YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

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**GEMARA GITTIN 5779**

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In loving memory of Rabbi Dr. Barrett (Chaim Dov) Broyde ztz"l

הוֹלֵךְ תָּמִים וּפֹעֵל צֶדֶק וְדֹבֵר אֱמֶת בִּלְבָבוֹ

Steven Weiner & Lisa Wise

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**Shiur #05**

**Gittin Chapter 9**

**(84a) “On condition that you marry Ploni” and “on condition” stipulations**

**Rav Baruch Weintraub**

Translated by R. Shalom Mashbaum

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**Sources for shiur:** **On Condition That You Marry *Ploni* (and on Conditional *Kinyan* in General)**

על מנת שתנשאי לפלוני בפרט (וגדרי תנאי על מנת בכלל)

*מלבד הבנת פשט הסוגיה, השאלה שתעמוד במרכז דיוננו תהיה מהו דינה של האשה כלפי הבעל שאיננו הפלוני - האם הנישואים לו מותרים או אסורים, מן התורה ומדרבנן; ולאור זאת, מה משמעותו של תנאי על מנת.*

1. **פשט סוגייתנו ודין 'שמא יאמרו'**

גיטין פד ע"א "ת"ר הרי זה גיטך על מנת שתינשאי לפלוני... לאחר תצא,” רש"י ותוספות.

רמב"ן דברים כד, ד "וטעם הלאו הזה... על כך"

שו"ע אבן העזר קמג, טו עד "ואם נשאת לא תצא,” ובפת"ש ס"ק י.

1. **חששות בעניין קיום התנאי**

בעל המאור מד ע"א ברי"ף, "והתנאין המתקיימין כך דיניהם... טפי עדיף,” ובכתוב שם.

רשב"א גיטין פג ע"א "בכולהו תנאי דעלמא... כן כמו שכתבנו"

רמב"ם גירושין ח,א ובמגיד משנה שם

רא"ש פ"ט סימן ב עד "שמא יבא ויבטל הגירושין,”

1. **תנאי על מנת בכלל – חלותו למפרע**

גיטין עד ע"א משנה וגמרא שעליה עד "דאמרי כרבנן"

ירושלמי גיטין ט,א "אמר רבי שמי ... הותר הגט למפרע"

רשב"א גיטין פד ע"א ד"ה על מנת שתבעלי עד "משום ערוה קאמר וצ"ע".

[אם יש זמן - חדושי ר' שמעון שקופ כתובות סימן א, "ועל כן נראה לי לפרש... שתיבעלי, יעוי"ש" – צילום בכונן; גר"ח על הרמב"ם אישות ב,ט ד"ה אכן מה שנראה לומר עוד בזה, דבאמת]

1. **שיטת הרמב"ם**

רמב"ם גירושין ח,יג, השגת הראב"ד ופירוש המגיד משנה

תורת גיטין קמג, כ (צילום בכונן)

אבני מילואים קמג, א

גר"ח גירושין ח,יג, בעיקר עד "לא אכפת לן זה"

רמב"ם אישות ו, יז-יח ומגיד משנה שנם

[אם יש זמן – כתובות נו ע"א תוד"ה הרי זו, עד: "שלא התנו על מה שכתוב בתורה"; כתובות יט ע"ב "בעא מיניה רבא מרב נחמן... וחותו לדינא"

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1. They give their wives away as a gift

“We learned in a *beraita*: This is your get on condition that you marry *Ploni* – the woman should not marry *Ploni*, but if she does so, she need not leave him” (Gittin 84a).

The gemara explains that there are two essential explanations of this statement. In R. Nachman’s opinion, the statement focuses on the prohibition to marry that Ploni, lest people say that “they give their wives away as a gift.”

On the other hand, Rava, although he agrees with R. Nachman that there is a prohibition to marry Ploni, “lest peoples say,” as above, nevertheless, the novel feature of this prohibition is its leniency: although regarding everyone else she is prohibited even *be’diavad*, and if she married someone else, she must leave him, nevertheless, to Ploni the prohibition is *le-khatchila* only, and *be’diavad* she need not leave him.

It is not clear from the gemara if Rava and R. Nachman disagree halachically regarding the status of the woman in regards to every other man [other than Ploni]; Rava himself suggests an argument that would cause R. Nachman to be lenient, but he rejects it. We will deal with this at length further on.

Another conjecture arises from Tosfot, who suggest that R. Nachman held that the woman should be permitted to everyone else *le’khatchila*, or at the very least *be’diavad*, since the Rabbis have annulled his *kiddushin* (*afka'i* *Rabbanan kiddushin minei*). However, Tosfot say that R. Nachman retracted his original opinion, since such a minor concern (“lest people say…”) is not a sufficient basis for such an extreme measure as annulling *kiddushin*. According to this, Rava, although he agrees with R. Nachman regarding the halakhic logical argument of “lest people say that they give their wives away as a gift,” nevertheless disagrees about the degree of this concern and this prohibition.

It is possible to suggest that at the core of the dispute is the question what exactly is the nature of the concern “lest people say that they give their wives away as a gift.” One possibility is to follow Rashi, that there is a concern regarding salacious talk and gossip (*la’az*), which is a form of a concern about promiscuity. See also the Ramban on Devarim 24,4, who thus explains the prohibition of remarrying a woman one divorced, after she has married someone else, “so that men will not trade their wives with each other; in the evening the husband writes a *get* for his wife, and she returns to him in the morning. And this is the meaning of ‘and you shall not make the land sin,’ for this is the cause of great sins.”

However, there is another possibility – that behind this concern is opposition to a perception something like that of R. Eliezer, which sees the prohibition of *eshet ish* as a major component of the husband’s *baalut*. This approach is only a step removed from the idea that a husband, in the course of *kiddushin*, can permit his wife to Ploni, similar to the discussion of the gemara regarding ‘*kiddushin* except for Ploni.’ The gemara is opposed to giving the husband the power to control the autonomy of the woman after divorce. If this is what we concerned about, perhaps we can understand that there is a crucial question here: lest people say that they give their away wives as gifts, and thus relating to the entirety of *kiddushin* exclusively as a matter of *kinyan* [i.e., the husband “owns” the wife]; this is not merely a ‘minor concern,’ and it is possible on this basis to annul *kiddushin*, and possibly to hold that someone who performed *kiddushin* with this intention did not in fact perform *kiddushin* at all.

A ramification of this question regarding the basis of the concern is the ruling of the Rama that even if the husband did not explicitly make a condition with the wife that she marry Ploni after the divorce, but it is obvious that he divorced her for this purpose (such as if Ploni gave the husband money to divorce her, and supports her in order that he may marry her), she is forbidden to marry that Ploni. It is clear from this ruling of the Rama that there is a concern here regarding promiscuity, not a concern about regarding *kiddushin* as a financial institution. In any event, since we rule like Rava, the Rama’s ruling in favor of this side of the dispute is reasonable.

1. The prohibition to others – on the basis of ‘concern’

Rava himself raises another explanation of the leniency implied in Rav Nachman’s statement: “If you were to say that she marries Ploni today and divorces him tomorrow, and thus fulfills the condition, it is comparable to your opinion in your dispute with R. Yehuda, as it was said “[One who says} ‘The sleep of my eyes is forbidden to me as *konam* if I sleep tomorrow,’ R. Yehuda said: He must not sleep today, lest he sleep tomorrow. R. Nachman said: He may sleep today, and we are not concerned that he may sleep tomorrow.”

He then rejects this argument: Now, how are these cases comparable? Here [regarding vows] the matter is in his hands, for he may keep himself awake by pricking himself with a thorn, there [regarding *gerushin*], is the matter in the hands [power] of the woman, to cause the divorce to take effect?

Rava understands that R. Nachman’s *heter* [in the case of vows] is built on the realistic perception that the prohibition will not take effect, a perception that here [in the case of *gerushin*] can’t be relied upon, since the *gerushin* is not in her control. From Rava’s statements we can with certainty conclude that when a get is subject to a condition, the question as to the extent it can be relied on depends on the question of the certainty we have that the condition will be fulfilled. Within this position, we find three main approaches in the Rishonim (mostly on *daf* 83):

1. The opinion of R. Hai Gaon and Rabbeinu Hananel: In all types of conditions which allow to let a *get* take effect, we must wait for the condition to be fulfilled, and R. Nachman’s leniency only relates to vows, a relatively minor prohibition. R. Nachman merely cited one of two reasons for leniency in vows.
2. The opinion of “there are those who are lenient” (*yesh meikilin*) cited in the Ramban and the Rashba, whose source is, it seems, the Rambam (Gerushin 8:1): in all conditions (under her control – see the Maggid Mishna there) we can rely on the assumption that the condition will be fulfilled.
3. The opinion of the Ramban and the Rashba themselves: In every condition which requires a positive act, we are concerned that perhaps she will be unable to fulfill the condition because of things beyond her control, and we may be lenient only in as case with a combination of a passive condition (that something not be done) and something under her control (such as ‘on condition that you not drink wine for thirty days’).

On the assumption that in the intermediate days before the condition is fulfilled the status of the woman was uncertain, it is possible that the dispute among the Rishonim is based on the question of the relationship between “*chezkat hadin*” (the preexisting legal status) and “*chezkat* *kashrut*” (a presumption that someone acts in accordance with the law). The preexisting legal status of the woman is that of the prohibition of an *eshet ish*; whereas the *chezkat kashrut* of the woman leads to the assumption that if the woman remarries, she will be sure to fulfill the condition, in order that it not turn out ex post facto that she violated a severe prohibition. This question itself depends on the definition of *chezkat kashrut* – is it itself essentially a *chezkat din* that at most teaches us that someone presumably did not sin, or perhaps it is a presumption based on reality which teaches us that someone will not sin. This is beyond the scope of the present discussion.

Another possibility may be that those who are lenient are more inclined to rely on the woman not to cause a sin, and if in fact she did cause such a sin that is her problem alone, while those who are stringent hold that the court must interfere more, and prevent even the possibility of a sin being performed.

1. The prohibition to others

However, a completely different conception arises from the statements of Tosfot Rid here and in Bava Metzia 64b. He understands that the question is not how to resolve the current uncertainty (*safek*) regarding the status of the woman, but rather the status of the woman [before she marries Ploni] is definitively that of the prohibition of an *eshet ish* until the condition is fulfilled [she married Ploni], which then changes her status retroactively. In other words, Tosfot Rid rules based not on the laws of doubts (*sfeikot*), but rather based on the laws of certainty (*vada’ut*).

One should note that according to this, it is difficult to understand Rava’s comparison of R. Nachman’s position here and his opinion regarding one who vows not to sleep today if he sleeps tomorrow. In our case, the woman’s status is that of prohibition until the condition which frees her is fulfilled, while there the vower’s status is that of permissibility until the condition which prohibits him is fulfilled. Thus we must say again that only one of two reasons was cited, or possibly Tosfot Rid made his statement only according to R. Nachman, but he himself holds that there is a prohibition not only on the basis of a doubt, but on the basis of the definitive law itself.

Thus we have learned that a stipulation “on condition that” works differently according to the Rashba and the Rid. According to the Rashba, the condition has already been resolved in principle, but we are in doubt as how it was resolved (fulfillment or non-fulfillment), but according to the Tosfot Rid, only actually fulfilling the condition changes the law retroactively. The Yerushalmi Gittin 9:1 seems to support the Rid.

“R. Mana said to him: what is this similar to? To someone who said: this is your *get* on condition that you have relations with Ploni; *le’khatchila*, he is forbidden to have relations with the woman, but if he nevertheless did, the get takes effect retroactively.”

The Rashba tried to present a forced explanation that the Yerushalmi is going according to the opinion that “on condition that” is **not** equivalent to “immediately (*me-achshav*),” but since the Yerushalmi says explicitly that he is prohibited to have relation with the woman *le’khatchila*, the Rashba admits that this is difficult.

See also the dispute between Rashi and Tosfot in regards to the bills of divorce of King David’s soldiers (Ketuvot 10a). According to Rashi, King David did not sin, since he had relations with Batsheva on the basis of a get which was subject to a condition which was subsequently fulfilled, while according to Tosfot, this would be a sin, and therefore they explain that the case of the *gittin* of King David’s soldiers were absolute, unconditional *gittin*.

An even more extreme opinion that that of the Tosfot Rid arises in Chiddushei R. Shimon Shkop (Ketuvot siman 1) – he holds that fulfillment of the condition is effective only in the future and retroactively, but not completely and absolutely regarding the past, so even if the condition is fulfilled, the past sin which was committed does not change its sinful nature, but only in regard to halakhic consequences regarding the future.

1. The Rambam’s opinion and the principle of “*al menat*”

However, neither the opinion of the Rashba or that of the Rid resolves the difficult statements of the Rambam (Gerushin 8:13)

“[One who says to his wife:] This is your get on the condition that you marry Ploni,” if the woman married Ploni, the get is valid, as is the case of all other conditions. However, the Sages said the woman must not marry Ploni or anyone else; not Ploni, lest people say “they give each other their wives as gifts,” and anyone else because the get is valid only upon the fulfillment of the condition.

If she violated with the law and married that Ploni, she does not have to leave him; if she married someone else before marrying Ploni, the get is invalid, and any offspring is a mamzer, and she requires a get from the second husband as well.

The Raavad objects to the Rambam’s ruling:

Why should the get be invalid? The second husband can divorce her, and she can marry the subject of the condition [Ploni], and the get takes effect retroactively, and the offspring [of the second marriage] is not a mamzer. Thus it appears in the Yerushalmi. And furthermore, if the *get* is invalid, how can she marry him?

The Raavad makes two claims, one backed up by a proof [from the Yerushalmi], and the second one by logical reasoning. The first claim is that there is no reason to assume that the get is invalid, because the condition may yet be fulfilled in the future, and thus there is also no reason to rule that the offspring is a mamzer. This claim is supported by a proof from the Yerushalmi, and seemingly the intention is to the Yerushalmi we saw above, that since the condition was fulfilled, it wipes out transgressions retroactively.

The second claim of the Raavad is that if the get from the divorcing husband is indeed invalid, then the subsequent *kiddushin* and *nissuin* to someone are null and void, so why should she require a get from him?

We will not deal with the second question here, but only the first.

On what basis does her marriage to the second husband [not Ploni] after the *get* nullifies the *get*. We have found various answers to this question:

1. Torat Gittin 143:20 – since the Sages have nullified *gittin* with a condition which it is not within her power to fulfill (in accordance with the opinion of Rav Hai Gaon), therefore the offspring of the second marriage is a *mazer* (*mi-derabanan*).
2. Avnei Milluim 143:1 – Our estimation of the original husband’s intention is that he made a condition which was in her power to fulfill, and if she eliminated her power to fulfill the condition [by marrying the second husband], we estimate that the original husband’s intention was to invalidate the get in this case.
3. R. Chaim here explains simply that since she performed an action that caused her to be powerless to fulfill the condition, she thereby nullifies the condition. However, this *chiddush* itself requires clarification as to its meaning.

It seems that there is a major distinction between a condition “on condition that” and one of “if”. The statement of Tosfot (Ketuvot 56a s.v. *harei zeh*) is well known:

She is *mekudeshet* and his condition is nullified. Perforce we are dealing with a case where he made a double condition (*tnai kaful*) ... and this is puzzling, why is she *mekudeshet*, for he explicitly stipulated that if he is obligated to provide his wife with food and clothing and have relations with her, she is not *mekudeshet*?... And the Ri says that if we hadn’t derived the laws of conditions from the condition of *bnei* Gad and *bnei* Reuven, we might think that no condition could nullify an action, and even if the condition was not fulfilled in the end, the action would be in effect, but now that we derive the laws of conditions from there, that a condition has the power to nullify an action, we say that this is only when the condition does not relate to something written in the Torah, similar to the condition of *bnei* Gad and *bnei* Reuven, who did not make a condition which relates to something written in the Torah.

From the statements of the Ri it seems that the condition is “something else” [an external factor], and the action and its result exist independently, as is implied in Ketuvot 19b:

Rava asked R. Nachman: [If witnesses on a document claim] ‘There was a condition on the deed [which was not fulfilled]’ are they believed? If you say they are not believed to claim ‘*modda ve-amana’* because that uproots the deed, then this claim [an unfulfilled condition] also uproots the deed [and thus they are not believed]. But possibly, a condition is *“milta achrita*” (something else) [an external factor, not part of their original testimony, and therefore they are believed]. He [ R. Nachman] said to him: when litigants appear before us, we tell the ‘go and fulfill your conditions’ and then appear in court [thus, a condition is indeed *milta achrita*.]

And this is, if so, the reasoning to apply the laws of conditions, because the action exists by itself [independently], and the condition is a mechanism to prevent future results of the action which exists by itself [independently]. However, the Rambam (Ishut 6:17-18) states the novel idea that all this is said about a condition which effects a **future** result, but not in regards to a condition which has immediate effect (“*me-achshav*”), and a condition which is formulated as “*al menat*” is equivalent to one which is formulated as immediately “*me-achshav*”:

Anyone who says “immediately” (*me-achshav*) does not have to duplicate his condition (*lichfol t’nao*) or state the condition before the outcome (*lehakdim tnai le’maase*), but even if he stated the outcome first, his condition is valid. However, he nevertheless must state a condition which it is possible to fulfill; but if he made a condition which is impossible to fulfill, this is regarded as someone who uses hyperbolic language, and there is no condition in this case. And anyone who says “*al menat*” is regarded as if he said “*me-achshav*,” and he need not duplicate his condition or state the condition before the outcome.

The Maggid Mishna explains that since the condition does not come to prevent the result, it need not be so strong. At the root of the matter we may say that in a condition which prevents the action of the condition itself becomes part of the action which creates the result, and it must be formulated precisely. However, when a condition is of the form “*al menat*,” the *tnai* doesn’t directly affect the result, but rather indicates the intention of the person who creates the result, whose goal in *gerushin* is a particular goal, and if it is not achieved, the get was given in error.

And in a similar way we should explain the uncertainty of the gemara in the beginning of the (ninth) chapter, if “on the condition (*al me-nat*) that you do not marry Ploni” is a get with exclusion (*shiyur*). And this is difficult, for a condition is something external (*milta achrita*) [not part of the get]. But we can say that [the husband who made] a condition “*al menat*” revealed his intention that the goal of the get is that his wife not marry Ploni, and if she marries him, the get was based on an error, and if so this is an exclusion in the *get* itself, and not merely in the time of its taking effect (its result), as is the case in other conditions.

At it seems that so we must explain the Grach’s intent, that the fact that she married someone else nullified the divorcing husband’s intent, and thus the get is nullified of itself (“*mimeila*”), because it is a get based on an error, and there is no need to make an independent condition.

**Sources for next week’s shiur:**

מסכת גיטין פ"ט יטלנה הינמט

1. גמרא פ"ד: "כיצד ,עשה ... ליפסל בו לכהונה.

2. דף ע"ח "תניא נמי הכי אמר לה ... צריכא".

3. רשבא פ"ד: ד"ה כיצד (עד סוף דבריו על הסוגיא).

4. גמ' פ"ד: "כתבו בתוכו ... אינו פוסל בכתב". תוס' ד"ה כל.

5. מלחמות (דף מ"ד: דבפי הרי"ף ד"כ כל התנאים "... אבל כל פירושו מתני. רבי היא ... כרית היה מתחילתו".