

I'm taking the liberty this week of relating to a live issue rather than to the parshah, and to send you two different pieces: First is an op-ed type piece that embodies CMTL's motto of "taking Responsibility for Torah" – it identifies a halakhic issue with real-world implications, argues forcefully on both technical and moral grounds that some halakhic outcomes of this issue are superior to others, and calls on everyone in the halakhic community to support those outcomes in every way possible. Following that is an objective analysis of the texts and arguments from which the technical ground above is derived. As always, the texts are provided in the original as well as in translation.

I hope these will inspire you to speak out on the specific issue of gerut lechumra, as earlier drafts have inspired several of my rabbinic colleagues. I also hope they will inspire in you a commitment to our mission and a recognition of the importance of CMTL's ideas and programs, and that you will support all of these in every way you can.

Shabbat Shalom!

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Op-Ed

What does it mean to be Orthodox?

Genuinely belonging to any group involves identification with its past, present, and future, each of which carries obligations. Identification with the past creates the obligation to take responsibility for past actions of the group and seek to ensure that they have the best possible consequences.

Being Orthodox therefore requires taking responsibility for the past actions of Orthodoxy. I want to talk about this with specific reference to conversion. But it is necessary to establish a premise first.

Halakhah lemaaseh can change, as the result of new evidence or new arguments. It is entirely possible to say that halakhic positions which were once legitimate and viable bases for practice can no longer be relied upon. Talmudically, of course, the obvious examples are nearly all the positions of Beit Shammai. Another famous example is the position of Rabbi Yose HaGelili permitting one to eat fowl cooked in milk, which the Talmud records was still relied on in some areas early in the Amoraic period, but certainly cannot be relied on anywhere today. Finally, a key principle of halakhic civil law is that precedents no longer cited by mainstream works such as the Shulchan Arukh cannot be relied on to rebut financial claims. These changes/restrictions may better capture the true intent of Hashem in His Torah and thus be a real contribution to the sacred mission of the Jewish people.

However, it is generally unjust to apply newly stringent regulations retroactively. This injustice is compounded when the consequence of the change in psak has consequences for identity and marriage. Thus halakhah forbids the introduction of new stringencies in areas that affect personal status when they might by implication be “motzi laaz al rishonim”, cast aspersions on the status of people who relied in good faith on the earlier rulings – all the more so it is forbidden to directly cast such aspersions, G-d forbid! The notion that someone could be made an agunah, or declared a mamzer, or have their Jewish identity removed, because the consensus of poskim has shifted – perhaps decades or even centuries after a divorce, marriage, or conversion that relied on the original consensus – violates elementary decency and the bedrock halakhic principle that “All the Torah’s ways of Torah are pleasantness”.

It is therefore regrettable and astonishing that significant Modern Orthodox poskim and batei din seem to be ignoring this principle in the area of conversion. On a broad and growing range of issues, ranging from the procedures for witnessing immersions to the standards for acceptance of the mitzvot, converts and children of converts are having their Judaism retrospectively invalidated on the basis of a new halakhic consensus. Many of these innocent victims are being put in the worst possible halakhic circumstance; they are told that they might be Jewish, and thus cannot marry either Jews or nonJews. Furthermore, if they are not currently fully observant, they are told that they have no way out of this twilight zone, as the batei din will not convert the incompletely observant even misafek (when the beit din sees the candidate as possibly but not certainly Jewish already). Even if the beit din determines that they are halakhically Jewish, it has become standard practice to refuse to certify their Jewishness if anyone anywhere might conceivably that they are not Jewish, unless they undergo “gerut lechumra” (halakhically unnecessary reconversion to satisfy counterhalakhic

opinions). Even this deeply troubling option, which can requires women to act in a way that denies the Jewishness of their own children, and men to act in ways that deny the Jewishness of their siblings, nieces, and nephews, is not offered to the incompletely observant.

While public outrage has been focused on the wholesale public nullification of Israeli Conversion Authority converts by the Israeli charedi rabbinate, I think it is fair to say that the more subtle, but no less wholesale, Modern Orthodox nullification is ethically worse. While the Israeli nullification, together with the implicit or explicit threats of disqualifying many Orthodox converts in the Diaspora, clearly and deliberately violated the slew of Biblical prohibitions against oppressing converts, and while the arguments used in that nullification substituted personal antipathy for halakhic reasoning, at least the rabbis involved served notice in advance of the conversions that they would reject them. The Modern Orthodox rulings invalidate thousands of conversions more than a generation after they happened, including those based on positions explicitly articulated, endorsed, and relied on in practice by Israeli Chief Rabbis of great scholarship and personal stature whose like we can only yearn to see again.

This position is simply and deeply immoral. At its core it means that Orthodoxy, and specifically Modern Orthodoxy, is completely disassociating itself with its past, especially its early and mid 20th century past, and thereby disclaiming all responsibility for that past. This is a peculiar position for the movement of masoret (tradition) to take, and owing to the broad and deep human harm it is causing, it must not be allowed to stand.

Recent events, however disturbing in and of themselves, have created an opportunity for recommitment to the halakhically mandated proper treatment of converts. I respectfully suggest that the RCA and its GPS beit din system seize this opportunity by publicly and unambiguously validating all past conversions done with integrity under Orthodox auspices, so that the righteous converts and children of converts within our community can live secure in their identities and in the essential compassion of the Torah community.

Text Analysis (The texts themselves follow:)

Under what circumstances may one create new stringencies in areas of Halakhah that affect personal status? The primary source for this discussion is a very difficult to follow responsum in Terumat Hadeshen, which, owing to the importance of the subject, I think is worth presenting in detail, although in the interest of clarity I will significantly rearrange the order of his argument. (My oral presentation of this text, available [here](#), is in its native order.)

Terumat Hadeshen is fully aware that new stringencies are regularly introduced in the area of gittin. This, he notes, seems to directly contradict Talmud Gittin 5b, where Bar Hadaya is ordered by R. Ami and R. Asi not to follow the stringent position of R. Achi, who required the agent who would deliver a get abroad to witness the writing of every letter of the get, rather than just the first line, so as to avoid casting aspersions on earlier gittin (that had been delivered by agents who had not been present for every letter).. This principle, Terumat Hadeshen further contends, is clearly generalizable, as Mordekhai to Gittin 5b uses it to forbid scribes from writing gets with “tagin” on the appropriate letters, lest people suggest that earlier gets written without the “tagin” were invalid. What, then, legitimates the stringencies put in place in his own days?

One might be tempted to say simply that the new stringencies were in fact installed contrahalakhically, although once adopted, eliminating them might be counterproductive. But Terumat HaDeshen notes that the Talmud itself, in another context, legitimates the establishment of a new get-related stringency. Gittin 85b records Rava as mandating the inclusion of “from this day and forever” in gets even though this had not previously been the standard form. This case too must stand for a general principle, as Mordekhai himself cites Rabbeinu Tam as mandating the inclusion of “behold you are permitted to any man” in gittin on the basis of this precedent.

To resolve this contradiction, Terumat HaDeshen suggests that

- a. One must not introduce stringencies that are obviously unnecessary (as the gain is minimal, and there is always a risk that ignorant people will think them necessary and invalidate previous gittin that lacked them)
- b. One should not introduce stringencies that can claim to be genuinely necessary (as then learned people can reasonably invalidate previous gittin that lacked them). Thus one may not require the agent to be present for the writing of the entire get, or require adornments on letters, as each leaves open the argument that past gittin not including these stringencies were invalid.
- c. One therefore may only introduce stringencies that have a legal purpose, but cannot claim to be legally necessary (as these remove any doubt about the validity of new gittin without providing grounds for invalidating previous gittin). For example, one may begin requiring formulations in gittin that account for rejected legal positions in obscure cases, or that conform to the simple reading of Talmudic texts, so long as it is clear that previous gittin written without these formulations would be legally valid

This is plainly a very delicate structure. I don’t wish here to discuss whether he convincingly fits his precedents into their appropriate boxes, but rather to draw out implications of b and c.

For b –

It seems to me that any new stringency that, by implication, would invalidate past gittin, could also be used to invalidate present gittin. Nonetheless, he bans new stringencies that could invalidate past gittin. Thus he seems willing to risk present gittin for the sake of past ones. This makes sense to me only if it is obvious that it is not necessary for gittin to satisfy all potential halakhic arguments, and thus the risk to present gittin is minimal, whereas once a stringency became normative, one might not realize that ignoring it had been perfectly acceptable in the past. Another way of framing b: One must allow new gittin to be written in ways that ignore valid halakhic positions rather than risk having people think that accounting for those positions was always necessary.

For c –

It seems to me here that his position makes sense only if one understands that a get cannot be questioned on the ground that it fails to account for halakhic positions that oppose the standard psak, even when one believes intellectually that those positions are plausible, and thus is religiously motivated to account for them when writing new gittin.

Furthermore, he allows one to be stringent to account for past overruled halakhic positions on the ground that such positions could never threaten past gittin. As he knew that positions overruled in the past can be resurrected by new poskim, this makes sense only if he assumed that such new decisions are not applied retrospectively.

Terumot HaDeshen's positions and assumptions, I suggest, are directly applicable to contemporary practice in the area of conversion, namely:

- a. One must not impose stringencies for one's own sensibilities that have no halakhic purpose
- b. One must not require conversions to account for all halakhic positions if that may cast aspersions on past conversions that accounted for some but not all
- c. One must not apply new psakim about conversion retroactively.

A last textual note: Terumot HaDeshen at the end seems to contradict the above by justifying our efforts to ensure that witnesses sign the get, even though the normative psak is that such signatures are unnecessary, and the practical need for such signatures no longer exists. This is not so, however; he assumes there that as for practical reasons all past gittin were signed, requiring signatures on contemporary gittin poses no risk to past gittin.

Shabbat Shalom!

1. גיטין ה:

בר הדיא בעי לאתויי גיטא. אתא לקמיה דרבי אחי דהוה ממונה אגייט.
א"ל: צריך אתה לעמוד על כל אות ואות.
אתא לקמיה דרבי אמי ור' אסי.
אמרי ליה: לא צריכת, וכי תימא אעביד לחומרא, נמצא אתה מוציא לעז על גיטין הראשונים.

2. מרדכי גיטין ה:

"וכי תימא אעביד לחומרא נמצא אתה מוציא לעז על גיטין הראשונים" -
פסק בספר התרומה:
דאין לזייו בגטאותיות של שעטנו גץ כמו שעושין בס"ת,
כי אין לשנות המנהג פן יוציאו לעז על גיטין הראשונים,
ועוד - אם ירגילו לעשות תגין, יש הרבה מן הסופרים שאין בקיאים לעשות, ויעשו גדולות כמו מקלות, ויקלקלו האותיות ברוב המקומות -
לכן טוב לחדול מלזיין.
ואע"פ שצריך שתהא כל אות מוקפת גויל,
היינו טעמא, משום דהאותיות המדובקות נראות אחת או אין נראות אות למי שאין מבחין מה בין אות זה ומה בין חברתה -
לפיכך נהגו להפריש,
אבל בלא תגין נקראין אות, והתגים לדרשא הן באים.
אמנם ר"י בר אברהם היה מדקדק:
כיון שלא יתחייב עליהם בשבת אם יכתבם בלא זיון כמשפטם, כדאיתא פרק הבונה,
א"כ לא מקרי אות בלא תגין,
והיה מצריך לעשות תגין כמו בס"ת
והכי איתא בפרק הבונה:
תנא: נתכוון לכתוב אות אחת ועלו בידיו שתיים חייב,
והתניא: פטור!?
לא קשיא - הא דבעי זיוני, הא דלא בעי זיוני.
וכן מצאתי בדברי ר"ב ממגנצא שכתב וז"ל:
צריך הסופר ליזהר לכתוב כתיבה שלמה ומזוינת, כל אות ואות בזיונה, ושלא לחסר אפילו קוצו של אות אחת, כאילו היה כותב תפלין ומזוזה.
ובספר התרומה כתב:
דההוא דהבונה י"ל דמיירי בס"ת, או במקום אחר שנתכוון לכתוב כמשפט ס"ת,
וה"פ:
הא דבעי הסופר לזיוני, כגון בס"ת; הא דלא בעי הכותב לזיוני,
אבל אידי ואידי מיירי כשעלו בידו לכתוב ב' אותיות שצריכין זיון אילו היו בס"ת,
דהא לא קאמר: הא באותיות שדינם לזיון; והא באין דינם לזיון.
ותדע:

דהא קאמר התם: נטל לגגו של חית ועשאה כמין ב' זיינין – חייב,
משמע דבנטילת הגג לחוד חייבת, אע"ג דלא זיין האותיות,
אלמא כיון דאין דעתו לזיין ולעשות תגין מקרי אות.

3. גיטין פה: - פו.

אתקין רבא בגיטין: 'איך פלניא בר פלניא פטר ותריך ית פלוניא אינתתיה דהות אינתתיה מן קדם דנא מיומא דנן ולעלם' . . .
"מיומא דנן" - לאפוקי מדרבי יוסי, דאמר זמנו של שטר מוכיח עליו;
"ולעלם" - לאפוקי מדבעא מיניה רבא מרב נחמן: דאמר: 'היום אי את אשתי ולמחר את אשתי' . . . ?

4. רש"י גיטין דף פה: - פו.

מן יומא דנן ולעלם לאפוקי מדר' יוסי דאמר - אין צריך לכתוב 'מהיום' בגט דשכיב מרע, דזמנו של שטר מוכיח עליו, ולא הוי כגט
לאחר מיתה - לכך תקן רבא בכל הגיטין להיות הסופרים רגילין בו.
ואע"ג דקיימא לן כר' יוסי, בעינן לאפוקי נפשין מפלוגתא, שיצא הדבר בהיתר ולא יצא שם פסול אמשפחות ישראל.
לאפוקי מדבעא מיניה רבא מרב נחמן היום אי את אשתי ולמחר הרי את אשתי – מהו? ופשט ליה: כיון דפסקה פסקה.
אפ"ה, תקן דלא לעביד הכי, שלא להוציא לעז על הגט.

5. תוספות מסכת גיטין דף כו עמוד א

וצריך שיניח מקום הרי את מותרת לכל אדם –

בכל דוכתי משמע שכותבין לשון זה בגט,
ובפ' בתרא (לקמן כה). נמי תניא: גופו של גט הרי את מותרת לכל אדם,
והנהיג ר"ת לכתוב לשון זה בגט.
אבל בטופסי גיטין לא היה כתוב.
ומ"מ אין להוציא לעז על גיטין הראשונים, שהרי מאריכין לכתוב כמה לשונות בגט דחשיב כמו 'הרי את מותרת לכל אדם'.

1. Gittin 5b

Bar Hadaya needed to deliver a get. He came before R. Achi, who was appointed over gittin.

[R. Achi] said to him: You must be attentive to each and every letter.

He came before R. Ami and R. Asi.

They said to him: You need not, and should you say 'I will act in accordance with the more stringent opinion'. it would turn out that you were casting aspersions on the earlier gittin.

2. Mordekhai Gittin 5b

"and should you say 'I will act in accordance with the more stringent opinion'. it would turn out that you were casting aspersions on the earlier gittin" –

The Sefer HaTerumah ruled:

One must not adorn the letters SHaTNeZ GaTZ in a get the way one does in a Torah scroll, because one must not change the existing practice lest they cast aspersions on the earlier gittin. Furthermore – If they make a habit of adding adornments, many of the scribes are not expert at this, and they will make large ones, like sticks, and in most cases they will distort the letters – therefore it is better to refrain from adorning.

Even though it is necessary for each letter to be surrounded by an [ink-free] margin, the reason for that is that the attached letters look like one, or don't look like a letter, to ne who cannot tell the difference between one letter and another –

therefore the custom was to separate them,

but without adornments it is still called a letter, and the adornments serve only a homiletical purpose.

However, R. Y. ben Avraham was particular -

since one would not be liable for writing them on Shabbat if one wrote them without their usual adornments (See Shabbat Perek haBoneh below),

and it follows that without the adornments they are not considered letters,

so he required adornments like those in a Torah scroll,

and thus we find on Shabbat 105a:

A beraita glossed the Mishnah: One who intended to write one letter, but ended up with two – he is liable.

But we learned in a beraita: He is exempt!?

‘ This is no difficulty – this deals with letters that require adornments; this with letters that do not.

I found the same in the words of R. B. of Magenca, who wrote:

The scribe must be very careful to write a complete and adorned script, each and every letter with its adornment, and so as not to lack even the tip of one letter ,as if he were writing tefillin or a mezuzah.

But Sefer HaTerumah wrote that Shabbat 105 can be said to discuss a case of writing in an actual Torah scroll, or where one intended to write according to the rules of a Torah scroll, and it should be interpreted thus:

This deals with letters that the scribe must adorn, such as when in a Torah scroll; this with letters that the writer need not adorn, but both cases deal with a case in which he ended up with two letters that would require adornment were they in a Torah scroll.

This reading is evidenced by it not saying: This deals with letters whose rule is that they require adornment; this deals with letters that don’t require adornment.

Know this:

Because it says there: If one removed the roof of a chet and made it like two zayins – he is liable,

which implies that merely removing the roof creates the liability, even though he didn’t adorn the resulting letters,

so we see that of his intent is not to adorn and put on adornments, it is called a letter.

3. Gittin 85b – 86a

Rava established in the standard get text: ‘ . . . from this day and for ever ’ . . .

“from this day” – excluding the position of Rabbi Yose, who said that the date of a contract serves as its initiation date;

“and forever” – to exclude the question Rava asked Rav Nachman: If one said: ‘Today you are not my wife, but tomorrow you are my wife . . .’

4. Rashi Gittin 85b-86a

“from this day” – excluding the position of Rabbi Yose, who said that one need not write “from today” in the get of someone on their deathbed, as the date of a contract serves as its initiation date, and this I not like a get after death – that’s why Rava established this for all gets, so that the scribes would be familiar with it.

And even though we hold like Rabi Yose, we need to take ourselves out of controversy, so the matter will emerge as permitted and the stigma of unmarriageability will not fall on Jewish families.

to exclude the question Rava asked Rav Nachman: If one said: ‘Today you are not my wife, what is the law? And Rav Nachman answered him: Once the relationship ceased, it remains ceased. Nonetheless, Rava established not to act so, so as not to (stimulate) the casting of aspersions on the get.

5. Tosafot Gittin 26a

It is necessary to leave blank the space for “behold you are permitted to all men” –

Everywhere the implication is that we write this formulation in the get,

and on Gittin 85a a beraita also teaches: “The body of the get is ‘behold you are permitted to all men’,

and Rabbeinu Tam established writing this formulation in the get,

but in the standard forms of gets it was not written,

but regardless one should not cast aspersions on earlier gets, as they extensively write several formulations in the get that are considered the same as *behold you are permitted to all men*.

תרומת הדשן סימן רלב

שאלה:

הא דקאמר תלמודא פ"ק דגיטין /דף ה ע"ב/:

וכ"ת אעביד לחומרא, א"כ אתה מוציא לעז על גיטין הראשונים!?

א"כ תקשה היכי נהגו האחרונים כמה חומרות בגיטין שלא נהגו בהן הראשונים!?

וכן עוד היום אנו מחמירין בכמה מילי בגיטין שלא נהגו בהן רבותינו שהיו לפנינו?!

תשובה:

יראה דבברים הללו צריכים לימוד רב אימתי שייד לומר 'נמצאת אתה מוציא לעז ואימת לא אמרי הכי'.

דהא ע"כ כללא הוא, דילפינן מינה מההיא דפ"ק דגיטין, דהא דייק מיניה התם במרדכי דאין לזיין האותיות של שעטנ"ז

ג"ץ בגיטין מטעם דא"כ אתה מוציא לעז.

והיה נראה לחלק:

דכל היכא דמילתא דפשיטא הוא להתיר, ובא אחד להחמיר ולעשות זהירות יתירתא, כה"ג אמרינן לא תעביד דא"כ אתה מוציא לעז, אבל היכא דאיכא ספיקא וצדדין שמן הדין ראוי להחמיר, מוטב יותר לעשות כדת וכתורה לגמרי, וניחוש לגיטין שלפנינו שלא יהא בהן ספק, משניחוש ללעז גיטין הראשונים.

והכי אמרינן פ' המגרש /גיטין דף פה ע"ב/ ד

אתקין רבא בגיטין "מן יומא דנן ולעלם", ומפרש התם "מן יומא דנן" לאפוקי מדר' יוסי, דאמר זמנו של שטר מוכיח עליו,

ופרש"י התם: אע"ג דקי"ל כר' יוסי, מ"מ תקן כך כדי שיהא בהיתר גמור ושלא יוציא שום לעז על בת ישראל.

וכה"ג נמי פי' אהא דתיקון "ולעלם" לאפוקי מדבעי רבא מדרב נחמן,

אלמא אפי' האמוראים החמירו שלא לצורך ולא חשו ללעז גיטין הראשונים, דמשמע דקודם רבא לא היו כותבים "מן יומא דנן ולעלם",

והיינו משום דהוא חייש ללעז שלפניו, משום דרבנן פליגי עליה דרבי יוסי חש רבא פן יוציאו לעז ולימרו דהילכתא כרבים.

וכן הא דאיתא בתוספות ובמרדכי פ' כל הגט דתיקון ר"ת לכתוב בגט והרי את מותרת לכל אדם, אע"ג דבטופס הקדמונים לא היו כתב /כתוב/ כדאיתא התם, לא היו חיישי ר"ת ללעז הראשונים והחמיר שלא לצורך, שהרי כתבו תוס' ומרדכי התם דבטופסים הקדמונים נמי מאריכין בכמה לשונות בגט שהן כוללין כמו והרי את מותרת לכל אדם, מ"מ הואיל ומשמע בכמה דוכתא בתלמוד דצריך לכתוב והרי את כו' חש ר"ת פן יוציאו לעז אם לא יכתבו הכי, ולא אשגח על לעז גיטין הראשונים.

וא"כ, צריכים לחלק בההיא דגיטין דלעיל דאין לעמוד על כל אות ואות משום לעז גיטין הראשונים, וכן הא דזיין אותיות דשעטנ"ז ג"ץ דדייקינן מיניה,

אע"ג דהתם נמי איכא צדדים וסברות להחמיר, אלא דהתם אי אתינא להחמיר ולומר דצריך לעמוד על כל אות ואות, א"כ הגיטין הראשונים שלא עמדו על כל אות ואות היו פסולים לגמרי, ונשתנה בהן מטבע חכמים לגמרי, דהוה גרע טפי מלא אמר כלל בפני נכתב, שהרי העיד שקר שנכתב בפניו, דהיינו כל הגט כמו שאנו סוברים להחמיר, שכך תיקנו חכמים, והוא לא ראה רק שיטה אחת! וכן אותיות דשעטנ"ז ג"ץ, אם נחמיר לזיינם, א"כ סוברים אנו דלא מיקרו אותיות בלא זיון, וא"כ כל גיטין הראשונים שלא זיינו אותם פסולים לגמרי היו, כי לא היה כתב כלל, וכמו שגרשה בגט מוטעה ומשובש מכל צדדים דמי.

אבל ההוא דמן יומא דנן וכן והרי את מותרת, אפילו לפי מה שסוברים להחמיר, הגיטין שלא היו כותבים כך לא היו פסולים בפשיטות, אלא שהיה לדקדק לעז בהן, כל כה"ג לא חיישינן ללעז גיטין הראשונים, אי איכא סברא וטעם להחמיר,

אבל למיעבד זהירות וחומרות יתירות שלא נהגו הראשונים, אפי' בכה"ג לא עבדינן.

ומההיא דפרש"י א"מן יומא דנן" — לאפוקי מדר' יוסי, ואע"ג דהילכתא כר' יוסי, מ"מ תיקון רבא כדי שיהא בהיתר גמור ושלא יצא שום לעז על נשואי בנות ישראל, נראה לתרץ נמי הא דנהיגי עתה לטרוח הרבה לפעמים ע"י יציאה מרובה להחתים עדים בגיטין, אע"ג דפסק תלמודא בכמה דוכתא בגיטין דהלכה כרבי אלעזר דאמר עידי מסירה כרתי וגט שאין עליו חתומים עדים כלל כשר לגרש

בו, ואין העדים חותמין על הגט אלא מפני תיקון העולם, והאידינא ליכא תיקון העולם בעידי חתימה, שהרי כל המנהיגים קורעים הגיטים מיד אחר נתינתם וגונזים אותם לעצמן, ומימינו לא שמענו שבאתה אשה לב"ד וגט בידה להנשא בו או לגבות בו כתובתה, וא"כ טורח עידי חתימה /חתימה/ למה לדידן, אלא משום דכמה סתמא משניות וברייתות דקא סברי כרבי מאיר, דסבר עח"כ = עדי חתימה כרתי =, וגט שלא היו עדים חתומים בו היו כמו חספא בעלמא, מפקינן נפשין מכל פלוגתא כדי שיהא בהיתר גמור ושלא להוציא לעז כלל על נישואי בנות ישראל.

[הגה"ה: בפ' יש נוחלין פירש רשב"ם /דף קלו ע"א/ ד"ה מוכיח עליו/ וכן במרדכי שם, דרב אלפס ויתר גאונים סבירא להו דלפי האמת רבא סבר בגיטין דלא כרבי יוסי, ולכך תיקן מן יומא דנן ולא משום שלא יצא לעז על נישואי בנות ישראל כדפרישית, ע"כ.]

Question:

Regarding that which the Talmud says (Gittin 5b):

“If you say that I should act in accordance with the more stringent position (and require the agent-for-delivery of a *get* to be present for the writing of each and every letter), then you would be casting aspersions on earlier *gittin*!?”

If this is so, you should find problematic – how have the later authorities practiced numbers of stringencies with regard to *gittin* that were not practiced by earlier authorities?

And so too even today we are stringent in several matters with regard to *gittin* that were not practiced by our teachers who preceded us?!

Response:

It seems that these matters require great study (to determine) when it is relevant to say “it turns out that you are casting aspersions” and when we don’t say that,

as it cannot be denied that this is a general principle, because we derive (other cases) from Talmud Gittin 5b above, as in Mordekhai there he deduces from it that one should not adorn the letters of the acronym Shatnez Gatz in *gittin*, on the ground that one would be casting aspersions.

It seemed reasonable to distinguish (as follows):

Everywhere that it is an obvious matter to permit, but one came to be stringent and impose an extra degree of caution, in such cases we say ‘Do not act so, because if you do, you will cast aspersions’,

but where there is doubt and there are perspectives according to which it would be proper to be stringent from a strictly legal perspective, it is better to act according to law and Torah completely, and to be concerned for the *gittin* in front of us, that no doubt attach to them, than to be concerned about aspersions on earlier *gittin*.

Thus we say on Talmud Gittin 85b that Rava instituted the writing of the phrase “from this day and forever” in *gittin*, and it is explained there that “from this day” was instituted in opposition to the position of Rabbi Yose, who said that “the date of a contract verifies itself (i.e. serves as the contract’s effective date)”,

and Rashi interprets there: “Even though we hold like Rabbi Yose, nonetheless he established this so that the *get* would create complete permission and there would be no aspersions cast upon daughters of Israel”,

and similarly the word “forever” is explained as opposed to the question which Rava asked of Rav Nachman (as to whether a *get* as valid if one said “Today you are not my wife, but tomorrow you are my wife”),

so we see that even the Amoraim were stringent without necessity and were not concerned for aspersions on earlier *gittin*, as the implication is that prior to Rava they did not write “from this day and forever”,

and that was because he was concerned about aspersions on the case before him, that because the Rabbis disagree with Rabbi Yose, Rava was concerned lest people cast aspersions and say that the law follows the majority opinion.

And the same principle is behind that which is in Tosafot and Mordekhai Perek Kol HaGet, that Rabbeinu Tam instituted the writing of “and behold you are permitted to all men” in *gittin*, even though this had not previously been in the standard form, as they say there, but Rabbeinu Tam was not concerned for aspersions on the past and instituted an unnecessary stringency, as Tosafot and Mordekhai there write that in the earlier forms they had also put in several extensive formulations that were as broad as “and behold you are permitted to all men”, but nonetheless since in several places the Talmud implies that it is necessary to write “and behold etc.”, Rabbeinu Tam was concerned lest they cast aspersions if it were not written, and he paid no heed to aspersions about earlier *gittin*.

If this is so, we need to distinguish the case cited from Talmud Gittin above that one should not stand over each and every letter lest one cast aspersions on the earlier *gittin*, and similarly in the matter of the adorning of the letters of the acronym Shatnez Gatz that is derived from it,

and say that even though in those cases there are also perspectives and rationales in favor of stringency, nonetheless there, if we come to be stringent and say that one must stand over each and every letter, then the earlier *gittin* where the agent-for-delivery did not stand over each and every letter would be utterly invalid, and with regard to those *gittin* the necessary rabbinic formula would be completely distorted, as this would be worse than (the agent) not saying at all “it was written before me”, as he would be testifying falsely that it was written before him, as in accordance with the stringent position we would be adopting, his statement would refer to the entire *get*, as this was the decree of the Sages, and he only saw the writing of one line!

And also with regard to the letters of the acronym Shatnez Gatz, if we adopt the stringency of adorning them, that would mean that we held that they are not called letters without the adornments, and therefore all the earlier *gittin* that did not adorn them were utterly invalid, as they were not in writing at all, and it is as if the husband divorced the wife with a *get* that is erroneous and messed-up in all ways.

Whereas the case of “from this day”, and similarly “and behold you are permitted”, even according to the rationale for stringency, the *gittin* in which those phrases were not written were not obviously invalid, but rather it was possible to find aspersions to cast on them, and in such cases we are not concerned about aspersions on earlier *gittin*, so long as there is a rationale and a reason to be stringent.

But to institute cautions and additional stringencies (that have no rationale or reason) that our predecessors never practiced, even in such cases (where there is no risk of casting obvious aspersions on the past), we don’t do that.

And with regard to the comment of Rashi on “from this day on”, that “it comes to oppose the position of Rabbi Yose, and even though we hold like Rabbi Yose, nonetheless Rava established this so that the *get* would create complete permission and there would be no aspersions cast upon daughters of Israel”, it seems correct to resolve on this basis the contemporary practice of making multiple efforts and going to great expense to have witnesses sign the *get*, even though the Talmud in a number of places in Tractate Gittin ruled that the law follows Rabbi Eliezer, who said that the witnesses of the transfer of the *get* to the wife make the document effective, and that a *get* which does not have any witnesses’ signatures is valid to divorce with, and the witnesses sign the divorce only “because of *tikkun haolam*”, and nowadays *tikkun haolam* is not affected by the signatures of witnesses, as all directors-of-Jewish-divorce tear the *get* immediately after it is given and then bury it in their own files, so that in all our days we have never heard of a woman coming to court with a *get* in her hand seeking to remarry or to claim her *ketubah* on the basis of that document, in which case why is the bother of getting witnesses’ signatures necessary for us? But rather it is because there are several anonymous *mishnayot* and *beraitot* that hold like Rabbi Meir, who holds that the witnesses’ signatures make the document effective, and that a *get* without witnesses’ signatures is merely a scrap, so we remove ourselves from all disagreement so that the *get* will create complete permission and so as to prevent any aspersions from being cast on the marriages of daughters of Israel.

[Note: In Chapter Yesh Nochalin Rashbam and Mordekhai comment that RIF and other geonim hold that in truth Rava holds against Rabbi Yose with regard to *gittin*, and therefore he instituted the writing if “from this day” for that reason, and not to prevent the casting of aspersions on the marriages of daughters of Israel, as previously explained.]