and *Chatzer* Are Conveyed Simultaneously**

**Kinyan Chatzer**

Rava explains that a *get* may be issued by placing it in the husband’s *chatzer* (“courtyard”) and thereafter conveying the courtyard to the woman’s ownership[[2]](#footnote-2). The Gemara does not explicitly state which *kinyan* effects the woman’s acquisition of the *get*, however the very implementation of the term “*chatzer*” in describing the land infers that this is indeed *kinyan chatzer*. A woman can be divorced by means of a *kinyan chatzer* whereby her husband places the *get* in her courtyard. In this instance, the woman’s receipt of the *get* is effected by way of the *kinyan chatzer* process. In our instance the courtyard itself and her *get* are transferred simultaneously into her ownership. Indeed, Rashi here (s.v. “*kena’ato*”) comments, that “her *get* and courtyard came to her as one.”

In the seventh chapter of Gittin, a seemingly identical instance is discussed:

“A certain deathly ill person (“*shekhiv mera*”)… go tell him to convey ownership to her of that place wherein he placed her *get*; let her go, open and close the door, and thus take possession of it” (Gittin 77b).

Presumably this instance is based on the same principle: the *get* is in the husband’s courtyard, which he then conveys to his wife (she acquires the property by means of *chazaka* – taking “hold”) and consequently is divorced. The Gemara concludes with the explicit statement that this instance is founded on the principle, “her *get* and courtyard are conveyed (to her possession) simultaneously.”

Kinyan Agav

Rashi explains that the woman acquires the land by means of *chazaka*:

“And now he gives her the courtyard and the *get* therein, as we are taught (in the Mishna), ‘Property that cannot serve as security may be acquired together with property that can serve as security by (means of) money, contract, or *chazaka* (Mishna Kiddushin 1:5).” (Rashi s.v. *harei*, ibid.)

In contradistinction to the Gemara’s discussion here, Rashi on *daf* 77b explains that the woman’s possession of the *get* is not effected by way of *kinyan chatzer* but rather by *kinyan agav*. The Ramban there rejects Rashi’s explanation and the resulting halakhic inference, rather asserting that a woman cannot be divorced by a *kinyan agav*.

The Ran explains:

“Certainly a woman cannot be divorced by (*kinyan*) *agav*, for we require ‘*ve-natan be-yada*’ (‘he shall place in her hand,’ Devarim 24:1) and this is absent. Here (the discussion) involves the law of *chatzer*, as (the Gemara) explicitly states, that this (instance represents) her *get* and *chatzer* coming as one.” (39b in the Rif)

Ran’s claim is that not every *kinyan* effective for financial transactions will be effective for a *get*, for it is not sufficient to convey the *get* to the woman’s possession, rather it is necessary to fulfill the requirement of the verse, “*ve-natan be-yada*” (“he shall place in her hand”, Devarim, ibid.). Conveyance by means of k*inyan chatzer* fulfills the requirement for “her hand,” since “(the law of possession by means of one’s) courtyard is derived from ‘her hand.’” This is not the instance of *kinyan agav*, however, for while this would result in the woman’s ownership of the *get*, the *get* would not be considered “in her hand.”

Ran offers evidence for the Gemara’s context being the efficacy of *kinyan chatzer*, from the advice proffered to the *shekhiv mera* desiring to divorce his wife who was told to convey to his wife ownership specifically of the place wherein the *get* lay. If the context is that of *kinyan chatzer*, then this requirement is apparent. However, if the context is that of *kinyan agav*, it is not necessary for movables to be placed (“*tzevurin*” – “accumulated”) on the real estate together with which they are being acquired by means of *kinyan agav*[[3]](#footnote-3). This proves, then, that for conferring possession of the *get*, the Gemara demands *kinyan chatzer* while a *kinyan agav* is insufficient.

Rashi’s Approach

From this question it is reasonable to conclude that Rashi, too, does not believe that a *kinyan agav* may be used to convey a *get*, for the same reasoning of Ran, that this manner of *kinyan* does not fulfill the requirement of “in her hand.” Rather, Rashi contends that the fulfillment of “*ve-natan*” (“and he shall give”) can be distinct from that of “*be-yada*.” While the actual effectuation of the transaction by means of *kinyan agav* does not fulfill the requirement of “*be-yada*,” it most certainly does fulfill the act of giving the *get*, for now the *get* is in the woman’s possession. An additional requirement remains: the *get* must be conveyed to the hand of the woman, which indeed occurs since the *get* is located within her courtyard (that she just acquired), and any object located within one’s property is seen to be within one’s hand (even if this object was not acquired itself by *kinyan chatzer*).

Consequently it also becomes clear why the *get* must be within the courtyard even in the event that *kinyan agav* is utilized, despite this *kinyan* itself not requiring “*tzevurin*.” However, the question still remains: Why didn’t Rashi rely on *kinyan chatzer* alone to fulfill both requirements – “*ve-natan*” by means of the *kinyan chatzer* itself, and “*be-yada*” since the *get* is located within the newly acquired courtyard. Rashi’s commentary itself does not answer this, however two possible solutions can be proposed:

1. The opinion of the some Rishonim (see Shitah Mekubetzet, Bava Metzia 31a) that *kinyan chatzer* is only effected for objects entering the courtyard after the courtyard is in the possession of its owner (i.e. *kinyan chatzer* effects the transaction by means of an object’s entry into the courtyard, and not by its location within the courtyard). In the instance under discussion, the *get* lies within the courtyard that is in the husband’s possession, and thus the courtyard itself cannot effect *kinyan*, nor, clearly, the act of giving the *get*. This act, then, requires the *kinyan agav*.
2. It is possible that Rashi understands that the effectuation of ownership over a *get* by means of *kinyan chatzer* occurs the moment following the transfer of ownership over the courtyard by means of the real estate transaction, and not concurrently. Logically, then, the woman first acquires the courtyard and only thereafter the *get*. It is possible that in such an instance we cannot declare that “her *get* and courtyard are conveyed simultaneously,” for they are effectuated consecutively – while they occur in close proximity, this is still not simultaneous but rather sequential[[4]](#footnote-4).

In any event, this investigation has led to our understanding that there are two aspects to issuing a *get*:

1. The act of *netina* (“giving”), which is transfer of the *get* to the woman’s possession.
2. The physical transfer of the *get* in to the woman’s hand, or any other location considered “her hand” by law. Rashi’s innovation allows for fulfilling these two aspects by two distinct modes. However, even those who dispute Rashi on this point will consent to the analysis itself that there are two distinct requirements in issuing a *get*[[5]](#footnote-5).

Armed with this distinction we can address the difficult and enigmatic closing of the Gemara’s discussion.

Abaye’s Difficulty

Abaye questions the possibility presented by Rava whereby one can convey a courtyard containing a *get* to a woman he desires to divorce. Abaye questions: “Just as (in the instance of a *get* placed in) her hand, (the divorce can be effected) with her consent or without her consent; so too (if the *get* is placed in) her courtyard (the divorce should be effected) with her consent or without her consent – however a gift (can only be proffered) with her consent and not without her consent!” The Gemara then raises a counterproof from the instance of a *shaliach* (“agent”) for receipt of the *get*, an instance that may only transpire with the woman’s consent; however this is rejected for two reasons:

1. *Chatzer* is derived from the law of “her hand,” and therefore specifically *kinyan chatzer* must be effective without her consent, while *shelichut* (“agency”) is not derived from this law.
2. *Shelichut* is, indeed, effective in an instance absent of consent – the instance of a father who receives the *get* of his minor daughter.

These two reasons are problematic and difficult to understand:

1. “*Shelucho shel adam ke-moto*[[6]](#footnote-6)” (“The agent of an individual is equivalent to himself”) forms the basis of agency for receipt of a *get*. By means of the unique law of the *shaliach* a *get* can be delivered to this *shaliach* rather than to the woman herself. If the possibility of divorce without the woman’s consent must be applicable to her receipt of the *get* by her own hand, then this will apply to the hand of her *shaliach*, too, for the agent’s hand simply replaces her hand. While the *shaliach* cannot act as her agent unless she so consents, transfer of the *get* can be performed into the hand of an unwilling recipient.
2. Simply the existence of one instance of *shelichut* without the consent of the beneficiary does not answer the question at all. Acquisition by means of *kinyan chatzer* also comprises instances of divorce without consent, such as when the courtyard belonged to the wife prior to issuing the *get*. However, Abaye’s contention is that in the instance under discussion the act of giving the *get* must be such that the woman is unable to prevent this act. Although a father receives the *get* of his minor daughter without her consent, in regular *shelichut* this aspect is absent. Essentially this is Tosafot’s (s.v. “*ve-i’ba’it*”) question, which they basically leave unanswered[[7]](#footnote-7).

Rav Chaim Soloveitchik questioned Ran’s understanding of Rashi, that divorce may be executed whereby possession of the *get* is transferred by way of a transaction that is effective in transferring regular financial ownership. How can Abaye require the giving of a *get* meet the standard of issuance “with her consent or without her consent”? Even if this requirement is correct, and in its absence the issuance of the *get* is invalid, nonetheless effectuation of monetary possession of the *get* does transpire (for in financial matters there is no *gezerat ha-katuv* (“Torah dictate”) requiring “with her consent or without her consent”), and consequently she should be divorced precisely as she may be divorced by way of *kinyan agav* with respect to acquiring the *get*.

If Abaye suggests invalidating a manner of giving a *get* that is only possible “with one’s consent and not without one’s consent,” then following our above introduction we can analyze his contention. Does this invalidate the act of giving – the *netina*, or does it invalidate the actualization of the *get* being delivered into her hand, “*be-yada*?” In other words, does a manner of giving a *get* that is only possible with the woman’s consent constitute a deficiency in issuing the *get* or rather in the requirement to effectively place the *get* in the woman’s hand itself?

It is clear from Abaye’s terminology that the answer is the latter – “Just as (in the instance of a *get* placed in) her hand, (the divorce can be effected) with her consent or without her consent.” This would also seem to be the logical presumption. The act of giving when issuing a *get* is not specifically unique to the field of divorce, which is why this act must be defined in relation to the definition of *netina* throughout the Halakha. The concept, however, of “*be-yada*,” is unique to the issuance of a *get* and consequently it is reasonable to understand the innovation that this unique requirement must incorporate the possibility of issuance without the woman’s consent. In other words, Abaye contends that divorce can only occur when the *get* reaches her in a physical act independent of her consent. This is not a law of obtaining ownership of the *get* or of the *get* entering her possession, but rather it pertains to the physical location of the *get* in her hand; thus the mechanisms of acquiring the *get* or the woman expressing her will are extraneous to this process.

Now we can explain the continuation of the Gemara. Rav Shimi bar Ashi raises a difficulty from *shelichut* – when appointing an agent to receive the *get* this can only be achieved be means of the woman’s consent and not in the absence thereof. Abaye offers two solutions:

1. The rule of *shelichut* is not derived from the term 'her hand' but rather “from *ve-shilach* – ‘*ve-shilecha*’ (Devarim ibid.)” (the superfluous *vav* in “*ve-shilecha*”). In the instance of an agent for receipt of the *get*, the two aspects of *netina* that we explained above are implemented through this agent: the act of giving is executed by the husband giving the *get* to the agent, and also the aspect of “*be-yada*” is achieved. This latter aspect is a unique law regarding receipt of a *get* by an agent, for in general we do not consider the physical person of the agent to be the physical person of the individual who appointed him[[8]](#footnote-8). A *get* must incorporate the *gezerat ha-katuv* such that not only the act must be related to the individual on whose behalf the agent acts, but the hand of this agent must also be considered the very hand of the woman who appoints this agent.

Therefore, while the agent can only act as such for someone who so desires, we have already explained that Abaye’s rule is not related to the act of giving but rather to fulfilling the requirement of “*be-yada*.” “(The law of) s*helichut is not derived from ‘her hand’*” – this signifies that the agent’s hand is not considered as merely an additional ‘hand’ for the woman, in a similar fashion to her courtyard; rather the agent replaces the woman and is seen to represent her actual physical person. The moment this agent is appointed – and thus is endowed with the status of her physical person – the act of giving into his hand is executed without his consent, precisely as every *get* is given to a woman. Should the woman void the agency of her agent he will no longer be able to receive the *get* on her behalf, however she will not be able to prevent the agent from ‘being’ her hand as long as he is considered to represent her.

Consequently, then, in contradistinction to the law of divorce by *kinyan chatzer* whereby a woman can prevent a specific courtyard from representing her hand, she cannot prevent this agent from ‘being’ her ‘hand’ by merely voiding his agency. Such an act is akin to renouncing her ownership of her courtyard, which, of course, is a question that Abaye did not raise.

1. Now the second solution becomes clear. Abaye answers that *shelichut* absent of consent exists in the instance of a father who receives a *get* on behalf of his minor daughter.

Let’s consider the instance of divorcing a minor: Who is the legal party in this divorce? In other words, with whom is the husband executing the divorce proceedings? Presumably the father is the legal *be’alim* (“owner,” holder of the rights) in the marriage and divorce of his minor daughter. The father performs the *kiddushin* (“betrothal”) of his daughter since he holds the rights to his daughter’s marriage, and therefore he also receives the *get*. Indeed, a minor daughter cannot effect her divorce without the consent of her father[[9]](#footnote-9). Furthermore, the Gemara in Kiddushin (44b) states that even a *na’ara* (“youth,” a girl between the age of 12 and 12 and a half years old) and not merely a *ketana* (minor) is considered an agent of her father with regard marriage and divorce (rather than the father being her agent in this regard). Why, then, does the Gemara term the father as the “*shaliach*” of his minor daughter?

It would seem that the two discussions in the Gemara relate to two separate laws. Regarding the act of divorce itself – the father is the principle party (the “*be’alim*”) and not the woman’s agent. However the requirement that the *get* be placed in the woman’s hand is a specific law regarding the woman’s physical person, in which instance it is incongruous for the husband to place the *get* in the father’s hand. However there is an explicit *gezerat ha-katuv* that a father can accept his minor daughter’s *get*, signifying that he is considered her agent in this regard such that his hand is considered to represent her physical hand. Consequently, the Gemara contends that the general law of agency for receipt of a *get* does incorporate the possibility of unwilling receipt, and not solely in this instance of the minor’s father; the very law of an agent for receipt of a *get* whereby the agent’s hand is considered to represent the physical hand of the woman constitutes the necessary element of absence of consent. Solely the law of agency classifying the deeds of this agent as the deeds of the woman requires her consent, while the second aspect, that the agent’s hand represents her physical hand is effective even in the absence of her consent.

Thus, since we have already presumed that Abaye’s requiring the giving of a *get* be possible regardless of the woman’s consent to be solely a requirement of “*be-yada*,” and not an element of the act of *netina*, the instance of *shelichut* no longer poses a difficulty. In *shelichut* the necessity for her consent relates to the giving and receipt of the *get*, yet not to the required status of “*be-yada*.”

The distinction between these two solutions in the Gemara relates to the definition of the law of “*be-yada*.” The second solution understands that this is a separate *halot* (effectuation) of the agency; the woman receives another ‘hand,’ and thus this becomes an instance of agency that is independent of her consent. The first solution infers that this is not an additional ‘hand;’ rather the agent is considered to represent the physical person of the woman and her hand, and thus the woman’s consent is of no consequence.

**Sources and questions for the next *shiur*:**

Reformatting a *Get* after its Composition

1) Gittin 21a, "Bi-shlama… shema yiktom," 22a

Rashi 22a, s.v. Shema

2) Tosafot 21b, s.v. Yatza

Ramban, s.v. Yatza

Questions:

1) Which part of the gemara suggests that the disqualification applies even to items which are not *mechubar*?

2) By adopting the position of Rabbeinu Hai does the Ramban view "*mechusar* *ketzitza*" as part of an item's identity?

3) How may we explain Rabbeinu Tam's claim that any cutting - even of detached items - invalidates the *get*?

1. An essay on a similar topic can be found in Alon Shevut vol. 155, “[A *Get* by Means of Proxy and *Chatzer* in the Absence of the Woman’s Consent,” Eli Keinan](http://asif.co.il/download/kitvey-et/alon%20shevut/alonshevut155/155get.html), appearing in “Alonei Etzion, the collection of Yeshivat Har Etzion Publications, 5766. [↑](#footnote-ref-1)
2. This *shiur* will not examine the instance of one’s ambulatory property (“*chatzer mehalekhet*”) that relates to conveying ownership by means of one’s slave rather than real estate property. [↑](#footnote-ref-2)
3. Kiddushin 27a, Shulchan Arukh 202:1,2 [↑](#footnote-ref-3)
4. See Rav Chaim Shmuelevitz in Sha’arei Chaim, 46. [↑](#footnote-ref-4)
5. A more extreme approach than that of Rashi can be found in that of Rambam who contends that a time separation may exist between the moment of giving the *get* and the actual receipt of the *get* by the woman. This possibility presents in the Gemara’s discussion here regarding a bound slave – see Rambam, *Hilkhot Mekhira* 5:18, and Rashba’s question on the Gemara here. See further the Rambam, ibid. 6:5 and 5:2. In all these instances the woman is divorced after she receives the *get* even though in the interim the husband has already concluded his issuing the *get*, and the process is not considered invalid as is the instance of “take your *get* from the ground (Kiddushin 24a).” It must be explained, then, that “take your *get* from the ground” constitutes a defect in the act of giving the *get*, an act which occurs immediately in all these instances, whereas the woman will only be divorced when the *get* physically reaches her, and this can be attained by an action of the woman herself, even after the passage of time. [↑](#footnote-ref-5)
6. Kiddushin 41a. [↑](#footnote-ref-6)
7. See also the Rashba. [↑](#footnote-ref-7)
8. This explains why *shelichut* cannot be implemented with regard fulfilling *miztvot*. Should I appoint an agent to don *tefillin*, the act of donning the *tefillin* is indeed my act, however the *tefillin* are located on the arm of the agent and not on my arm. [↑](#footnote-ref-8)
9. Shulchan Arukh, Even Ha’ezer 141:4. [↑](#footnote-ref-9)