

CENTER FOR MODERN TORAH LEADERSHIP



ARE ALL INVALIDLY COERCED GITTIN INVALID? (PART 8- each can be read independently)

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Rav Nachman states in the name of Shmuel (Talmud Gittin 88b):

גט המעושה
בישראל,
כדין – כשר;
שלא כדין - פסול ופוסל;
ובעובדי כוכבים,
כדין - פסול ופוסל;
שלא כדין - אפי' ריח הגט אין בו.

A get -

if coerced by Jews -

if *kedin* – is kosher;

if *shelo kedin* – is invalid but invalidates (the recipient for marriage with a kohen);

if coerced by nonJews

if *kedin* – is invalid but invalidates;

if *shelo kedin* – lacks even the odor of a get.

Since a husband must divorce willingly (Mishnah Yebamot 14:1), the validity of any coerced get demonstrates that legal willingness can result from coercion. This also follows from Talmud Bava Batra 48a's presentation of coerced gittin as related to Rav Huna's ruling (Bava Batra 48a) that coerced sales are valid.

But then why does it matter whether the coercers are Jewish, or whether their actions are *kedin*? All that should matter is whether the husband is considered willing!

Ramban explains the *kedin* element by saying that coercion produces valid consent only to otherwise fair sales, not to gifts or below-market sales. A get is considered "fairly sold" only if the husband receives the benefit of fulfilling an halakhic obligation. Ramban mentions two possibly relevant obligations:

- a. an obligation to give the get
- b. an obligation to obey the person or persons coercing the get.

These obligations seem parallel to the complicating factors in Rav Nachman's statement.

- a. An obligation to give the get = the coercion is *kedin*.

- b. An obligation to obey = a Jewish court.

However, Ramban says that either factor is SUFFICIENT, whereas according to Rav Nachman both factors are NECESSARY. Our understanding therefore remains incomplete.

Talmud Gittin 88b initially suggests that nonJewish coercers cannot produce Biblically valid consent because

לא בני עשויו ניניהו

they are not legally valid coercers

This suggestion is withdrawn in favor of Rav Mesharashya's explanation that non-Jewish coercers CAN produce Biblically valid consent. Gittin coerced by nonJews are invalid only Rabbinically, and only on policy grounds.

However, Gittin 88b rejects Rav Mesharashya as incompatible with the ruling that gittin coerced by nonJews *shelo kedin* "lack even the odor of a get", i.e. they are Biblically invalid. It concludes that all gittin coerced by nonJews are Biblically invalid. Gittin coerced by nonJews *kedin* invalidate their recipients for marriage with kohanim only lest onlookers incorrectly derive that gittin coerced by Jews *kedin* are also invalid.

With Rav Mesharashya rejected, the default is presumably a return to the initial suggestion that nonJews "are not legally valid coercers". But why aren't they?

One possible explanation draws an analogy to the invalidity of nonJewish agents for delivery or receipt of a get. Gittin 10b explains that only those eligible to be principals can stand in for principals, and nonJews are *לא בני כריתות*, not subject to the halakhic laws of divorce. We might sort-of-similarly understand coercion as a form of agency in which the coerced acts to fulfill the will of the coercer. (This suggestion is cited by Rav Yosef Dov Soloveitchik in the name of his grandfather Rav Chaim.) Therefore, coercion produces valid consent only when the coercers are Jewish.

A problem with this approach is that Bava Batra 48a presents get-coercion as derivable from Rav

Huna's general principle that coerced sales are valid, which in turn is grounded in the claim that

אגב אונסיה גמר ומקני

as a result of being coerced, he completed his commitment to the sale.

This formulation seems very far from the notion of substituted will. (Rav Soloveitchik argues that nonetheless substituted will is uniquely relevant to the cases of sacrifice and divorce, but we noted in Part 6 that there is no biblical source for this with regard to divorce, and considerable evidence against.)

A very different approach notes that Talmud Bava Batra 48a quotes Rav Mesharashya without any hint of rejection, and seems unaware of the statement of Rav Nachman in the name of Shmuel that causes Gittin 88b to reject Rav Mesharashya. Perhaps Shmuel did not agree that gittin are derivable from sales, or that only coerced sales (as opposed to coerced gifts) are valid, or perhaps he invalidated all coerced sales. Fundamentally, perhaps he did not agree that אגב אונסיה גמר ומקני. But then why are any coerced gittin valid? (We'll revisit this approach in Part 9.)

Regardless, Rambam Mishneh Torah (Hilkhot Mekhirah 10:1) rules that coerced sales are valid, and also (Hilkhot Geirushin 2:20) that gittin coerced by non-Jews *shelo kedin* are Biblically invalid. So a way is needed to reconcile these rulings.

Lechem Mishnah (Hilkhot Geirushin 2:20) contends that לא בני עשויי ניהו refers not to the irrelevance of gittin to non-Jews, but rather to the prohibition against bringing cases in non-Jewish courts: "These are the statutes that you must place before them = before them and not before non-Jewish courts". This understanding is supported by Bava Batra 48a's citation of the parallel prohibition "before them and not before courts with non-ordained judges" in the context of an objection to coercing gittin in Babylonia, where there were no ordained judges. Lechem Mishnah contends further that אגב אונסיה גמר ומקני applies only if the coerced person BELIEVES that he or she is receiving fair value. When non-Jews coerce gittin *shelo kedin*, there is no basis for the husband to falsely assume that he is obligated to give the get.

Therefore, according to Lechem Mishnah, when non-Jews coerce *shelo kedin*, the husband neither receives fair value nor believes that he has, so the get "lacks even the odor of a get".

when either Jews or non-Jews coerce *keidin*, the get is Biblically valid, since fair value is received and the husband presumably understands this

when a *beit din* coerces *shelo kedin*, the get is Biblically valid even though no fair value is received, because the husband presumably believes that there is an underlying obligation, and therefore that he is receiving fair value.

Lechem Mishnah's psychological framework is broadly accepted as the best explanation of why a get coerced by non-Jews *shelo kedin* is Biblically invalid.

For Lechem Mishnah himself, a get coerced by Jews is Biblically valid even if the husband was not obligated to divorce (= *shelo kedin*). His evidence for this is from the latter section of Rambam Hilkhot Geirushin 2:20. (Please recall as background that for Rambam the categories "obligated to divorce" and "may be coerced to divorce" are equivalent – see Part 7.)

לא היה הדין נותן שכופין אותו לגרש,
וטעו בית דין של ישראל, או שהיו הדיוטות,
ואנסוהו עד שגירש –
הרי זה גט פסול;
הואיל וישראל אנסוהו - יגמור ויגרש,

If the *din* did not yield that we
coerce him to divorce
but a Jewish court erred, or they
were not ordained, and they
compelled him until he divorced –
this is a *pasul* (Rabbinically invalid)
get;
since it was Jews who compelled
him – he will completely commit and
divorce.

Rambam therefore supports the position that so long as the get itself is obligatory, consent obtained by Jewish coercion is at least Biblically valid, and runs no risk of *mamzerut* or adultery. (Note that Rambam in his Responsum #362 goes so far as to validate a get coerced by private Jews out of self-interest, so long as the husband did not declare in advance before witnesses that his consent was not genuine, because אגב אונסיה גמר ומקני.)

The next and *beli neder* penultimate installment of this series will discuss what may be the only viable alternative to Lechem Mishnah's purely psychological framework.

Shabbat Shalom!