

YESHIVAT HAR ETZION
ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

TALMUDIC METHODOLOGY

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**SHIUR #02: THE GRAMMAR OF A *GET* AND ITS FUNCTION AS A
*SHETAR***

The correspondence between a classic *shetar* (contract) and a *get* is intriguing and the subject of great debate. On appearance, a *get* is a standard *shetar kinyan*, a contract of acquisition, purposed to affect the release of a woman. However, many *halakhot* suggest that it doesn't function as a classic *shetar* but rather constitutes a written communication of marital release, referred to by many as *shiluach bi-khtav* (release in writing).

According to the latter view, the divorce isn't effected **contractually** by the crafting and issuing of a formal document. In theory, the woman could have been divorced by verbal communication of release. However, this manner would have been crude and uncivilized. Instead, the Torah commands that the communication of separation be written in a document and delivered to the woman.

This question is reflected in three important global issues about a *get*.

Firstly, the unique requirement to draft a *get lishma* — oriented for the specific purposes of divorcing a specific woman launched by the husband's instructions — reflects a possible gap between a *get* and a classic *shetar*, which may be written generically.

Secondly, there may be independent rules which govern the manufacturing process of a *get* which don't apply regarding drafting a standard *shetar*. This may indicate that the process isn't the formal creation of a *shetar*, but rather expressing written communication a process which may begin at the point of drafting the *get*. More so, though contracts must be legally obtained by

the recipient through an act of transferring *kinyan*, the *Ketzot* famously argues that a *get* must be merely symbolically deposited in the hands of the woman but not necessarily acquired by the woman.

Finally, the role of *eidim* (witnesses) for a *get* may be significantly diminished in relation to their central function in a classic *shetar*. The Mishna in *Gittin* (86a) validates a *get* without any signatures (at least *mi-deOraita*, by biblical law) and this may reflect a unique condition of a *get* (see the second view of Rashi to that *mishna*). These *halakhot* all indicate that a *get* may not serve as a formal contract, but rather as written communication of release.

This definition of a *get* as written communication of release may be reflected in several fascinating syntactical issues unique to the text of a *get*. Typically, a *shetar* documents the legal activity from the standpoint of the witnesses. Hence, the event described in a *shetar* is prefaced with the word “*eikh*” (literally translated as “how”) which grammatically introduces a narrative which the witnesses themselves are observing **concerning** the litigants. The Rif and the Rambam present the syntax of a *get* as including the word *eikh*, similar to a standard *shetar*.

By contrast, the Rosh (in a *teshuva* quoted by the Tur in *Even Ha-ezer* 126) claims that unlike a classic and formal *shetar*, the *get* should not contain the word *eikh* but should be written as a first-person communique from the husband. He explains that a *get* is a husband’s communication directly to his wife, rather than the recorded voices of the *eidim* who witness the proceedings of the husband and wife. This responsum of the Rosh reflects the discrepancy between a formal contract and a *get*, which may be a written release and not a formal contract.

An additional question may surround the inclusion of the phrase “*Harei at muteret le-khol adam*,” “You are hereby permitted to anyone,” within the text of the *get*. The actual text of a *get* elaborately describes the process of divorce, which should render a frontal inclusion of the phrase *harei at muteret* unnecessary. The Mishna (86a) does refer to the phrase “*Harei at muteret*” as “*gufo shel get*,” suggesting that it constitutes the core (literally, *guf* means body)

of the *get*. However, a different *mishna* (ibid, 26a) doesn't list this phrase among the critical components of a *get* (which must be drafted with *lishma* intent).

Tosafot (26a) provide two solutions which pivot upon the issue of how vital this language is to the actual *get*. From the Rambam's comments, it appears that the language isn't necessary at a *de-Oraita* level. Presumably, as a formal contract, the *get* — whose overall text greatly elaborates the effects of *geirushin* — would not require inclusion of a direct communication from the husband about the release of the woman. If, however, the *get* isn't a formal contract but a written communique from the husband, it may require a direct communication of this release in the form of "*Harei at muteret le-khol adam.*"

The question of whose voice is contained within a *get* — the husband's or the witnesses' — may also impact even minute details about the manner in which the *eidim* sign a *get*. The *Yam shel Shelomo* claims that typically, with regard to *shetarot* in general, the witnesses need not include the actual word "*eid*" at the conclusion of their signatures. After all, the entire *shetar* is their affidavit, and merely signing their names at the end of this *shetar* declaration suffices. However, he asserts that *eidim* who sign a *get* must conclude their signatures with the actual word *eid* in order to demarcate their signatures from the overall *get*. As the overall *get* is the recorded communication of the husband, the *eidim* must differentiate the final section of the *get* — their signatures — by underscoring that they aren't merely extending the text of the *shetar* (which is authored by the husband), but affixing their signatures - a new grammatical component. This position of the *Yam shel Shelomo*, distinguishing between the grammar of a *get* signature and the grammar of a general *shetar* signature, is parallel to the Rosh's distinction between a *shetar*, which is centered on the word *eikh*, and a *get*, which doesn't incorporate that word.

In a similar vein, the *Cheishek Shelomo* claims that *eidim* who sign a *get* should not preface their signatures with the term "*Ne'um*" (literally translated as "So speaks"), which would imply they are the speakers of the *get*. As the *get* is the recorded voice of the husband, the *eidim* should not preface their signatures to a *get* with a phrase which may contradictorily suggest that they are the speakers. This grammatical adjustment is also in line with the aforementioned views of the Rosh and *Yam shel Shelomo*.

Conceivably, the nature of a *get* and the question of whether the text represents the recorded voice of the husband or the affidavit of the witnesses may influence the structural role that *eidim* to a *get* can play. The Mishna in *Gittin* (86b) implies that a *get* can be written on multiple columns of one piece of paper — possibly unlike a *mezuzah*, for example, which must be drafted on a single column. This appears to clash with a statement of Rashi in *Sota* (18a, s.v. *A*) that all halakhic documents must be condensed onto one column or else Halakha considers them separate.

The *Or Zarua* claims that indeed multi-columned documents whether ritual such as a *mezuzah* or contractual such as a *shetar* aren't integrated and are halakhically considered as separate records. However, a *get* may be written on multiple columns since the signatures at the end of the final column will integrate the entire document. Does this suggest that the entire text of a *get* is indeed the voice of the *eidim*, hence their signatures are the conclusion of the entire document and can unify the entire document into one text? Had the voice of the *get* been considered the written communication of the husband, the signatures separately affixed to one column of this communication may not have integrated the entire document into one text.

A similar unifying effect of the signatures can be detected in a comment of the Ra'avad about a multilingual *get*. Commenting on *Hilkhot Geirushin* 4:8, in which the Rambam disqualifies a multilingual *get*, the Ra'avad argues and validates it based on the signatures. As long as the witnesses understand the various languages, their singular signature (which is obviously unrelated to language since it is a name) validates the *get*. Again, if the text of the *get* is the husband's recorded communication, one could question whether the various languages can be ratified by a separate and unrelated signature of the *eidim*. It would appear that the Ra'avad, like the *Or Zarua*, views the *get* as an affidavit of the witnesses. As long as the signing witnesses understand the various languages of the *get*, their concluding signature creates one coherent text.

Finally, there is an interesting statement recorded by Tosafot (87b) in the name of Rav Yosef Bonfils or Rav Yosef Tov Ilem (one of the earliest Rishonim) which may identify a *get* as a more formal *shetar*, unlike the positions of the

previous Rishonim, who view the *get* as the recorded communication of the husband which is merely signed by the *eidim*.

The conclusion of the *get* includes a phrase, *iggeret shibbukin*, which loosely translates as “letter of release.” Rav Yosef Bonfils instructs that the word *iggeret* must be preceded by a *vav* to connect it with the previous text of the *get*. Writing the word *iggeret* without a conjunctive *vav* may suggest that a *get* is merely an informal letter (*iggeret*) rather than a more formal *shetar*. Including the *vav* makes it clear that this phrase is merely qualifying the entire earlier section of the text which frames the *get* in more formal terms.

Is this a manner of associating a *get* with a formal *shetar*, as opposed to a more informal letter which contains written communication? If so, then his comments would be discrepant with those of the above Rishonim, who did view a *get* as an informal recording of the husband’s communication.