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חירות ואחריות

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## ARE ALL INVALIDLY COERCED GITTIN INVALID? (PART 5- each can be read independently)

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The validity of coerced gittin is addressed in two mishnayot (Arakhin 5:6 and Gittin 9:8) and three Talmudic passages (Gittin 88b, Bava Batra 47b-48b, Kiddushin 50a).

Mishnah Arakhin states without qualification that "we coerce him (*kofin oto*) until he says 'I am willing'", while Mishnah Gittin says that a coerced get (*get me'usab*) is valid only if the coercing is done by Jews. The halakhic tradition assumes that these mishnayot are compatible.

There are at least two ways of reconciling them. The first is to limit Mishnah Arakhin to cases where the coercion is done by Jews. The second is to say that Mishnah Arakhin records the *deoraita* law, whereas Mishnah Gittin records the *derabanan* law. The second option is taken explicitly by the amora Rav Mesharashya as he is cited in Gittin and Bava Batra.

The sugya in Gittin begins from a statement by Rav Nachman in the name of Shmuel that a get coerced by Gentiles *kedin* (= in-accordance-with-the-law) is both *pasul*/invalid and *posel*, meaning that the woman who receives it becomes prohibited to marry a kohen as a divorcee. The Talmud explains this seeming paradox by citing Rav Mesharashya's statement that a get coerced by a Gentile is Biblically valid but Rabbinically invalid. Thus a woman who receives such a get is Biblically a divorcee who cannot marry a kohen ever, and rabbinically a married woman who cannot remarry until she is divorced.

However, Talmud Gittin continues, Rav Nachman in the name of Shmuel ruled that a get coerced by Gentiles *shelo kedin* is Biblically invalid and "has not even the aroma of a get". Why should that be so, if Gentile coercion is effective on a Biblical level?! The Talmud therefore concludes that Rav Mesharashya's statement was erroneous. Gittin coerced by Gentiles even *kedin* are Biblically invalid, but the Rabbis decreed that a get coerced by Gentiles *kedin* invalidates the recipient from marrying a kohen.

The sugya in Bava Batra begins with a statement by Rav Huna that coerced sales are legally valid. Mishnah Gittin is cited to challenge Rav Huna's statement – why is a Get coerced by Gentiles invalid? The challenge is deflected by citing Rav Mesharashya to establish that the get is only rabbinically invalid. This defense is accepted.

The sugyot in Bava Batra and Gittin thus contradict as to whether Rav Mesharashya is authoritative. Since Bava

Batra presents Rav Huna as defensible only on the basis of Rav Mesharashya, while Gittin shows that Rav Mesharashya is incompatible with Rav Nachman in the name of Shmuel, it seems that Rav Huna and Rav Nachman in the name of Shmuel are incompatible.

The consensus halakhah nevertheless accepts both Rav Huna and Rav Nachman in the name of Shmuel. It may therefore be more useful to think of the sugyot generated by their statements as unaware of each other. Bava Batra does not cite Rav Nachman in the name of Shmuel, and Gittin does not cite Rav Huna. Bava Batra considers the issue solely in terms of the effectiveness of the coercion, whereas Gittin considers it in terms of the legitimacy of the coercion and coercers.

Ramban further notes a seeming contradiction within the halakhah's understanding of the sugya in Bava Batra. "But we hold like Rav Huna, and yet we also hold against Rav Mesharashya!?" His response yields a forced reading of the sugya, but opens up new and unforced ways to understand the halakhah.

Ramban contends that the sugya in Bava Batra toward its end abandons an initial assumption that Rav Huna validates even coerced gifts, and therefore no longer needs Rav Mesharashya. This may or may not be so. Regardless, this approach shows that the statements of Rav Huna and Rav Nachman in the name of Shmuel are compatible – it is only the sugyot in Bava Batra and Gittin that contradict. The halakhah can therefore choose the sugya in Bava Batra and integrate Rav Nachman/Shmuel's statement as it might have been understood by that sugya, or else choose the sugya in Gittin and integrate Rav Huna's statement as it might have been understood by that sugya.

Fundamentally, Ramban says that the distinction between *kedin* and *shelo kedin* must parallel the distinction between sales and gifts. In other words, a husband who agrees to give a get only under coercion must be receiving fair value for the get in the *kedin* case, but not in the *shelo kedin* case.

because only coercion *kedin* by Jews is comparable to sales,

as since this is the *din* – it is as if he took money from him.

Alternatively:

we return to the mitzvah to heed the sages.

דלא דמי לזביני אלא כדין דישראל,  
דכין דדינא הוא - דמי שקיל מיניהו,  
ואי נמי –  
הדרין למצוה לשמוע דברי חכמים.

Ramban offers two subtly different formulations of what constitutes the fair value for the get. In the first formulation, it is fulfillment of the *din*, presumably the obligation to give the get; in the second, it is fulfillment of “the mitzvah to heed the sages”. The first formulation is based entirely on Rav Nachman’s language of *kedin* and *shelo kedin*. The second formulation is drawn from the anonymous Talmud in Gittin.

This might be a distinction without a difference. Presumably giving the get is obligatory whenever the sages permit coercing it – otherwise why would they permit the coercion? So if the sages authorize coercion whenever giving the get is obligatory, the two standards are identical.

However, what if there are cases where the sages did not authorize coercion even though they obligated the husband to give the get? The same gap exists within the apparently narrower second formulation, because the obligation to heed the sages is not limited to cases where they are willing to coercively enforce their decrees.

Let’s take a step back before addressing that question. This series of essays was inspired by Rav Moshe Botzko z”l’s trenchant observation that the sugya in Gittin validates all coerced gittin. Ramban concedes this with regard to the beginning of the sugya, but argues that this is no longer true at its end. I argue that perhaps even if it is true for the entire sugya, the halakhah modifies the outcome to account for Rav Nachman in the name of Shmuel. Rav Botzko argues that Rambam follows the sugya in Gittin without Ramban’s modification, but I am not convinced (see Part 1).

Rav Botzko is also aware that halakhists through the centuries have set out whole categories of cases in which a get is obligatory but nonetheless a beit din is not authorized to coerce the get. When there is a dispute as to whether a particular kind of obligatory get can be coerced, batei din generally move very cautiously out of fear that unauthorized coercion will invalidate the get and make the wife an adulteress if she remarries, and her subsequent children mamzerim.

That fear rests largely on a presumption that all unauthorized coercion renders a get Biblically invalid. (Generally, a Rabbinically invalid get does not make the children mamzerim, although the issue requires full and separate treatment.) In other words, it rests on reading Rav Nachman as saying that any get which is coerced **WHEN**

**COERCION IS NOT LEGALLY AUTHORIZED** is Biblically invalid. But neither of Ramban’s formulations justify such a far-reaching conclusion. Rather, they suggest that a coerced get is valid so long as giving it fulfills an obligation (whether to give the get or to heed the sages), even if it should not have been coerced. This lowers the halakhic risk significantly in cases where the consensus halakhah is that a get is obligatory, even if there is no parallel consensus to authorize coercion.

Rav Botzko contends that there are essentially two positions among rishonim. The first, along the lines we have developed in Ramban, argues that a coerced get is Biblically valid whenever giving the get fulfills an obligation, whether or not the coercion was halakhically valid. The second position is that coercion is authorized whenever giving the get is obligatory. Either way, he writes,

על פי הנ"ל, אינני מבין מדוע יש מקום  
לחשוש, ומה מקום לבהלה והפחד מלכפות  
על נתיני הגט במקום שהוא מחוייב לגרש,  
שהרי גם אם הכפייה היא שלא כדין, לא יהיה  
הגט בטל ואין כאן שום חשש של 'אשת  
איש' דסוף סוף חייב לגרש ומתרצה לכך, אם  
לא שנפרש בדעתם דסבירא להו דאף היכא  
שבעצם העישוי הוא שלא כדין כבר הגט  
בטל, אהל לכאורה זהו נגד הסברא.

“Based on the above, I do not understand why there is reason for concern, and what room there is for such terror and fear regarding coercing the giving of a get in cases where the husband is obligated to divorce, because even if the coercion is *shelo kedin*, the get will not be *batel* (= meaningless, Biblically invalid) and there is no concern at all for adultery since bottom line he is obligated to divorce and agrees to this, unless we explain their opinion as holding that even where (only) the coercion itself is *shelo kedin* – the get is already *batel*. But this seems to be against *sevara*/practical reason.

It seems clear to me that Rabbi Botzko has correctly identified the formal rationale for the fear of coercion that suffuses batei din. I do not share his confidence that this rationale is against *sevara*. But even before reading Rav Botzko’s essay, I argued for exploring whether this rationale is supported by the halakhic sources, and finding him ahead of me on that path was enormously encouraging. We’ll go down the path together in the coming installments of this series.

Shabbat Shalom!

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