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## WHEN ARE COERCED GITTIN VALID? (PART 4)

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Rav Huna rules (Bava Batra 47b) that a coerced sale is valid. Toward the end of a long discussion, Talmud Bava Batra 48a clarifies that this ruling extends only to cases where the coercer "gives money" to the coerced.

Earlier in that discussion, the Talmud challenges Rav Huna. Mishnah Gittin 9:8 rules that a get coerced by gentiles is invalid. If Rav Huna is correct that coerced agreements are legally binding, why is the get invalid? The Talmud responds by citing Rav Mesharashya's comment that a get coerced by gentiles is only Rabbinically invalid. Since the Rabbis' rationale for invalidating coerced gittin does not apply to ordinary sales, Rav Huna's ruling is compatible with the Mishnah.

The challenge and response assume that Rav Huna's ruling in principle extends to coerced gittin. But why should it, since the husband receives no money in exchange for the get?!

Rashbam explains that the language "gives money" is imprecise. Rav Huna's principle actually applies whenever the coerced sustains no loss. Here, the husband loses nothing if it is clear that the wife will regardless not act as his wife.

R. Isaac of Dampierre (=RI) initially explained that the husband receives the benefit of terminating his marital obligations of food, clothing, and sex. However, Tosafot report that RI rejected this rationale because it would validate even a get coerced not-in-accordance-with-the-law, whereas Rav Nachman reported in the name of Shmuel (Gittin 88b) that such a get is invalid. (This rejection applies equally to Rashbam's rationale.) RI therefore concluded that a coerced get is valid only where the husband has a legal obligation to give the get, and fulfillment of this obligation is equivalent to receiving money.

A difficulty with RI (see Part 3) is that before challenging Rav Huna from Mishnah Gittin 9:8, the Talmud seeks to derive his ruling from Mishnah Arakhin 5:6, which validates coerced gittin without distinguishing between Jewish and Gentile coercers. The Talmud responds that one might validate a coerced get but not a coerced sale because "there is a mitzvah to listen to the Chakhamim". The Talmud's attempted derivation seems to validate all coerced gittin, while the response adopts RI's final position and validates coerced gittin only in cases where the Rabbis obligate giving the get. But RI can't explain why the Talmud made the attempt.

One might suggest that the initial position treated fulfilling the mitzvah to heed the sages as receiving a fair market price, while the response treats it as receiving MORE than a fair market price. Therefore, Gittin can't serve as precedent for validating coerced sales EVEN when the seller receives ONLY a fair market price. But it's very difficult to read that position into RI.

Ramban suggests that the Talmud's attempted derivation assumes that Rav Huna validates even coerced gifts, but the rejection assumes that he validates only coerced sales. This seems forced.

There is a second difficulty with RI. IF we assume that the obligation he refers to is the same as the "mitzvah to listen to the chakhamim" that the Talmud cited in distinguishing gittin from sales. The sugya also accepts Rav Mesharashya's comment that a get coerced by Gentiles is Biblically valid. What mitzvah to listen to the chakhamim would be fulfilled by bowing to Gentile coercion?

Ramban responds that Talmud Gittin 88b utterly rejects Rav Mesharashya's comment because it is incompatible with the statement of Rav Nachman in the name of Shmuel that a get coerced by Gentiles *shelo kedin* (= not in accordance with the law) is Biblically invalid. Rav Huna himself may have rejected Rav Nachman's report, or Shmuel's ruling, and therefore may have accepted Rav Mesharashya and validated all coerced gittin on the Biblical level.

This explanation is weak as a reconciliation of RI with Talmud Bava Batra. It requires that sugya to first cite Rav Mesharashya as authoritative, and then to explain Rav Huna on the assumption that Rav Mesharashya is wrong, without noting the shift.

However, Ramban notes that the consensus halakhah accepts both Rav Huna and Rav Nachman's report of Shmuel. Therefore, while RI's rationale for validating only coerced gittin does not fit well into Bava Batra, it is a useful explanation for the halakhah, which accepts Rav Huna regarding sales but follows Gittin 88b in accepting Rav Nachman/Shmuel and rejecting Rav Mesharashya, and therefore holds that gittin coerced by Gentiles *shelo kedin* are Biblically invalid.

Following Ramban, we can align the Rabbinic texts that address coerced gittin as follows:

- A. Mishnah Arakhin (and a parallel beraita in Talmud Arakhin – see Part 1) validates coerced gittin (so long as the husband eventually says “I am willing”)
- B. Mishnah Gittin validates coerced gittin only if the coercion is Jewish.
- C. Rav Mesharashya states that Mishnah Gittin’s distinction between Jewish and Gentile coercion is only Rabbinic; Biblically, even gittin coerced by Gentiles are valid.
- D. Rav Nachman in the name of Shmuel validates coerced gittin only if the coercion is Jewish and *kedin* (= in-accordance-with-law), and Biblically invalidates gittin coerced by Gentiles *shelo kedin*.

Talmud Bava Batra rejects or is unaware of D, and therefore follows Rav Mesharashya in understanding the limitation in B as a rabbinic decree rather than a fundamental claim about coercion. Talmud Gittin accepts D but nonetheless accepts the ruling of Rav Huna cited in Talmud Bava Batra regarding sales, and assumed that it applies to gittin as well.

Where does that leave us?

The notion that the mitzvah to heed the sages serves as compensation for the get appears in Bava Batra as a way to validate coerced gittin even if one rejects Rav Huna. Since that sugya in the end validates Rav Huna on the basis of an empirical/psychological claim, we can reasonably contend that the mitzvah to heed the sages plays no role in the end.

The consensus halakhah rejects Bava Batra’s understanding of the implications of Rav Huna’s position for Gittin. It rules that one can invalidate coerced gittin Biblically even if one accepts Rav Huna! So the halakhah also has no textual commitment to the relevance of the mitzvah to heed the chakhamim, which is mentioned only in Bava Batra.

However, the halakhah must explain Rav Nachman/Shmuel’s position, which Biblically invalidates at least gittin that are coerced by Gentiles *shelo kedin*, in a way that is compatible with Rav Huna’s validation of coerced sales.

What does *shelo kedin* mean? It’s reasonable to suggest that *kedin* means where the sages obligated giving the get, and that *shelo kedin* means where the sages did not obligate giving the get. On this reading, Talmud Bava Batra imported Shmuel’s logic in order to reject a possible grounding for Rav Huna. (This may be the position of Rambam, who accepts Rav Huna but apparently explains the validity of coerced gittin on the basis of the mitzvah to heed the sages. However, Rambam’s explanation of gittin is not framed in Rav Huna’s terms.)

Ramban opens up another possibility.

דלא דמי לזביני אלא כדן דישראל,  
דכיון דדינא הוא - דמי שקיל מיניהו,  
ואי נמי:

הדרין למצוה לשמוע דברי חכמים.

Because (gittin) are not similar to sales  
except when they are coerced by Jews *kedin*

—  
Because since (giving the get) is required by  
the law – (it is as if) he is receiving money  
from them.

Alternatively:

We return to the mitzvah to heed the sages.

Ramban clearly distinguishes between the factor of *kedin* and the mitzvah to heed the sages. It seems therefore that a coerced get *kedin* can be valid even when there is no mitzvah to heed the sages.

Chatam Sofer takes Ramban one step further, as follows:

Ramban showed that Bava Batra 48 and Gittin 88 are incompatible. Gittin 88 rejects Rav Mesharashya because he is incompatible with Rav Nachman/Shmuel, who biblically invalidates a get coerced by Gentiles *shelo kedin*. But, Chatam Sofer contends (and we will accept at least for the sake of argument) that Rav Nachman himself rejects Rav Huna’s ruling that coerced sales are valid. If Gittin 88 is following Rav Nachman, it therefore needs an explanation for Shmuel’s ruling that rejects Rav Huna. Gittin 88 accordingly adopts the *bava amina* from Bava Batra 48 that coerced gittin can only be validated by fulfillment of the mitzvah to heed the sages. Since there can be no mitzvah to heed the sages when Gentiles are the coercers, Gittin rejects Rav Mesharashya.

The halakhah, however, follows Rav Huna against Rav Nachman. Therefore, it can validate coerced gittin that do not fulfill the mitzvah to heed the sages. Rather, the fact that a get is coerced *kedin* is sufficient, at least Biblically, and there is no reason to reject Rav Mesharashya.

In other words: Ramban said that the halakhah follows the sugya from Gittin, but also incorporates the ruling of Rav Huna from Bava Batra. Chatam Sofer notes that the same logic allows us to say that the halakhah follows the sugya from Bava Batra, but incorporates the ruling of Shmuel from Gittin. The immediate *nafka minna* is Rav Mesharashya. As Ramban himself sets it up, halakhah rejects Rav Mesharashya, and a get coerced by Gentiles even *kedin* is Biblically invalid; whereas as Chatam Sofer sets it up within Ramban, halakhah follows Rav Mesharashya, and a get coerced by Gentiles *kedin* is only Rabbinically invalid.

In what circumstances would a get be coerced *kedin* and yet not generate the mitzvah to heed the sages? Can there be a mitzvah to heed the sages regarding a get coerced *shelo kedin*? Stay tuned for Part 5.

Shabbat Shalom!

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