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"Taking Responsibility for Torah"

WHEN IS A COERCED GET VALID? (PART 3)

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Rav Huna states on Bava Batra 47b that a coerced sale is valid. The Talmud concludes that his position is based on the empirical/psychological claim that "as the result of his being compelled, he makes up his mind to genuinely transfer ownership". Rav Moshe Botzko z"l (see part 1) argued that this empirical claim validates coerced divorces as well (although Gittin 88b may explain Rav Huna differently – see part 2).

However, Rav Hamnuna cites Mishnah Gittin 5:6 to challenge Rav Huna. That Mishnah address the case of "sikrikons", people (or government officials) who took possession of private Jewish land by force during an overall oppression of Judea.

מוטיב רב המנוח:

לקח מסיקריקון וחזרו ולקח מבעל הבית - מקחו בטל;

ואמאי?! התם נמי נימא: אגב אונסיה גמר ומקני?

Rav Hamnuna asked an attack question based on a text:

If he bought from a sikrikon and afterward bought it from the owner – his purchase is a nullity.

Why?! There too, let us say that "as the result of his being compelled, he makes up his mind to genuinely transfer ownership"?

People who bought the land from sikrikons might try to solidify their ownership by offering the original owner compensation in exchange for legal title. Probably the sikrikons would sell at a discount because their title was socially insecure among Jews, and a Jewish purchaser might offer some or all of that discount to the original owner. However, this compensation obviously would not amount to the full value of the land.

The Talmud responds to Rav Hamnuna's challenge by noting that Rav and Shmuel disagreed about whether the Mishnah's ruling applies even if the owner writes a *shtar* for the sale.

Rav holds that the sale is valid if the owner writes a *shtar*. If we follow Rav, then Rav Huna's principle can then be reconciled with the Mishnah either by assuming that he also requires a *shtar* for a coerced sale to be valid, or else that the case of sikrikon requires extra evidence of commitment.

However, Shmuel holds that the sale is invalid even if the owner writes a *shtar*. Is Rav Huna compatible with Shmuel? The Talmud responds that even Shmuel agrees that the sale is valid **היכא דיהב זוזי** = where the purchaser gave money.

The simplest reading of this is that the seller's agreement is more genuine when it is concretized by accepting a consideration.

However, presumably money changed hands even in the case that the Mishnah invalidates! Shmuel therefore must mean that the sale is valid only when the money that changes hands – the consideration for the purchase – constitutes a market price. (It is not clear to me whether this means a market price for the legal title without practical possession, or a market price for the land as if the original owner was still in practical possession. I incline to the former.) Therefore, to be compatible with Shmuel, Rav Huna's principle must hold only when the person being coerced is paid a market price.

Just about every rishon formulates this conclusion as **תלייהו ויהיב** – "If they hung him up and he gave – his gift is no gift". (It puzzles me that I cannot find a Talmudic-era antecedent for that formulation.) They accordingly wonder why the Talmud thought Rav Huna was relevant to gittin – what consideration is the husband receiving in exchange for the get?

Rashbam explains that consideration is not necessary. Rav Huna's principle is valid whenever the seller does not lose out in the transaction. In other words, the relevant factor is equity rather than consideration. He then explains that the husband does not lose anything by giving the get.

דהא לא מפסיד מידי,

דומיא דזביני שמקבל דמי שדה

דכיון שאשתו שונאתו ובלא גט נמי לא תעמוד אצלו,

וגט זה אינו אלא להתירה לאחר' –

לא מפסיד כלום.

Because the husband loses nothing, similar to the case of a (coerced) sale, where he receives the value of his field, because since his wife hates him, and without a get she will also not 'stand next to him', and this get's only purpose/effect is to permit him to marry another – he loses nothing.

According to Rashbam, a coerced get seems valid whenever continuing the marriage would not actually provide the husband with a wife. (The language "he loses nothing" might have implications for questions of constructive agency = **זכיה** as well.)

However, Tosafot appear unaware of Rashbam's approach.

וא"ת

אי מהכא גמר,

אפילו תלייהו ויהיב נמי מתנה הוי,

והיהא דסיקריקין מוכח דאינה מתנה?!

If you were to say:

If Rav Huna's position is derived from the rule regarding gittin, then "they hung him up and he gave" would also be a valid gift, but the case of sikrikon proves that it is not a valid gift!?

Rashbam's approach is not subject to this attack, since in the case of a gift or under-market sale, the owner sustains a loss in the transaction.

R. Isaac of Dampierre tries a purely transactional approach. The husband receives relief from his marital obligations as consideration for the get.

והיה ר"י רוצה לתרץ
דהכא הוי כמו מכר
דהא יש לו כפרה תחת הקרבן וקונה הכפרה,
ומגיטי נשים, דבעי למיגמר מינייהו – הוי נמי כמו
מכר,
שנפטר על ידי כך משאר כסות ועונה

RI wanted to answer
that here (the case of coerced sacrifices) is like a
sale
because he has atonement in place of the sacrifice,
and he acquires the atonement;
and gittin, which the Talmud sought to use as a
source for Rav Huna – that is also like a sale,
because he is thereby exempted from (his marital
obligations of) food, clothing, and sex

However, Tosafot report that RI ended up rejecting this approach.

אבל אי אפשר לומר כן,
דא"כ גט מעושה שלא כדין נמי יהא כשר,
ובהגדר (גיטין דף פח: ושם) אמר שמואל דפסול!
But it is impossible to say this,
because if so, a get coerced not-in-accordance-
with-law would also be kosher,
but on Gittin 88b Shmuel said that such a get is
pasul!?

RI's answer explains too much. If relief from marital obligations is sufficient consideration for a get, then coerced gittin should be valid even when "not in accordance with law". But Rav Nachman in the name of Shmuel declares that such gittin are invalid!?

This challenge applies to Rashbam as well – if the husband loses nothing by divorcing a wife who hates him and would in any case not stay with him, why should it matter whether the coercion is in-accordance-with-law?

We can answer for Rashbam that whenever the wife hates the husband and would in any case not stay with him, coercing the get is always "in accordance with law".

Alternatively, RI's transactional explanation can be combined with Rashbam's, as follows: Exemption from marital obligations is a fair market price for a get when and only when the wife hates the husband and would in any case not act as a wife to him.

But Tosafot report that RI himself took a different approach.

ותירץ ר"י

דכל דבר שהוא מחוייב לעשות - הוי כמו מכר,
והכא - הרי הוא מחוייב להביא קרבן;
ולקמן נמי - מחוייב הוא לגרש את אשתו, דמיירי
בהנהו שכופין אותן להוציא;
אבל שלא כדין –
הוה כמו תליוהו ויהיב, דלא הויא מתנה.

RI gave this resolution:

Everything that he is obligated to do is like a sale.
So here, behold he is obligated to bring a sacrifice
and below, he is obligated to divorce his wife, since
it is talking about those whom we compel to
divorce,
but (coercion) where it's not-in-accordance-with-
the-law" –
is like "they hung him and he gave", which is not a
valid gift.

RI's second explanation undoes Rabbi Botzko's argument entirely. In this reading, there is not even a hava amina that Rav Huna's principle would validate all coerced gittin (even if we reject Rav Mesharashya's claim that gittin coerced by nonJews are ipso facto Biblically invalid – see part 2). Rather, it was universally assumed throughout that Mishnah Gittin 5:6 was dealing only with cases (such as those listed in Mishnah Ketubot 7:10) where halakhah authorizes coercing husbands to divorce. In other cases, there is no sufficient consideration, and therefore coercion would not produce a valid get.

However, this argument seems incoherent. If the Talmud's assumption throughout is that fulfilling the obligation-to-divorce by itself is sufficient consideration for the get, then why isn't Mishnah Gittin a viable source for Rav Huna's principle regarding sales, which also requires sufficient consideration? The Talmud says that fulfillment-of-obligation differentiates gittin from sales, but actually it should establish a commonality!

We can answer for RI that fulfilling the obligation must serve only as an additional consideration, meaning that this approach must work in tandem either with Rashbam or else with the purely transactional approach. Perhaps RI understands the Talmud as arguing that in Mishnah Gittin the husband actually receives more than a fair market price for the get, because he also fulfills his obligation to divorce. Therefore, gittin cannot serve as a precedent for Rav Huna's rule regarding sales.

On this explanation, the Talmud's conclusion would follow either Rashbam and validate at least all coerced gittin in cases where the marriage was already dead, or else the transactional approach, in which case it would validate all coerced gittin.

However, this does not seem a plausible reading of RI's position as presented by Tosafot.

We will see next week that Ramban rejects the premise apparently shared by Rashbam and Tosafot that the Talmud assumed throughout that Rav Huna invalidated coerced gifts. Ramban's reading may reopen the possibility raised by Rav Botzko that Rav Huna validates all coerced divorces.

Shabbat Shalom!