

# CENTER FOR MODERN TORAH LEADERSHIP

Center for Modern Torah Leadership



חרות ואחריות

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"Taking Responsibility for Torah"

## UNDER WHAT CIRCUMSTANCES IS A FORCED GET VALID? (PART 2)

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Rav Huna states on Bava Batra 47a that תליהו וזבין – זביניה (literally "If they hung him up and he sold – his sale is a sale"), meaning that a sale agreed to under physical duress is valid (so long as the buyer pays a fair market price and the seller's agreement is expressed verbally or via action). The Talmud initially grounds Rav Huna in a reductio ad absurdum. Invalidating sales agreed to under duress would invalidate all sales, because all sales are made under duress, as the seller would rather keep the object. (Presumably the Talmud means "all sales of private goods", since sellers of commercial goods have no interest in keeping them.)

However, the Talmud notes, the duress of ordinary sales can be distinguished from externally imposed duress. A separate rationale or source is therefore needed to validate Rav Huna's principle.

The first attempted source is the first ruling in a Mishnah (Arakhin 5:6) that, on the basis of a Biblical text (see last week's DT), rules that the courts may beat a person who owes a sacrifice until they say "I am willing". That source is rejected on the ground that the recalcitrant ultimately desires atonement, and therefore validating a sacrifice brought under duress has no necessary implications for sales.

The second attempted source is from the next line of that text, which states that the same rule applies to divorce. That source is rejected on the ground that "there is a *mitzvah* to heed the words of the sages" (in the case of divorce). Since there is no universal rabbinic obligation to divorce, this rejection must limit the scope of Mishnah Arakhin to the specific cases in which such an obligation exists.

With both attempted sources rejected, the Talmud concludes that Rav Huna's ruling is grounded in an empirical/psychological claim that a person under compulsion genuinely commits to the sale. The continuation of the sugya evaluates whether that empirical claim is correct. It concludes with a ruling that the halakhah is in accordance with Rav Huna.

Rav Moshe Botzko notes (see last week's DT) that the empirical claim presumably applies to the case of divorce. (We could reverse the Talmud's question and ask why a Biblical source is necessary for the case of sacrifices.) The Talmud's first challenge to the empirical rationale for Rav Huna makes this point clearly.

מתיב רב יהודה:  
גט המעושה,

בישראל - כשר, ובעכו"ם - פסול,

ובעכו"ם - חובטין אותו ואומרין לו: 'עשה מה

שישראל אומר לך'.

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

הא איתמר עלה, אמר רב משרשיא:

דבר תורה אפילו בעכו"ם כשר, ומה טעם אמר

בעכו"ם פסול? כדי שלא תהא כל אחת ואחת

הולכת ותולה עצמה ביד עכו"ם ומפקעת עצמה

מיד בעלה.

Rav Yehudah asked an attack question based on a text (Mishnah Gittin 88b):

**A forced get –**

**If (forced) by Jews - it is kosher;**

**but if (forced) by gentiles – it is pasul;**

**and if (forced) by gentiles, they beat him**

**and say to him 'Do what the Jew says to you'.**

Why (is the get invalid if forced by a Gentile)?! There also, let us say 'as a result of being coerced, he committed and divorced'!?

The assumption of Rav Yehudah's question is that Rav Huna's logic applies to all gittin. The Talmud's answer accepts that assumption:

(The answer is that) there is an Amoraic gloss on that Mishnah:

Said Rav Mesharashya:

Biblically, even (a get forced) by a Gentile is kosher.

For what reason did they say that If (the get is forced by a gentile) – it is pasul/invalid?

So that every woman not go hang herself (=become dependent) on a gentile and thereby extract herself from her husband.

Rav Mesharashya holds that Rav Huna's rationale extends to divorce, and that coerced divorces are Biblically valid. Divorces coerced by gentiles are Rabbinically invalid for policy reasons, but all divorces coerced by Jews remain completely valid.

The problem is that the halakhah does not in fact validate all divorced coerced by Jews. The sugya in Bava Batra cited the

Mishnah in Gittin without the Amoraic gloss that immediately follows it on Gittin 88b:

אמר ר"נ אמר שמואל:

גט המעושה

בישראל, כדן - כשר, שלא כדן - פסול ופוסל;

ובעובדי כוכבים, כדן - פסול ופוסל,

שלא כדן - אפי' ריח הגט אין בו.

Said Rabbi Nachman said Shmuel:

A forced get –

if (forced) by Jews –

if in accordance with the law – it is valid;

if not in accordance with the law – it is pasul

and it invalidates (the woman who receives it  
to marry a kohen);

if (coerced) by Gentiles –

if in accordance with the law – it is pasul and

it invalidates (the woman who receives it to  
marry a kohen);

if not in accordance with the law- it lacks even  
the aroma of a get.

The Talmud there immediately criticizes the gloss as incoherent:

מה נפשך?!

אי עובדי כוכבי בני עשוויי נינהו - איתכשורי נמי

ליתכשר?!

אי לאו בני עשוויי נינהו - מיפסל לא ליפסל?!

Either way (this is wrong)?!

If gentiles are legally capable of (valid)

forcing, then let it (=the get that results from  
their coercion) be kosher?!

If gentiles are not legally capable of (valid)

forcing, then let it (the get that results from  
their coercion) not invalidate (the woman who  
receives it from marrying a kohen)?!

The sugya then quotes Rav Mesharashya's statement to explain that gentiles are capable of Biblically valid forcing. A get resulting from such coercion is only valid Rabbinically invalid, and therefore invalidates a woman to marry a kohen.

However, the sugya then realizes that Rav Mesharashya's statement is sufficient to explain the Mishnah, but not to explain the gloss of Rav Nachman bar Yitzchak, which it assumes is authoritative. Specifically, it cannot explain why a get forced by Gentiles "not in accordance with the law" is meaningless, i.e. Biblically invalid.

אי הכי, "שלא כדן - אפי' ריח הגט אין בו"; ונהוי

שלא כדן בישראל, ומפסיל נמי לפסול?!

If so, then "if not in accordance with the law-

it lacks even the aroma of a get" – let a get  
forced by gentiles not in accordance with the  
law be the same as one forced by a Jew (not in  
accordance with the law), and (therefore)  
invalidate a woman (who receives it from  
marrying a kohen)?!

The sugya in Gittin therefore concludes by rejecting Rav Mesharashya and declaring that all gittin forced by Gentiles are Biblically invalid. In a situations where a gentile forced a get "according to the law", meaning where a get forced by a Jew would be valid, the Rabbis nonetheless invalidated the woman receiving such a get from marrying a kohen lest someone mistakenly assume that a get forced by a Jew in such circumstances is also meaningless.

אלא, הא דרב משרשיא בדותא היא,

וטעמא מאי?

כדן בכדן דישראל – מיחלף; שלא כדן בכדן

ישראל - לא מיחלף.

Rather, that (statement) of Rav Mesharashya is an error,

and what is the (true) reason (that a divorce  
compelled by a Gentile "according to the law  
invalidates the woman who receives it for  
marriage with a kohen)?

(Because a get forced by a gentile) "in  
accordance with the law" - could be confused  
with (a get forced) by a Jew "according to the  
law";

(but a get forced by a gentile "not in  
accordance with the law" – would not be  
confused with (a get forced) by a Jew  
"according to the law")

This sugya thus apparently concludes that any get forced by a Gentile is Biblically invalid. This implies that Rav Huna's empirical claim does not apply to the law of divorce.

Why then is a divorce coerced by Jews valid? The only other explanation we have seen is the anonymous and tentative suggestion on Bava Batra 48a, so beautifully embellished by Maimonides, that coercion in divorce works because "there is a commandment to listen to the Sages".

While there is much room to discuss how the conflict between the sugyot in Bava Batra and Gittin should play out according to standard principles of halakhic authority (= *klalei hora'ab*), and how rishonim other than Rambam handle that conflict, it seems highly plausible that Maimonides ruled like Gittin over Bava Batra, and rejected Rav Mesharashya. This also seems more appealing to me than Rav Botzko's contention that Rambam offered the rationale that the husband desires to heed the Sages only as a folk rationale.

We'll see next week that even if we accept Rav Mesharashya's statement as authoritative, an argument can be made that a get coerced by Jews is valid only in situations where there is an obligation to listen to the sages. Rav Huna's principle applies only to equitable sales, where the coerced seller receives market value for his wares. A coerced gift is not legally valid according to any position. Is giving a get more like a sale, or rather a gift?

Shabbat Shalom!

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