YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**Halakha in the Age of Social Media**

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**In loving memory of Rabbi Dr. Barrett (Chaim Dov) Broyde ztz"l**

**הוֹלֵךְ תָּמִים וּפֹעֵל צֶדֶק וְדֹבֵר אֱמֶת בִּלְבָבו**

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**Shiur#05: The Videoteleconference *Get***

In our *shiur* on social media and *berakhot,* we saw that the Poskim debate whether talking on the telephone or through a computer or television screen could be considered similar to “in-person” interactions. One of the most important questions that is related to this arises in the area of *ishut.* The writing and delivery of a *get* (bill of divorce) must be done either by the husband or his agent. To appoint an agent, the husband must directly instruct someone to write and deliver the bill divorce to his wife. In the last hundred and fifty years, Poskim have examined whether these instructions can be delivered by telephone or, more recently, videoteleconference. Is such communication direct or not?

For this issue, we will be drawing heavily on Rav Chaim (Howard) Jachter’s excellent treatment of this topic in his article “The Use of a Videoteleconference for a Get Procedure” in the *Journal of Halacha and Contemporary Society* XXVIII. The updated version has been published on YUTorah: <https://www.yutorah.org/lectures/lecture.cfm/736614/rabbi-chaim-jachter/the-use-of-a-videoteleconference-for-a-get-procedure/>.

**The Problem**

 Rav Jachter summarizes the motivation for this discussion as follows:

In a conventional situation, a Get procedure involves a husband and wife both appearing before a Bait Din to execute a Get. Even if both parties live a great distance from each other, they may each appear in Batei Din in their respective areas, and the Get may be executed through the use of an agent or agents. It is especially important for the husband to present himself to the Bait Din, since he must directly issue orders to a scribe and two witnesses to respectively write and sign the Get.

Sometimes, though, either the husband or the wife is situated a great distance from a competent Bait Din recognized to supervise a Get proceeding. Halachic authorities have been grappling with this problem for centuries, and various proposals have been suggested and sometimes implemented.

***Tzivui Ha-ba’al:* The Husband’s Instructions**

The Talmud in *Gittin* cites a *baraita* which states that the scribe and witnesses cannot write or sign a *get* unless they are told to do so by the husband. This concept is codified as *tzivui ha-ba’al*:

If **the scribe wrote** the bill of divorce **for her sake and the witnesses signed it for her sake** then **even though they wrote it, and they signed it, and they gave it to** the husband **and he gave it to** his wife, **the bill of divorce is void until they hear** the husband’s **voice when he says to the scribe: Write** the document for the sake of my wife, **and to the witnesses: Sign** the document for the sake of my wife. (*Gittin* 72a, Koren translation)

As the Talmud explains, this means that the husband cannot tell someone to instruct others to write the *get.* This is accepted in *Shulchan Arukh* (EH 120:4)

The general consensus is that the appointment itself cannot be done though a third party, but the Poskim debate whether the husband can appoint the scribe and witnesses directly, but without their being present, and then inform them through a third party. Both positions are cited by the *Beit Shemuel* (EH 120:7), *Chelkat Mechokek* (EH 120:12) and *Peri Chadash* (EH 120:6). Rav Jachter summarizes the current approach of Poskim:

Almost all great Halachic authorities of the past two centuries have ruled leniently in cases where it would otherwise be impossible to obtain a Get on behalf of the wife. Generally speaking, these authorities either adopted the approach of the Maharim Mi’Brisk or ruled that a written appointment is valid if no viable alternative exists.

A small minority of decisors do not accept the use of this procedure even in the most dire circumstances. These include Pri Chadash (Even Haezer 120:6) and Chazon Ish (Even Haezer 85). However, Rabbi Eliezer Waldenburg (Tzitz Eliezer 10:43) of the Bait Din Hagadol in Yerushalayim notes that "virtually all" Batei Din in Israel permit an authorization in writing in cases of very urgent need. Rav Gedalia Schwartz, the head of both the Bait Din of the Rabbinical Council of America and the Bait Din of Chicago, reports that, generally speaking, this is also the practice of Batei Din in North America. This author adds that this is especially true in a situation where it is highly doubtful that the couple's marriage was Halachically valid, such as when the couple married only in a civil ceremony.

**Conceptual Background**

Why must the husband directly appoint the scribe to write the *get*? Even the more lenient approach believes that the appointment must be done directly, even if they permit informing the scribe and witnesses indirectly. Several models can be suggested. First, this could be a general instance of *shelichut (*agency). The husband, not the scribe or the witnesses, is divorcing his wife. Thus, the creation of the *get* must be done by the husband or his agents. This position is taken by several Rishonim, such as Rav Yitzchak of Dampierre (Tosafot*, Gittin* 9b, s.v. *Af al pi*).[[1]](#footnote-1)

Other Rishonim, such as Tosafot (*Gittin* 22b, s.v. *Ve-ha)* take the position that this is a function of *lishmah.* Throughout *Gittin*,[[2]](#footnote-2) it emerges that a *get* must be written for its intended purpose — that it be used for this man, to divorce this woman. Perhaps the requirement that the husband directly instruct the scribe and witnesses stems from this higher level of intent that is necessary to create a *get* and effectuate a divorce.

The *Nimukei Yosef* (*Bava Batra* 168a, s.v. *Ve-khatav ve-natan*) suggests, even more straightforwardly, that this is the way to create a situation in which the husband is “having the *get* written.”

These latter two formulations seem to point in a direction developed extensively by *mori ve-rabbi* HaRav Aharon Lichtenstein zt”l — that divorce is not simply a legal procedure. Rather, the laws of *gittin* are meant to encapsulate the existential divide that it represents. Thus, the husband must be intensely and intimately involved in the process for it to work. [[3]](#footnote-3)

The Chazon Ish (*EH* 85) seems to take this approach as well, arguing that we need the will of the husband, the scribe and the witnesses to be united at one moment.

Rav Moshe Feinstein (*Iggerot Moshe, EH* 1:117) raises a radically different possibility. In general, the gold standard of evidence in Halakhais a pair of two valid witnesses. However, Rav Feinstein suggests that it is only courts who are required to accept testimony as evidence. Thus, the scribe and witnesses must know that the husband wants to divorce his wife. However, they are under no obligation to believe anyone, even valid witnesses, as to the husband’s intent. Thus, the Torah requires that they receive their instructions directly from the husband, so there can be no doubts as to whether or not he desires them to initiate the divorce proceedings.[[4]](#footnote-4)

The question that the Poskim contend with is what counts as direct instruction.

**Written Instructions**

The first question we must deal with is whether the husband can instruct the scribe and witnesses in writing. This issue begins with a *mishna* (*Gittin* 7:1, BT *Gittin* 67b)

In a case where the husband **became mute, and** two people **said to him:** Shall **we write a bill of divorce for your wife, and he nodded his head** indicating his agreement, **they examine him** with various questions **three times. If he responded to** questions that have **a negative** answer: **No, and** responded **to** questions that have **a positive** answer: **Yes,** indicating his competence, **they shall write** the bill of divorce **and give** it to his wife based on the nod of his head. (Koren translation)

In this passage, we find the first indication that the husband does not need to convey his wishes **verbally,** as we allow a mute person to divorce his wife, after we have established competence.[[5]](#footnote-5) We seem to require only confirmation that this is the husband’s will (Tosafot*, Gittin* 72a, s.v. *Kolo*).

From this *mishna*, Rav Kahana (*Gittin* 71a) derives that *tzivui ha-ba’al* can be done through writing even for a deaf-mute:

**Rav Kahana says** that **Rav says:** With regard to **a deaf-mute who can express** himself **through writing,** the judges of the court may **write and give a bill of divorce to his wife** based on his written instructions. **Rav Yosef said: What is he teaching us? We** already **learned** in the mishna: In a case where the husband **became mute, and** the members of the court **said to him:** Shall **we write a bill of divorce for your wife, and he nodded his head** indicating his agreement, **they examine him** with various questions **three times. If he responded to** questions that have **a negative** answer: **No, and** responded **to** questions that have **a positive** answer: **Yes,** indicating his competence, **they shall write** the bill of divorce **and give** it to his wife based on the nod of his head.

However, the Gemara goes on to reject the position of Rav Kahana. The Rishonim debate whether the Talmud simply rejects his **application to a deaf-mute** who is considered legally incompetent or rejects **the possibility of issuing a written *tzivui ha-ba’al****.*

The Gemara, though, subsequently cites a *baraita* that conclusively rejects this.

Rambam (*Hilkhot Geirushin* 2:16) adopts the former approach, thus validating a written *tzivui ha-ba’al.* Many Rishonim, however, invalidate such written instructions.[[6]](#footnote-6)

However, if writing is not sufficient, then why is nodding one’s head in assent, which is explicitly accepted by the *mishna* above? The Rosh (*Gittin* 7:19) addresses this and contends that “nodding is better because he shows it with his body.” Rav Jachter cites Rav Zalman Nechemia Goldberg, who interprets the view of the Rosh as follows:

…although writing is a bodily act, one cannot discern the writer's intention from the act of writing itself. Nodding the head is analogous to speech, on the other hand, because one can discern the intent of the husband from his bodily action alone. (Jachter, n. 4)

Thus, according to this latter group of Rishonim, we maintain that the *tzivui ha-ba’al* can only be done verbally or with a direct physical act that is legally equivalent. In *Beit Yosef* (*EH* 120) and *Shulchan Arukh* (*EH* 120:5), Rav Yosef Karo cites both views, though he indicates that he regards the stringent position to be normative. However, the *Ba’er* *Heite*v (120:10) and *Get Pashut* (120:26) both rule that in cases of great need, one may be lenient.

**Telephone**

Can the appointment be done by telephone? There are two potential problems:

1. Without the physical presence of the husband, the scribe and witnesses cannot

be sure of the speaker’s identity.

1. As mentioned, the case of *tzivui ha-ba’al* requires a unique level of direct communication, at least according to many authorities. Does a telephone call qualify?

Many Poskim feel it is permitted. They note that in many areas of Halakha(see *Gittin* 23a, for example) voice recognition counts as proof of identity. As for the second issue, they assume this is considered direct communication. Rav Melech Schachter formulates the issue as follows: the command must be direct from the husband to the scribe and the witnesses, and in this case, **they hear the command from his mouth, literally!** (translation and emphasis mine). He further writes that he asked both Rav Moshe Feinstein and Rav Joseph Soloveitchik, and they both agreed.[[7]](#footnote-7)

Some authorities object simply because of evidentiary issues.[[8]](#footnote-8) Others, however, take issue with Rav Schachter’s view cited above. They contend that speaking to someone on the telephone is **not considered direct communication.** Thus, even if we have **no doubt that the husband is on the telephone, his instructions do not count.** This is how Rav Eliezer Waldenberg understands the view of Rav Yitzchak Schmelkes.[[9]](#footnote-9) Rav Menasheh Klein (*Shut Mishneh Halakhot* 14:113) argues that this is the case because in all areas of Halakha*,* we do not consider a voice transmitted though a telephone or similar media to be the person’s voice.

**Videoteleconference**

Rav Jachter writes that though no consensus has emerged regarding telephones, a *tzivui ha-ba’al* done by videoteleconference should be good according to all authorities (a possibility already raised by Rav Schmelkes over one hundred years before the technology was invented). He argues that this will solve the potential evidence problems raised above (though perhaps not entirely). More importantly, he cites Rav Zalman Nechemia Goldberg as ruling that this will solve the “direct communication” issue as well:

Rav Goldberg also points out that the *Chazon Ish* and Rav Moshe Feinstein interpret the Ramban's position very differently than Rav Schmelkes. The *Chazon Ish* (*EH* 85) writes that the Ramban requires "that the will of the husband and the will of the scribe and witnesses should be unified in one moment, and that the husband should be aware of the will of the scribe, and the scribe should be aware of the will of the husband, and it all should occur simultaneously." This requirement seems to be fulfilled if a husband appoints the scribe and witnesses via videoteleconference.

He further notes that according to Rav Feinstein, who thinks that the entire issue of *tzivui ha-ba’al* is based on the scribe’s not needing to believe the witnesses, this should surely be fine.

In an addendum published in 5761, Rav Jachter writes as follows

Since the time I first published my proposal regarding the use of videoteleconferencing for a Get, Poskim have had a mixed reaction. Rav Zalman Nechemiah Goldberg, Rav Herschel Schachter, and Rav Mordechai Willig support the idea, whereas Rav Yosef Shalom Elyashiv, Rav J. David Bleich, and Rav Elazar Meir Teitz reject the proposal. Accordingly, this proposal cannot be implemented as no rabbinical consensus has emerged regarding this issue. Perhaps it can be relied upon in a situation where it is highly doubtful whether a Get is necessary, such as when the couple was married only in a civil ceremony and never had a Chuppah. Those who rule strictly are concerned that the videoteleconference appointment is unacceptable according to the Ramban and still has potential for fraud.

Rav Shlomo Weissman told this author that the position of the Beth Din of America is to avoid this if possible, but in cases of *igun,* they would accept it. Rav Michoel Zylberman told this author that usually the Beth Din of America will use a combination of a telephone call and an ad hoc *beit din*.

Note that for reasons that are beyond the scope of this article, often courts will combine methods, requiring letters plus telephone calls, or similar arrangements.

**Connecting This to the World of *Berakhot***

When we studied the laws of *She-hecheyanu* and *Mechayeh Ha-meitim,* we saw various positions as to what interactions are intimate enough to warrant blessings or to prevent the build-up of emotion to require a blessing upon reuniting in person. As we saw in the issue of *mayim she-ein lahem sof,* similar principles can be found in the world of *ishut.*

We saw that Rav Ovadya Yosef claims that telephone conversations or communication across screens does not count, because “the excitement and emotional animation that one gets when he sees his friend face-to-face is with much greater power and strength” (*Shut Yechaveh Da’at* 4:17). On the other hand, we saw that Rav Yosef Toledano feels such connection can be created when communicating through screens.

In this context, the unique requirements of *tzivui ha-ba’al* demand, according to the *Chazon Ish,* following the view of the Ramban, “that the will of the husband and the will of the scribe and witnesses should be unified in one moment, and that the husband should be aware of the will of the scribe, and the scribe should be aware of the will of the husband, and it all should occur simultaneously.” While this is not an emotional claim, it does highlight the need for true human interaction. Indeed, in this context, we also saw a dispute as to whether telephone or video conversations could rise to that level.

Of course, one could distinguish in one of two directions. One could argue that formally, neither telephones nor videoteleconferences can create the **emotional response** of an in-person interaction, but they can be formally sufficient to create the meeting of the minds needed for *tzivui ha-ba’al.* On the flipside, one could argue that while there is no true meeting of the minds, friendly interactions can be as meaningful even without physical presence. All of this sidesteps the issues of evidence unique to *ishut.*

Nevertheless, it remains true that the same kinds of questions as to the nature of human interactions are raised in both areas of Halakha*,* and thus a full understanding of the halakhicperspective on communication technology requires throughout analysis of both.

As for the evidentiary concerns, this is also something we have seen before. In general, Poskim are quicker to consider that laws may be changed if they are information-based. While the Poskim debate whether in fact voice recognition or even seeing someone in a videoteleconference may be trusted or is suspect due to concerns of falsification, in principle, they are open to the idea that technology might solve this issue. This again parallels the wider consensus that the laws of *Mechayeh Ha-meitim* have changed with the advent of communications technology, as well as the discussion we saw concerning *mayim she-ein lahem sof.*

The last few installments should bolster our contention in the introduction to this series: to assess the ways in which communications technology has affected or can affect Halakha*,* it is important to start by asking about the ways in which this technology has affected our lives. From there, we can look for the areas of Halakhathat are impacted by these changes, and we will find the implications in widely varying areas of law.

1. See also Tosafot*, Gittin* 22b, s.v. *Ve-ha,* who raise this possibility. [↑](#footnote-ref-1)
2. See especially the third chapter. [↑](#footnote-ref-2)
3. See Rabbi Assaf Bednarsh’s article, *Be-inyan Tzivui Ha-ba’al Li-khtov et Ha-get,* in which he develops this approach thoroughly. The article is available here: https://www.yutorah.org/lectures/lecture.cfm/730287/rabbi-assaf-bednarsh/%D7%91%D7%A2%D7%A0%D7%99%D7%9F-%D7%A6%D7%99%D7%95%D7%95%D7%99-%D7%94%D7%91%D7%A2%D7%9C-%D7%9C%D7%9B%D7%AA%D7%95%D7%91-%D7%90%D7%AA-%D7%94%D7%92%D7%98/. [↑](#footnote-ref-3)
4. This approach follows the position that the scribe and the witnesses must be informed, not just appointed, directly. [↑](#footnote-ref-4)
5. In Talmudic times, a deaf-mute was considered to lack legal competence. The status of deaf-mutes in modern times has been heavily debated. See Rabbi J. David Bleich, *Contemporary Halachic Problems* II, pp. 368-375, available here: <https://www.sefaria.org/Contemporary_Halakhic_Problems%2C_Vol_II%2C_Part_II%2C_Chapter_XVIII_Status_of_the_Deaf_Mute_in_Jewish_Law?lang=bi>. [↑](#footnote-ref-5)
6. See: Rosh*, Gittin* 7:19; *Chiddushei Ha-Rashba, Gittin* 72a, s.v. *Kolo;* Ran*, Gittin* 33a (Rif), s.v. *Cheresh;* Mordekhai*, Gittin* 417; and *Hagahot Maimoniyot, Gittin* 2:16:200. [↑](#footnote-ref-6)
7. See the article here: https://www.yutorah.org/lectures/lecture.cfm/879456/rabbi-melech-schachter/%D7%91%D7%99%D7%A8%D7%95%D7%A8-%D7%9C%D7%94%D7%9C%D7%9B%D7%94-%D7%91%D7%A2%D7%A0%D7%99%D7%9F-%D7%A6%D7%99%D7%95%D7%95%D7%99-%D7%9C%D7%A1%D7%95%D7%A4%D7%A8-%D7%95%D7%9C%D7%A2%D7%93%D7%99%D7%9D-%D7%A2-%D7%99-%D7%98%D7%9C%D7%A4%D7%95%D7%9F-%D7%95%D7%91-%D7%A9%D7%9C%D7%95%D7%97%D7%99%D7%9F/. [↑](#footnote-ref-7)
8. See Rabbi Jachter’s article for summary. [↑](#footnote-ref-8)
9. See *Shut Beit Yitzchak, EH* 2:53. His position is debated by more recent authorities. See *Shut Tzitz Eliezer* 10:47 and *Shut Minchat Asher* 2:96. [↑](#footnote-ref-9)