

OVERVIEW of the Daf

1) A forced sale (cont.)

The Gemara continues to search for the rationale behind R' Huna's ruling that a forced sale is valid and concludes that it is a logical conclusion.

R' Yehudah unsuccessfully challenges the explanation of R' Huna's ruling.

R' Hamnuna unsuccessfully challenges this ruling.

Rava rules that a forced sale is valid but adds a number of qualifications to this ruling.

The Gemara rules that a forced sale is valid even if the extortionists specified the field since it is similar to Ameimar's ruling that a forced kiddushin is valid.

Mar bar R' Ashi disagrees and explains why a forced kiddushin is invalid.

Ravina unsuccessfully challenges this rationale.

An incident involving a forced sale is recorded.

R' Huna's ruling is explained and the rationale offered for his position is that he recognizes the validity of a forced sale.

R' Huna's ruling is challenged. ■

REVIEW and Remember

1. What is the rationale for R' Huna's ruling that a forced sale is valid?
2. Why did Chazal enact that non-Jews cannot force one to give a טג to his wife?
3. Is a forced kiddushin valid?
4. What is the halacha if it is discovered that the same person signed on the notification as well as on the document of sale?

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 In loving memory of their father
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Distinctive INSIGHT

Compelling a person to fulfill his vow

יקריב אותו מלמד שכופין אותו עד שיאמר רוצה אני

Rav Huna had ruled that a sale which is done against the will of the seller is nevertheless valid. The Gemara searches for a precedent that such an act is binding from the Baraisa regarding one who promises to bring an Olah offering. If the person later does not follow through with bringing his offering, we "force" him to do so. Yet, it cannot be brought while he is resisting our pressure, but only when he says, "I want to bring it." We see, therefore, that when someone is coerced to agree to someone else's wishes, we consider his eventual acceptance as genuine.

The Gemara rejects this proof, because the bringing of an offering is a situation where a person is truly pleased when he achieves atonement. Regarding a sale, however, we might say that the reluctant agreeing to the sale is unacceptable.

The Rishonim note that in Bava Kamma (40a) we find that when a person is obligated to bring a Chattas (sin offering) or Asham (guilt offering), we do not take any security or collateral from him to assure that he will fulfill his obligation to bring these offerings. The reason is that because these offerings are brought for atonement from his unintentional or doubtful sinful acts, we rely on his own motivation to come and complete his atonement process. Yet, our Gemara states that even when atonement is an outcome of a situation, we do not rely upon the person himself to come and bring his offering. Rather, we approach him and force him to fulfill his duty. What is the difference between the cases of Chattas and Asham where we rely upon the person himself to complete his task, whereas regarding an Olah we force him to bring his offering? And if we are intervening in order to ensure that he brings the offering, why do we not simply collect collateral to guarantee his cooperation?

Tosafos and Ramban explain that regarding a Chattas or Asham the person has sinned, and there is no doubt that he is self-motivated to bring the offering and to procure his atonement. In our Gemara, however, the person has not sinned. He has simply made a vow to bring an Olah offering. The Baraisa states that when a sin has not been committed, we must intervene and force the person to fulfill his vow. When our Gemara answers that the person who made a vow

(Continued on page 2)

HALACHAH Highlight

Forcing a person to comply with halacha

גט המעושה בישראל כשר

A גט that was coerced by a Jew is valid

The Gemara discusses the halacha of forcing a person to write a גט for his wife when halachically he is obligated to do so. The Gemara comments that this case is different than the case of forcing a person to sell his property since in the case of a גט there is the additional factor of the obligation to listen to the words of the Torah scholars who instructed him to write a גט for his wife. Rambam's¹ comment to this matter is noteworthy. He writes that the definition of אונס is when a person is forced to do something against his will that is not a mitzvah of the Torah. Forcing a person to comply with the Torah is not considered an אונס. His thoughts that prevent him from complying with the Torah act as an impediment from fulfilling the Torah and the pressure that is applied merely removes the impediment leaving behind the will to fulfill the mitzvos of the Torah and live like a Jew.

Teshuvos Chelkas Yaakov² was asked about selling chometz of a storeowner who intends to open his store and sell chometz on Pesach. The question was from the storeowner's

(Insight...continued from page 1)

will certainly be interested in fulfilling his pledge "in order to have atonement," it does not mean that he is in need of atonement, because he has not sinned. What is meant is that the person is aware that if he does not fulfill his oath, he will be subject to the severe consequences of one who does not keep his word. ■

rabbi and was inquiring whether there was any point to selling the chometz of a person who seemingly does not recognize the sale as binding. Chelkas Yaakov responded that there is no doubt that it is worthwhile to sell the storeowner's chometz. Although he does not observe the mitzvos we know from our Gemara and Rambam that in his heart he desires to keep the mitzvos and thus if we could do something to save him from violating additional prohibitions we should make the effort to do so.

Teshuvos Beis Shearim³, addressing a similar question, wrote that Rambam's explanation cannot be applied to our type of case. Rambam wrote that the reason forcing a person to give a גט is effective is that the recalcitrant husband wants to live as a Jew. In the case of a non-religious person that same assumption may not hold true. Therefore, we cannot assume that he will be happy to be in compliance with halacha when he is forced to do so. ■

1. רמב"ם פ"ב מהל' גירושין ה"כ.
2. שו"ת חלקת יעקב או"ח סי' קצ"ד.

STORIES Off the Daf

"Until he says, 'I want' "

"כופין אותו עד שאומר רוצה אני..."

Today's daf discusses forcing a husband to give a divorce.

Women sometimes have trouble procuring a גט, especially when the marriage turns into a struggle and the husband bears a grudge. Many have tried different strategies to protect these helpless woman.

The year was 1980 and in South Africa there were several women who had terrible trouble securing a גט. Their predicament inspired a resolution among the more important members of the community to work to pass a bill in parliament which would deal

with this matter. However, Rav Yaakov Seltzer, the Av Beis Din of Kahal Adas Yeshurun in South Africa, wondered if this was a good idea since the halachah is that a forced גט is not valid. Perhaps passing a law that every Jew who wants to have a civil divorce must also give a גט is completely ineffective, since if this is halachically considered coercion, women who receive such a forced divorce would not be allowed to remarry in any case.

When Rav Seltzer put this question to Rav Moshe Feinstein, zt"l, Rav Moshe ruled that this law was not necessarily an אונס. Clearly, offering someone a huge sum of money in return for giving a גט is no problem whatsoever since the husband gives the גט of his own volition to receive the money. Similarly, if the law is that he

cannot procure a civil divorce without first giving a גט, there is no problem of אונס.

"But if the law is merely that he cannot remarry without giving a גט this is may be a problem, since he already gave a civil divorce and why should there be further legal obstruction from marrying without giving a divorce. This is compared to putting him in prison or hitting him to force him to give a גט, which is a problem.

"In addition, you must ensure that the divorce is given only by an Orthodox beis din. This is important since, due to our many sins, Conservative and Reform congregations abound. A divorce issued by a Reform or Conservative beis din is of no halachic significance at all."¹ ■

1. אג"מ, אבה"ע ח"ד, סי' קי"ו