

CENTER FOR MODERN TORAH LEADERSHIP

Center for Modern Torah Leadership



חרות ואחריות

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"Taking Responsibility for Torah"

ARE ALL INCORRECTLY COERCED GITTIN INVALID? (Part 9- each can be read independently)

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This series tried to demonstrate that coercing an obligatory get does not run the risk of creating mamzerut or Biblical adultery. I began this effort from Rav Moshe Botzko's essay (הגינותי משה דף) (תכב):

על כן נלע"ד לומר

שכל מי שמחוייב לגרש וכפו אותו –
הגט הל

Therefore it seems proper in my humble opinion
to say

that anyone who is obligated to divorce, and
they coerced him to do so –
the get takes effect.

Rav Botzko reaches this conclusion using Lechem Mishnah's framework explaining how coercion yields genuine consent. In belt-and-suspenders mode, he added a variant of Imrei Binah's contention that the rabbis may validate externally expressed consent even when it does not genuinely reflect internal consent.

A potential objection to Rav Botzko's position is that he follows Rambam (and many or most rishonim) in understanding the Talmud as permitting coercion of anyone who is obligated to divorce. While he contends that his practical conclusion is true even according to the Tosafists who draw a sharp line between obligation and coercion, his analysis there is less robust.

It's therefore important that Rav Botzko was not the first to reach this conclusion, and that his predecessors were not committed to Rambam's position. The clearest earlier formulation I have found is in the 19th century Rabbi Yaakov Gezundheit of Warsaw's Tiferet Yaakov commentary on Gittin 88b. Tiferet Yaakov accepts Tosafot and nonetheless agrees with Rav Botzko that a get coerced when obligatory is valid even if the coercion was unjustified.

לכן נ"ל

דודאי יש שלשה מינים בזה הענין

האחד - הוא אותן כופין להוציא כהני דחשיב פרק
המדיר;

והשני - אותן שדינן יוציא ויתן כתובה, והרי דינו חרוץ
להוציא אבל מ"מ אין כופין להוציא רק פוסקין לו שכר
הדין.

ויש - שאין דינו כלל להוציא.

והך "כדין" שאמרו בגמרא - הוא מצד מין השני, שדינו
שיוציא אבל מ"מ אין דינו לכופו אותו להוציא -

מ"מ, כיון שדינו חרוץ להוציא והוא אינו חוצה, אם כפווה
לקיים הדין להוציא - הו' לי' גט מעושה כדין, ובהא דוקא
כשר דיעבד . . .

It therefore seems to me that there are three
kinds within this topic (of the coerced get):

The first – those that they (the Rabbis of the
Mishnah) would coerce to divorce (their wives),
such as those listed in Chapter Hamadir;

The second – those for whom the law is to
divorce and pay the ketubah, and although the
law is cut-and-dried that he must divorce,
nonetheless we do not coerce him to divorce,
we just rule for him that such is the law;

Others – whom the law does not at all obligate
to divorce.

The case described as *kedin* in the gemara
relates to the second kind, for whom the law is
that they must divorce but whom we
nonetheless do not coerce to divorce –
nonetheless, since their law is cut-and-dried to
divorce and he does not want to – if they coerce
him to fulfill the law that he must divorce – that
is a get coerced *kedin*, and it is specifically in that
case that the get is valid *post facto* . . .

Tiferet Yaakov agrees with Rav Botzko that *shelo kedin* refers
to cases where there is no obligation to divorce at all, and I have
tried to support that reading throughout this series. However, it is
important to note that Rav Yitzchak Herzog, the first Ashkenazi
Chief Rabbi of Israel, in the massive opening teshuvah of Heikhal
Yitzchak Even HaEzer, begins from the premise that this reading
is impossible:

. . . Tosafot there warn against coercing any
person to divorce, and to carry this (coercion)
out, until there is compelling evidence (that
coercion is halakhically justified), because we say
that a divorce coerced by Jews *shelo kedin* is
invalid, and we should not permit a married
woman in a case of doubt – see there.

This seems superfluous rhetoric, but their
intention is to give a severe warning not to rely
on our halakhic judgment unless it is
accompanied by clear evidence from the
Talmud, because our judgement without
evidence from the Talmud is still categorized as

doubt, and so this would be like permitting a married woman in a case of doubt.

But we need to meditate about the core of this matter, since we have found situations in which coercion is permitted only verbally, or by other means of distancing, such as those of Rabbeinu Tam, but not using instruments of violence, and we must descend into the depths of this halakhah:

Seemingly even we are commanded to coerce verbally or by expressing anger or by known means of distancing, there is still a mitzvah in the matter, and Rambam's well-known explanation is that since they inform him that this is a mitzvah incumbent upon him – his heart is shattered and he becomes willing, and if so, then in every case where there is a mitzvah to release one's wife via a get, we should (be able to) coerce literally using force, as there would be no concern of invalidating the get, as per the above, and what brought us to separate among cases of mitzvot?! Since there is a mitzvah, let us coerce giving the get!

Rav Herzog explains that we should integrate coercion of gittin into the general question of halakhic coercion. Some interpersonal wrongs generate Heavenly liability, while some generate humanly enforceable liability, and (he theorizes that) the latter are more severe. The distinction within gittin, then (according to Tosafot), is about the severity of the wrong done to the wife, and disputes among later commentaries are along the same axis.

This being the case, Rav Herzog wonders why the Talmud explains the effectiveness of coercion *keidin* as grounded in the husband's desire to obey "the mitzvah to obey the Sages". The Sages merely decide the severity of the underlying obligation, which can be rooted in verses such as "You must do the straight and the good" and "Love your neighbor as yourself". Why not say that the man agrees out of desire to fulfill the Torah?

Rav Herzog's answer is that the Torah does not address coercion at all. From the Biblical standpoint, a husband can only divorce willingly, full stop. But the Torah also gives the rabbis authority to define coerced consent as "willingness" when that result is mandated by 'tikun olam', improvement of society, and obligated husbands to obey. The husband's consent is based on the underlying Torah mitzvah AS MEDIATED by the Rabbis' decision that this mitzvah is severe enough to warrant coercion. Rabbinic coercion of a get is best compared to rabbinic flogging of those who violate their decrees, which presumably embody goals that can be rooted in verses. It is not an uprooting but rather an enforcement of the Torah.

Nonetheless, Rav Herzog maintains, if the validity of the get requires genuine consent, how can it work if the coercion is invalid? Isn't the husbands' consent dependent on his belief that

the beit din has correctly identified the get as a Torah necessity strong enough to warrant physical coercion?

Rav Herzog's answer is that the husband actually submits directly to the Torah, Rabbinic coercion merely gets him to acknowledge that his action violates the Torah. It is therefore valid consent so long as any mistake was made honestly in the pursuit of the rabbis' responsibility to administer Torah law.

The upshot is that even though *shelo keidin* refers to the coercion, contra Tiferet Yisroel and Rav Botzko, it includes only coercion deliberately done without justification.

Rav Herzog's argumentation gets more esoteric at this point. If a beit din coerces when it knows that poskim dispute whether coercion is justified, and if one holds that contemporary batei din have no authority to decide such disputes, is that considered "deliberately invalid coercion"? What if the beit din mistakenly believed that it had the authority to decide such disputes? What if the beit din believed that it had the authority to decide such disputes, but was aware that its authority was disputed?

The somewhat ironic upshot is that because this entire conversation depends on rejecting Rambam's contention that all obligatory divorces may be physically compelled, the issue here is a matter of doubt regardless: maybe Rambam is correct? Tosafot raise the specter of adultery and mamzerut only because they utterly rejected Rambam; we are not at the level to dismiss Rambam so absolutely. Furthermore, most authorities hold that a get coerced by Jews *shelo keidin* is Biblically valid, and maybe even those who hold that it is Biblically invalid mean only that it might be. So there are already two doubts to stave off mamzerut and adultery even if a ruling of coercion is in error. The possibility that coercion made by ruling according to one position is considered "mistaken" rather than "deliberate" creates a third doubt, and one is entitled to act to relieve distress when the risk is only a third-level or below chance of creating adultery or mamzerut.

Bottom line: There are three independent ways to reach the conclusion that there is no risk of adultery or mamzerut in following positions that permit coercion in cases where the get is plainly obligatory. I find Tiferet Yisroel's way most convincing. But Rav Herzog's teshuvah makes clear how important he thought it was to find a way of allowing batei din the leeway to coerce.

This issue has been irrelevant to US batei din, because they cannot arrange for physical coercion, and US courts generally wouldn't coerce divorce because of church-state issues. But "coercive control" laws recently passed in several states may allow get-denial to be considered as part of a series of actions that are subject to criminal penalties. In the vast majority of cases, halakhah will look at the pattern and not see those penalties as intended to coerce the get. But there may be outliers. I hope this series makes clear that the stakes should not immediately be framed in extreme terms, and that it also has immediate implications for Israeli practice, as Rav Herzog intended.

Shabbat Shalom!

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