

CENTER FOR MODERN TORAH LEADERSHIP



ARE ALL INVALIDLY COERCED GITTIN INVALID? (PART 6- each can be read independently)

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According to (at least) the conclusion of a sugya on Bava Batra 47-48, Rav Huna holds that coerced sales - are valid; coerced gifts - are invalid; and a get coerced by a Jew *kedin* (=in accordance with law) - is valid.

Ramban provides two formulations to explain why such a get parallels a sale rather than a gift.

1) When giving the get is obligatory, fulfillment of the obligation constitutes fair payment.

2) When giving the get fulfills an obligation to heed the sages, fulfillment of that obligation constitutes fair payment.

Ramban is clear that these formulations are not just different words expressing the same idea.

Each formulation has a textual strength and weakness.

The strength of the first formulation is that it emerges directly from the language of *kedin* used in a statement of Rav Nachman in the name of Shmuel on Gittin 88. Its weakness is that Rav Nachman's statement requires the coercion to be *kedin* and to be done by a *Yisroel*. This formulation seems irrelevant to the latter criterion, since the obligation to give the get is independent of who is doing the coercing.

The strength of the second formulation is that it is drawn directly from Talmud Bava Batra. Its weakness is that the Talmud uses that formulation to explain why coercion might produce valid consent ONLY with regard to gittin, and not with regard to sales, whereas Ramban uses it to explain why coercion might produce valid consent EVEN with regard to gittin, and on the same basis as sales. Put differently, the Talmud uses it to differentiate gittin from sales, while Ramban uses it to make them comparable.

Neither formulation provides a basis for claiming that the standard for consent regarding gittin is higher than the standard for consent regarding sales.

This last point explains why one lomdishe approach to the sugya is probably irrelevant halakhically. Because this approach has great intellectual appeal and popular influence, and affects issues beyond that of coercion, I think it's worth laying the argument out.

Mishnah Arakhin 5:6 states:

חייבי עולות ושלמים - ממשכנין אותן
אף על פי שאין מתכפר לו עד שיתרצה,
שנאמר (ויקרא א:ג) לרצונו -
כופין אותו עד שיאמר 'רוצה אני'.

Those liable to bring wholly-burnt or 'peace' offerings

– we seize their property as surety

EVEN THOUGH the sacrifice does not effect atonement for him until he gives it willingly,

as Scripture says: *lirtzono* (=in accordance with his will)

(Vayikra 1:3) –

we coerce him until he says “I am willing”.

The Mishnah initially seems to quote *lirtzono* as a reason that coercion might not create valid consent regarding sacrifices even though it creates valid consent elsewhere. In other words, it creates a requirement for “superconsent” in the context of gittin. The conclusion would then be that coerced but verbally expressed consent satisfies that standard.

However, the Mishnah is more likely a truncated version of a beraita cited on Arakhin 21a.

יקריב אותו - מלמד שכופין אותו.

יכול בעל כרחו? ת"ל: לרצונו:

הא כיצד?

כופין אותו עד שיאמר 'רוצה אני'.

Yakriv (=He will sacrifice it) – this teaches that we coerce him.

This might mean even against his will – therefore Scripture teaches *lirtzono*.

How can these be reconciled?

We coerce him until he says “I am willing”.

The beraita initially reads *yakriv* as authorizing coercion regardless of consent. This seems to contradict *lirtzono*, which requires consent! The solution is that coerced consent is sufficient. This leaves open the possibility that sacrifices require a lower level of consent (“infraconsent”) than other areas of law such as sales, and that coerced consent might be sufficient only for sacrifices.

Neither the mishnah nor the beraita support a claim that sacrifices require a form of superconsent that cannot be achieved via coercion. The simplest reading of both is that sacrifices require at most the same degree of consent as other areas of law.

Under the rules of midrash halakhah, a principle established via Biblical interpretation in one legal context extends to all comparable contexts (*binyan av*) unless it is strongly counterintuitive (*chiddush*). Bava Batra 48 accordingly asks: Is the beraita regarding sacrifices the source of Rav Huna's ruling that coerced consent validates a sale? The Talmud answers that sacrifices may not be the source, because sacrifices might require a lower degree of consent than sales. Why? Because a person is more likely reconciled to the coercion out of a sense that atonement is worth the cost of the sacrificed animal.

This dialogue is perfectly compatible with our conclusion above that sacrifices require AT MOST the same degree of consent as other areas of law. The Talmud initially thinks that sacrifices require the same degree of consent, and concludes that it MAY require a LOWER

degree of consent, or else the same degree. Since an alternative source is found for Rav Huna (which turns out to be practical reason/phronesis/*sevara*), the Talmud may adopt either position.

Nothing in this sugya opens even a logical possibility that sacrifices require a higher degree of consent than sales.

However, the mishnah and beraita each conclude:

וכן אתה אומר בגטי נשים –
כופין אותו עד שיאמר 'רוצה אני'.

You say the same regarding women's writs of divorce

–
we coerce him until he says "I am willing".

Why is divorce parallel to sacrifice? Since no variant of *lirtzono* appears in the Torah regarding divorce, and the Mishnah cites no verse regarding divorce, the simplest possibility is a *binyan av* from sacrifice to divorce. Since divorce does not lead to atonement, it follows that the reason coercion works for sacrifices is a broadly generalizable principle. The ruling regarding divorce is therefore proof that Rav Huna's ruling regarding sales can in fact be Biblically derived from sacrifices.

The Talmud replies that sacrifices may be generalizable only as far as divorce, because divorce – like sacrifices – may require a LOWER level of consent than sales, "since there is a mitzvah to heed the Sages".

The obvious problem with the Talmud's answer is that not all divorces involve a mitzvah to heed the sages. The obvious solution is that "we coerce him" refers to coercion by Jewish courts, as per Mishnah Gittin, which rules that coercion works for divorce only when coerced by "Yisroel".

Here too, once Rav Huna turns out to be based on *sevara*, the Talmud may return to its opening assumption that divorce requires the same degree of consent as sales. If so, we need to explain why gittin coerced by Gentiles are invalid. Talmud Bava Batra tells us that the answer is Rav Mesharashya's position that the Rabbis invalidated them for public policy reasons.

However, Talmud Gittin 88 rejects Rav Mesharashya as incompatible with the ruling of Rav Nachman in the name of Shmuel that gittin coerced by Gentiles *shelo kedin* are Biblically invalid, and consensus halakhah accepts both Rav Nachman in the name of Shmuel and Rav Huna. So the consensus halakhah needs an explanation for why gittin coerced by Gentiles *shelo kedin* are Biblically invalid according to Rav Huna. Ramban's second formulation answers that such gittin are comparable to gifts rather than sales, because in the absence of a mitzvah to heed the sages, there is no fair value given for the get.

But why is there no fair value? As Tosafot point out, the husband receives the same value for a coerced get as an ordinary get, namely relief from all his marital obligations – are all gittin really gifts?! The temptation is great to say that gittin require a HIGHER standard of consent than sales, that can ONLY be met by fulfilling a mitzvah. Fair value is not enough to validate a coerced get.

This position can be defended with regard to sacrifices by assuming that Mishnah Arakhin is independent rather than an excerpt from the beraita. Taken as an independent text, Mishnah Arakhin suggests that *lirtzono* creates a requirement for superconsent.

Talmud Bava Batra quotes the beraita rather than the mishnah. It therefore assumes that *lirtzono* explains (at most) why sacrifices require consent at all. Why would sacrifices not require the same level of

consent as sales? Because achieving atonement may constitute "supervalue", meaning that a coerced sacrifice is automatically equivalent to a sale at an above-market price.

Since this dialogue appears in the same section of the sugya that accepts Rav Mesharashya, one might argue that the consensus halakhah rejects the beraita as well.

However, there no need to say this, because there is no equivalent to Rav Nachman in the name of Shmuel regarding sacrifices

If one rejects the *beraita* and assumes that the Mishnah says something different, and one nonetheless accepts Bava Batra's suggestion, made in the context of explaining the beraita within a *hava amina*, that achieving atonement constitutes "supervalue", one can then construct a position that *לרצונו* established a requirement for "superconsent" that can be met only by a "supervalue" such as atonement.

However, as noted above, the Mishnah is most likely saying the same thing as the beraita; and the Talmud raises the possibility that atonement is a "supervalue" only as a *hava amina* to reject a source for Rav Huna, and in the context of explaining the beraita's possible position that sacrifices require only "infraconsent".

Having constructed this position, one might then argue that since the Mishnah draws a parallel between sacrifices and gittin, one can also construct a position that gittin require "superconsent", and that this requirement can be met only by the "mitzvah to heed the sages". This would involve transferring Bava Batra's explanation for its *hava amina* that divorce requires only infraconsent in the same way as we did regarding sacrifices.

However, regarding sacrifices we have a Biblical word – *לרצונו* – than can be read as establishing a special requirement of consent. No such word exists in the Torah regarding gittin, just ordinary verbs of action. To create a parallel to sacrifices, we would need to argue that the conceptual/social framework of Jewish divorce implicitly establishes a special requirement of consent.

However, all the Talmudic evidence is against the existence of such a special requirement. We would be "making it up" in the space created by the consensus halakhah's acceptance of both Rav Huna's ruling and that of Rav Nachman in the name of Shmuel. We would also have to acknowledge that this approach is against Rashbam, Tosafot, and at least the first formulation of Ramban. It is imho just barely possible to argue that the second formulation of Ramban is compatible with this position.

Nonetheless, my sense is that almost all popular presentations of this issue work on the assumption that divorce requires a higher degree of consent than sales. This assumption then generates speculation that the halakhic restrictions on when coercion is justified are intended to ensure that the necessary "superconsent" is achieved, and accordingly, that any get which is coerced when coercion is not halakhically justified is Biblically invalid and creates issues of adultery and mamzerut.

The only reason I can think of for the popularity of this *prima facie* wholly implausible position is that it fits well with the rhetoric of Rambam about coerced consent regarding divorce. But it may also have a substantive basis in Rambam, albeit one that I have not seen cited for this purpose. We'll turn to Rambam next.

Shabbat Shalom!