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Bava Basra Daf 48

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A Forced Sale

Rav Huna holds that if one is coerced to sell property, the sale is never the less binding. [*The reason for this is that a person will feel that he has no choice, and he might as well give up the property and take the money.*] The *Gemora* says that all sales are done under duress and nevertheless, they are binding. [*People only sell when they need money but they really have no desire to sell.*]

The *Gemora* asks on this logic. There might be a difference when the coercion is not internal, but coming from someone else.

Rather, it is as the *braisa* states: It is written regarding a sacrifice: *He shall bring it*. This teaches us that we force him to fulfill his obligation. Perhaps, you might think that he brings the *korban* even against his will. The Torah writes: *Of his will*. This teaches us that we compel him to bring the sacrifice until he says that he is willing to bring it. [*This shows that one can be forced by others to do something willingly, and is therefore a source for the law that a forced sale is a sale.*]

The *Gemora* rejects this proof: Perhaps there it is different, for everyone wishes to receive atonement (*and he is really willing to bring the korban*).

Rather, it may be proven from the latter part of that *braisa*, which states: And the same is true regarding a letter of divorce and the emancipation of slaves. We

compel him to give the *get* (*in cases where he is required to do so*) until he says that he is willing to give it.

The *Gemora* rejects this proof: Perhaps there it is different, for he has a *mitzvah* to listen to the *Chachamim* (*to issue a divorce or to free his slave*).

Rather, the *Gemora* concludes that the fact that a forced sale is valid is mere logic. Being that he is forced, he decides in a definite manner to make the sale valid. [*The Rashbam explains that being that he is being pained and he is going to receive money anyway, he indeed agrees to the sale.*]

Rav Yehudah asked a question from a *braisa*. The *braisa* states: If a husband is forced to give a *get* by Jews, it is a valid *get*. If he is forced to do so by gentiles, it is an invalid *get*. However, gentiles can hit him and say, “Do what this Jew tells you to do.” Why should the case where the gentiles force him be invalid? Why don’t we say that being that he is under duress, he indeed decides to give the *get*?

The *Gemora* answers: Rav Mesharshiya already taught about this case (*where he is forced by gentiles*) that the *get* in fact is valid according to Torah law. The reason that they said it is invalid is in order to teach that Jewish women should not go and make themselves dependent on gentile men in order to get themselves out of their marriage. [*The Rashbam explains that this will probably lead to their being promiscuous with the gentile men, as a manner of persuading them to force their husbands to give them a get.*]



Rav Hamnuna asked a question from a *braisa*. The *braisa* states: If a person bought a field from a gentile bandit, and he then went and bought it again from the original Jewish owner, the sale is invalid. [*Rashi in Gittin explains that we suspect that the original owner agreed to this second sale only out of fear.*] Why isn't the sale valid? Why don't we say there that being that he is forced, he decides in a definite manner to make the sale valid?

The *Gemora* answers: We already learned that Rav said about this case that it is only when the original owner merely said, "Go take hold of the field and acquire it." However, if he draws up a sale document, the sale is valid.

The *Gemora* asks: According to Shmuel, who holds that even if a sale document is drawn up the sale is invalid, what is the answer to our question?

The *Gemora* answers: Shmuel agrees that if the original owner is given money by the Jewish buyer, the sale is valid.

The *Gemora* asks: According to Rav Bibi who says in the name of Rav Nachman that a person who obtained property through a theft cannot retain the land, but he can take back the money he gave the victim, the implication is clearly that he does not keep the land even if he gave money. What, then, is the answer to our question?

The *Gemora* answers: Rav Bibi made a statement and Rav Huna disagrees with that statement.

Rava says: The law is that if someone is forced to sell, the sale is valid. This is only true if he was forced to sell any one of his fields. However, if he was forced to sell a particular field, the sale is invalid. Even when he was forced to sell a particular field, the sale is only invalid when he did not count the money that he was given.

However, if he counted the money, the sale is valid (*as this shows he made peace with the sale*). This is also the law only if he could not have gotten out of the sale. However, if he could have gotten out of the sale and did not, the sale is clearly valid.

The *Gemora* says that the law is that in all of these cases the sale is valid, even if he was forced to sell a particular field. [*The Gemora argues with Rava.*] This is because a woman is like a field, and Ameimar says that if a woman is forced to accept *kiddushin* against her will, the *kiddushin* is valid.

Mar bar Rav Ashi says: In a case of *kiddushin*, this is certainly invalid. Being that he acted improperly, Chazal act improperly with him and take away the *kiddushin* (*Chazal have the power to deem any type of kiddushin invalid*).

Ravina said to Rav Ashi: This is a satisfactory explanation where betrothal was effected by means of money; what, however, can be said in a case where betrothal was effected by cohabitation?

Rav Ashi replied: The Rabbis have assigned to such cohabitation the character of a promiscuous cohabitation. [*From the moment a divorce is annulled in such a manner, the cohabitation, it was ordained, must assume retroactively the character of a promiscuous cohabitation, and since her original betrothal is thus invalidated, the woman resumes the status of the unmarried and is free to marry whomsoever she desires.*]

The *Gemora* relates the following incident: Tabbi hung Pappi on a *kinera* tree in order that Pappi should agree to sell him his field, and Pappi did so. Rabbah bar bar Chanah (*and another person*) signed on a proclamation by Pappi before the sale stating that it was going to be done under duress and against his will, and they also signed the sale document. Rav Huna said: The one who signed on the



proclamation did well, and the one who signed on the sale document did well.

The *Gemora* asks: How can this be true? If the proclamation is valid, the sale document is invalid. If the sale document is valid, the proclamation is invalid!?

The *Gemora* answers: He meant to say that if not for the proclamation, the one who signed on the sale document would have done well. This is based on Rav Huna's reasoning that if someone is hung up (*i.e. forced*) to sell, the sale is valid.

The *Gemora* asks: How can this be so? Rav Nachman ruled that if witnesses said, "Our words were regarding a matter of trust," they are not believed. If they said, "Our words were attended by declaration (*of protest; the witnesses say that the seller protested that he was forced to sell and did not recognize the sale, and that they signed the deed in cognizance of the protest*), they are also not believed.

The *Gemora* answers that they are not believed when they testified orally, for their mere words cannot undermine that which they testified about in the document. However, if they testified in an earlier document, it has the ability to undermine the sale document. (47b – 49a)

INSIGHTS TO THE DAF

Forced Get

Rav Huna holds that if one is coerced to sell property, the sale is never the less binding. [*The reason for this is that a person will feel that he has no choice, and he might as well give up the property and take the money.*] The *Gemora* says that all sales are done under duress and nevertheless, they are binding. [*People only sell when they need money but they really have no desire to sell.*]

The *Gemora* asks on this logic. There might be a difference when the coercion is not internal, but coming from someone else.

Perhaps it is from the following *braisa*: It is written regarding a sacrifice: *He shall bring it*. This teaches us that we force him to fulfill his obligation. Perhaps, you might think that he brings the *korban* even against his will. The Torah writes: *Of his will*. This teaches us that we compel him to bring the sacrifice until he says that he is willing to bring it. [*This shows that one can be forced by others to do something willingly, and is therefore a source for the law that a forced sale is a sale.*]

The *Gemora* rejects this proof: Perhaps there it is different, for everyone wishes to receive atonement (*and he is really willing to bring the korban*).

Rather, it may be proven from the latter part of that *braisa*, which states: And the same is true regarding a letter of divorce and the emancipation of slaves. We compel him to give the *get* (*in cases where he is required to do so*) until he says that he is willing to give it. Evidently, the divorce and emancipation is valid even though, in his heart, he is not truly willing. This proves that words that are only in the heart are not regarded as words.

The *Gemora* rejects this proof: Perhaps there it is different, for he has a *mitzvah* to listen to the *Chachamim* (*to issue a divorce or to free his slave*).

Similarly, the Rambam discusses a case when a person is obligated to divorce his wife due to the ruling of *Beis Din*. When he refuses, he is beaten until he says that he is willing.

The Rambam asks: How can a *get* that is given by force be ruled to be valid? A coerced *get* is not valid at all!?

He explains that it is only considered “forced,” if a Jew is compelled to do something that the Torah does not obligate him to do. However, if he is compelled to do something that the Torah instructs him to do, this is not considered “forced.” The explanation is as follows: A Jew wants to perform all the *mitzvos* and distance himself from all sins, but his evil inclination convinces him to do otherwise. When he is beaten, his evil inclination is broken and when he says that he is willing, it is his actual intent and the *get* is valid.

Compliance with the Rabbis

Mar bar Rav Ashi says: In a case of *kiddushin*, this is certainly invalid. Being that he acted improperly, Chazal act improperly with him and take away the *kiddushin* (*Chazal have the power to deem any type of kiddushin invalid*). [*They accomplished this by transforming retroactively the money of the betrothal given to the woman at her first marriage into an ordinary gift. Since the hefker of money comes within the authority of Beis Din, they are thus fully empowered to cancel the original betrothal, and the divorcee assumes, in consequence, the status of an unmarried woman who is permitted to marry any stranger.*]

Ravina said to Rav Ashi: This is a satisfactory explanation where betrothal was effected by means of money; what, however, can be said in a case where betrothal was effected by cohabitation?

Rav Ashi replied: The Rabbis have assigned to such cohabitation the character of a promiscuous cohabitation. (*From the moment a divorce is annulled in such a manner, the cohabitation, it was ordained, must assume retroactively the character of a promiscuous cohabitation, and since her original betrothal is thus invalidated, the woman resumes the status of the unmarried and is free to marry whomsoever she desires.*)

The Rashba asks: Why don't we apply this rule in the case in *Yevamos* where a man fell into water that has no end? There, we rule that the wife will remain an *agunah* because the husband might have exited the water from a place that was not visible to us. Why don't we say that the *Chachamim* revoked the original *kiddushin* from him, and she may remarry another man?

He answers: It is only applicable in certain cases. If, for example, there was a *get*, except that it was written with a condition, and an uncertainty arose regarding the condition, the *Chachamim* can revoke his *kiddushin*. Another example where the *Chachamim* would revoke the *kiddushin* is where one witness is testifying on the woman's behalf (*that her husband died*). However, when there is no *get* and no witness, the *Chachamim* did not go ahead and revoke a *kiddushin*.

The *Gemora* in *Yevamos* (110a) records an incident in Narsh where a girl was married off when she was a minor. When she became an adult, they sat her by a *Chupah* (*wedding canopy, in order to validate the first marriage*), and someone else snatched her away before the “wedding” (*and made her his wife*)! Rav Bruna and Rav Chananel, students of Rav, were present when this happened, and they did not even require her to have a *get* from the second “husband” (*as his kiddushin is invalid*).

Rav Ashi explains that being that the wife snatcher acted improperly, the *Chachamim* therefore acted improperly with him and removed the validity of his *kiddushin*. (*This is following the opinion of Rav, who maintains that for the marriage of a minor to become valid, she must have marital relations with her husband when she becomes an adult, and if not the marriage is invalid.*)

The *Chachamim* were empowered to remove the *kiddushin* in this case because he acted improperly in the beginning of the *kiddushin*.

Reb Yosef Engel in Gilyonei Hashas cites a Teshuvos haRashba who writes that we only apply the principle of “Since he acted improperly, the *Chachamim* acted improperly with him” in places that are specifically mentioned in Chazal. The Sages did not annul the marriage in every case where one acts with trickery. This can be proven from a *Gemora* in Kiddushin (58b). The *Gemora* states: One who instructs his fellow to marry a woman for him (*as an agent*), and the agent goes ahead and marries her for himself, she is married to the second one. We do not say that since he acted improperly, the *Chachamim* invalidated his marriage.

This can also be proven from the fact that even if one betroths a woman who is subject to a negative prohibition, *kiddushin*, nevertheless takes effect. This is also true if someone marries a woman who is a secondary *ervah* to him. Obviously, sometimes this principle is applied, and sometimes, it isn't.

The Chasam Sofer asks: Why, in these cases (*where he betroths a woman subject to a negative prohibition, or a secondary ervah*) do we not say that the *Chachamim* revoked his *kiddushin*?

He answers, based upon Tosfos, who says that it is for this reason that the groom tells the bride that he is betrothing her according to the laws of Moshe and all of Israel. The *kiddushin* is only effective if Israel, i.e. the *Chachamim* consent to the marriage. However, one who is violating the Torah, or the sages, is obviously not marrying with such a stipulation and therefore, the marriage can still be effective. [According to the Chasam Sofer, not every marriage has that stipulation attached to it.]

The Shiltei Giborim states that this principle applies by a *get* as well. Anyone who divorces a woman does so in implicit compliance with the ordinances of the Rabbis, and the Rabbis may, in certain cases retroactively revoke the divorce.

Based upon this, the Taamei Yaakov answers the following famous question on Rabbeinu Gershom's decree: Since the Torah expressly permits one to divorce his wife without her consent, how can this be banned? The Taz lays down a rule that the Rabbis do not have the authority to prohibit something which is explicitly permitted by the Torah!?

He answers that since the Rabbis forbid giving a *get* in such a manner, it is automatically nullified, for one's betrothal and divorce can only be effective if he is compliance with the Rabbis' ordinances. In these cases, the Rabbis did not consent to such a *get*.

[I am uncertain as to how this answers the question. Granted, the get will be ineffective since it is prohibited to give a get without the woman's consent; but how did the Rabbis have the authority to issue such a decree? If the Torah expressly permits it, they cannot forbid it!?!]

Self-imposed O'nes vs. External O'nes

Rav Huna says that if one is forced into selling something and receives money for it, the sale is binding. The *Gemora* explains the rationale is that everyone who sells items that are dear to them only does so under pressure and financial difficulty, yet the sale is binding, so this type of force is no different.

To that the *Gemora* responds - *ודלמא שאני אונסא דנפשיה* - *מאונסא דאחריני*, meaning that there is a difference between a self imposed *o'nes* and an external *o'nes*. When one is forced due to financial pressures, he is making a decision under the circumstances. Although he would prefer to never be in such a predicament, nevertheless, he is making a conscious decision under the circumstances - this decision is regarded as *ratzon*. But if one is being coerced or forced by someone else, we don't consider his decision to be *b'ratzon*, so it is possible that the sale isn't binding (*which is the opinion of Rav Bibi,*



unlike R' Huna who holds that so long as he receives something in return, it is binding).

This concept is very important to distinguish between what we can call an internal *o'nes* and an external *o'nes*. This issue arises in two places, but the distinction is exactly the same.

The Rambam in Yesodei Hatorah (perek 5) holds that if one's life is being threatened unless he serves *avodah zarah* he is obligated to forfeit his life. But if he doesn't do so, he is still considered an *o'nes* and not killed for serving *avodah zarah*. Yet, the Rambam writes (halachah 6) that if one is deathly ill and uses *avodah zarah* as a means to heal himself, he is liable for whatever punishment is normally associated with the act that he committed.

Why is it considered *o'nes* when he is forced by others, but not when he is ill?

The Ohr Sameach makes the distinction that is hinted to in our *Gemora* (but doesn't mention the *Gemora*). Based on our *Gemora* the distinction is clear. When someone else is threatening to kill him, the decision that he makes is not considered "*ratzon*," because he doesn't at all want to do what he is being forced to do. But when he is ill and uses *avodah zarah* to save his life, he is deciding to benefit from *avodah zarah*. Surely, he is faced with extenuating circumstances, but that doesn't change the fact that he is making a conscious decision and is therefore liable for it.

The Rama writes in Hilchos Brachos (204:8) that if one is being forced to eat non-kosher food, even though he is enjoying the taste he doesn't make a *brocha* since he is considered an *o'nes*. But the Shulchan Aruch writes in the very next *halachah* that one who eats non-kosher because they are ill and they need it for medicinal purposes, makes a *brocha* on the food.

The Taz (12) struggles with this and elaborates about it (siman 196:1). But based on our *Gemora* the distinction is simple. One who is being forced to eat non-kosher by someone else is not making a decision to eat non-kosher, and would not eat it if not for being forced at gun point. Therefore, we don't consider this eating *b'ratzon*, and it is not worthy of a *brocha*. But, one who is ill, although he has severe circumstances, he is making a decision to eat the non-kosher food under the circumstances (*and being that his life is threatened it is permitted for him to eat it*), so we consider this to be a decision made *b'ratzon* and worthy of a *brocha*.

DAILY MASHAL

Path to Sanctity

The *Gemora* states: Whoever betroths a woman in Jewish marriage, betroths her subject to the will of the Rabbis.

The *baalei mussar* say: One who wants to sanctify and purify himself in his service to his Creator, should do so subject to the will of the Rabbis. He should go to the Rabbis and the righteous people of his generation, and they shall guide him in his quest. One who tries to forge a path himself is apt to stumble and make mistakes; nothing substantive will result from it.