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"Taking Responsibility for Torah"

ARE ALL INCORRECTLY COERCED GITTEN INVALID?

(PART 9 – EACH PART CAN BE READ INDEPENDENTLY)

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A get must be given willingly by the husband, and yet a coerced get is Biblically valid. How can this be?

Lechem Mishnah explains that coerced consent is Biblically valid when the seller evaluates the price paid as fair. Fulfilling a halakhic obligation to divorce, or to obey the coercers, constitutes fair value for a get, and we presume that husbands understand this. A coerced get is therefore Biblically valid unless the husband

- a. has no halakhic obligation to divorce his wife, and
- b. has no halakhic obligation to obey the coercers and
- c. understands that he has no such obligations.

These conditions are met when non-Jews coerce a husband who is not obligated to divorce. However, a get coerced by a beit din is Biblically valid even if coercion was not justified, and valid even Rabbinically when there is an underlying obligation to divorce.

This does not necessarily mean that the act of coercing is legitimate. Medieval authorities dispute whether an obligation to divorce automatically empowers beit din to coerce the get. Forcing a sale at fair price is generally a violation of the Commandment forbidding coveting = *lo tachmod*. But *deoraita* halakhah often permits illegal acts to have legal effects (see the sugya regarding *לא תעביד* on Temurah 4b-6b).

Sometimes the rabbis intervene to prevent those effects. For example, on Bava Batra 48b, Ameimar rules that women are married even if their consent was coerced, but Rav Ashi rules that such marriages are annulled, and the Halakhah follows Rav Ashi. (See Shulchan Arukh Even HaEzer 42:1, which also records a dispute as to whether the rabbis similarly intervene when men are coerced.)

Rabbinic interventions sometimes completely uproot the Biblical law. Thus Rav Ashi's ruling means that the woman is not married even Biblically. In other cases, the intervention only prevents the wrongdoer from gaining a legal advantage via the illegal action (שלא תהא חוטא נשכר).

In the context of marriage, complete uprooting frees the woman to marry another, while partial uprooting prevents the man and woman from acting as husband and wife. In the context of divorce, complete uprooting means that if the woman sleeps with another man, the children of that union are considered mamzerim. Partial uprooting means that the woman is

forbidden to remarry, but children from the forbidden remarriage bear no halakhic stigma.

To my knowledge, Rabbinic interventions to invalidate coerced divorces are all of the partial type. Therefore, under Lechem Mishnah's explanation, it seems that whenever divorce is obligatory, a beit din does not risk generating mamzerut by coercing the get.

Lechem Mishnah's psychological explanation works well within the framework of Ramban, who identifies the fair value that the husband receives as fulfillment of either the obligation to give the get or else of the obligation to obey the coercers. Separating these obligations means that fair value can be received even when coercion is unjustified.

However, Piskei RID (Rabbi Isaiah of Trani, 1180-1260) to Gittin 88b mentions only the obligation to obey the coercers. He further contends that a husband with no underlying obligation to divorce has no obligation to obey even a beit din's coercion, and crucially, that the husband will suspect that he has no obligation to obey. Therefore, he will not fully consent, and therefore, the divorce is Biblically invalid.

RID acknowledges that Geonic batei din decreed coercion in a circumstance where the Talmud did not mandate divorce, namely where the wife declares life with the husband unbearable.

Since the heads of the yeshivot decreed to coerce him to give a get –
there is an obligation to heed the words of the Sages, because the yeshivot in our time are in place of the Great Sanhedrin
and one must not diverge from their decrees,
and so we coerce him until he says 'I am willing'.

He adds in his Responsa (#62) that contemporary scholars must follow this decree and coerce husbands to divorce whenever their wife cannot be persuaded to continue the marital relationship.

RID also appears to hold (like Ramban and many others) that beit din may coerce any obligatory get.

RID's framework therefore provides no clear halakhic guidance for positions which separate the obligation to divorce from the right of beit din to coerce, or which reject the decree he attributes to the Geonim. One could coherently argue that husbands

- A. are aware of those positions, and

- B. deny any obligation to obey current batei din except when those batei din are following universally accepted halakhic standards, and
- C. therefore do not fully consent when a beit din coerces them unless coercion is permitted by all positions, and
- D. therefore such gittin are Biblically invalid

But this is a very tenuous argument even within RID, let alone as an application of RID's framework to positions he explicitly rejects. It is more plausible that husbands are obligated to obey whenever the beit din's position is halakhically reasonable (not a *טעות בדבר* (משינה), and that husbands understand this.

It must however be conceded that Lechem Mishnah's framework depends on broad and unverifiable psychological claims. Imrei Binah Hilkhhot Dayanim 1 (Rav Meir Auerbach, 1815-1878) points toward a radical alternative.

Immediately after concluding that gittin coerced by non-Jews *shelo kedin* are Biblically invalid, Talmud Gittin 88b cites the following incident:

Abbaya found Rav Yosef sitting (as a judge) and coercing gittin.

He said to him:

But we are nonordained judges, and a beraita says: . . . **before them – and not before nonordained judges!?**

He replied:

We are acting as their (ordained judges') agents.

Chiddushei HaRAN (likely misattributed) to Sanhedrin 2b explains Abbaya's challenge as follows:

Although he (Abbaya) knew that coercion of gittin is legally effective because of a rabbinic decree,

(he wondered): why were they (Rav Yosef) not concerned about the prohibition "*before them* and not before nonordained judges"!?

Imrei Binah wonders: If coerced gittin are effective because coercion produces willingness, why would Chiddushei HaRAN describe this outcome as "the result of a rabbinic decree"? He concludes that the Amoraim relied on Lechem Mishnah's psychological explanation only in cases explicitly addressed by the (ordained Tannaim of the) Mishnah (e.g. cases listed in Ketubot 7:10: "These we coerce to divorce ..."). In other cases, the husband may be uncertain whether he is obligated to obey. The rabbis therefore made a decree validating the divorce regardless.

How the rabbis can do this is an ancient conundrum. Imrei Binah adopts a standard solution: the rabbinic decree causes the coerced husband to consent lest the rabbis annul the marriage from the outset and retroactively make his sexual acts licentious.

(In a sense, Imrei Binah merely kicks the can down the road; ultimately, the get is valid only because we presume genuine consent. Specifically, halakhah adopts an irrebuttable presumption that a husband would rather be divorced than have had sex out of wedlock with a woman he considered fit to marry. This presumption is eminently rebuttable in practice. What if the marriage was never consummated? What if the husband in other contexts demonstrates unconcern about the couple's sexual history? What if he wishes to avoid paying alimony? And so forth. But Imrei Binah is in fine halakhic company ignoring those questions.)

Under Imrei Binah's understanding, the relevant question is not "does the husband think he is obligated to obey the coercers?", but rather "does the halakhah construct the coercers as agents of past ordained judges?" He argues that the fact that Abbaya questions Rav Yosef's general authority, and not his specific decisions, demonstrates that once given authority to coerce, nonordained judges have discretion about when and whom to coerce, and are not limited to cases explicitly covered by precedent.

Imrei Binah does not go all the way down this path. He sets out to explain the positions that worry that coercion by batei din can generate invalid gittin even when divorce is obligatory. But his explanations depend on tenuous and contortionist claims, e.g. that a validly coerced get can be invalid because it is "as if coerced invalidly", or that there are separate Biblical and rabbinic obligations to obey rabbinic decrees, and the rabbinic obligation to obey rabbinic decrees cannot generate fair value for the get. These are analytic bridges too far for me. In any case, it is not clear that the resulting invalidity would create mamzerut. Imrei Binah's citations omit the mentions of mamzerut in the sources he is attempting to explain.

My bottom line is that there are two viable models to explain the Biblical validity of gittin coerced by batei din. The first presumes that coercion creates genuine consent whenever the husband fulfills an obligation by divorcing. (Note that Tashbetz 1:1, cited by Beit Yosef EH 134, extends this logic to cases where divorce fulfills obligations of honoring parents, teachers, and so forth.) The second adds that where the presumption would otherwise fail, the rabbis construct consent wherever the husband fulfills an obligation by divorcing. Under either model, the get is Biblically valid even if the beit din's decision to coerce was incorrect.

I began this series with my joy at discovering Rav Moshe Botzko's argument for this conclusion. In the final installment of this series, I expect to show that having followed Rav Botzko up a winding path, we'll find other great poskim waiting at the summit, wondering why we took so long to arrive.

Shabbat Shalom!

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