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A Fatal Condition

The fourth *Mishnah* in the seventh *perek* of *masechet Gittin* presents a case where a husband offers his wife a *get* that will only take effect should he die from his current illness. *R' Yehuda* and *R' Yose* argue regarding the status of the wife during this interim period – between the handing over of the *get* and the husband's subsequent potential death. *R' Yehuda* maintains that the wife is considered "a married woman in every regard" while *R' Yose* maintains that her married status is in doubt. *Rabba* (*Gittin* 73b) explains that the circumstances of the *Mishnah* relate to the husband stipulating that the *get* is to take effect a moment before his death.

On the surface there does not appear to be any practical *halachic* difference between the two opinions, as even *R' Yose* who states that the marriage is in doubt would still require the woman to behave as if she is still married avoiding any potential catastrophic outcome. Understanding the nature of the argument between *R' Yehuda* and *R' Yose* highlights the practical implications of the differing views.

According to *Rashi* (*Gittin* 73b, s.v. "u'Mashni"), their argument pertains to the application of the principle of *Breira*. This principle enables the status of a current act to be determined retrospectively by a subsequent outcome. *R' Yehuda* applies the principle of *Breira* while *R' Yose* does not. *Rashi* distinguishes between the two opinions by applying them to a case where the woman engaged in an adulterous relationship during the interim period between delivery of the *get* and the husband's death. According to *R' Yehuda*, even if the husband dies, the woman and her adulterous partner are subject to capital punishment for adultery. Considering that the principle *Breira* is applied, whereby we declare that the *get* only takes effect the moment before the husband's death, the wife is regarded as a "married woman in every regard" and subject to the punishment for adultery. However according to *R' Yose*, who does not agree to the application of *Breira*, every moment subsequent to the handing over of the *get* is potentially the moment prior to the husband's death, and her marital status is in perpetual uncertainty. Under these circumstances, the nature of any adulterous relationship is uncertain, and her punishment is to bring a *korban ashum talui* (which is brought when a person is unsure if they committed a sin whereby if committed inadvertently they

would be required to bring a *korban chatat*). However, elsewhere *Rashi* (74a, "R' Yosi") explains that if the husband recovers from his illness the punishment is to bring a *korban chatat*, as the adulterous relationship is deemed inadvertent.

Many *Rishonim* disagree with *Rashi's* interpretation of the argument between *R' Yehuda* and *R' Yose*. The *Rashba* and *Ran* question *Rashi's* explanation of *R' Yose*, in the circumstance where the husband recovers, and maintain that the wife should still be required to bring a *korban ashum talui*, as at the time of her adulterous relationship, it could potentially have been the moment before the husband's death. Moreover, to change the punishment in the event of the husband's recovery confers an element of retroactivity, which, according to *Rashi*, *R' Yose* does not recognise. *Tosfot* emphasises another implication of *Rashi's* interpretation of *R' Yose*, where the husband dies from his illness and there are no issues regarding an adulterous relationship, but simply the question of the wife's status. There is no certainty of the moment prior to the husband's death when the *get* should take effect, and therefore, the status of the divorce is problematic. The logical extension of this would suggest an undesirable position where it would remain unclear if she is a divorcee or a widow.

In contrast to *Rashi*, many *Rishonim* understand that both *R' Yehuda* and *R' Yose* agree to the application of the principle of *Breira*. While sharing a common thread, the alternate explanations presented by these *Rishonim*, differ slightly. By way of example, the *Ran* explains *R' Yehuda* in the same way as *Rashi*. However, he understands *R' Yose* as being unsure whether stipulating that the *get* take effect immediately prior to death is valid. Accordingly, issuing a *get* under these circumstances could be seen as being effective immediately prior to death as instructed by the husband, in which case the wife will be put to death for adultery. Alternatively, this condition of the husband could be disregarded and the *get* takes effect retrospectively from the time of delivery, and the wife would not have committed a sin of adultery. Owing to this doubt, the wife must bring a *korban ashum talui*. The *Ran* concludes by claiming that *R' Yose* would agree that if the husband recovers, the wife would be put to death for adultery.

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Revision Questions

גיטין ז' ג: ח – ז': ז'

- Can a man give his wife a *get* on the condition that it takes effect after he dies? (ז': ז')
- What is the law if a husband gives his wife a *get* saying "this is your *get* from today and after death"? (ז': ג')
- What is the law regarding a woman who receives a *get* from her husband on the condition that it takes effect now if in the future the husband dies? (ד': ז')
- Can a man give his wife a *get* on the condition she gives him a sum of money? (ה': ז')
- What does *Rabban Shimon ben Gamliel* rule in a case where a man gives his wife a *get* on the condition that she gives him a particular item, yet that item was lost? (ה': ז')
- If a man gave his wife a *get* on the condition that she cared for his father, yet he died before she was able to care for him, when do we say that the *get* is invalid? (ו': ז')
- What is *Rabban Shimon ben Gamliel's* rule regarding a woman's inability to fulfill a condition in a *get*? (ו': ז')
- Which two cities lie on each side of the border of *Yehuda* and *Galil*? (ז': ז')
- If a husband gives his a wife *get* on the condition it will take effect if he does not see her for a period of thirty days, is the *get* valid if he consequently did see her frequently prior to disappearing for thirty days? (ז': ז')
- With what wording of the condition would a *get* be valid if it was given on the condition that the husband would not return within twelve month and died during that period? (ח': ז')
- If the husband directed two people to write and hand a *get* to his wife if he did not return within twelve months, and the witness wrote the *get* immediately and handed the *get* to the wife after twelve months, is the *get* valid? (ז': ט')
- Is a *get* valid if it is thrown: (ח': א')
 - Into the wife's *chatzer*?
 - Into the wife's bed?
 - On to the wife's lap?
- Is a *get* valid if it was handed it to the wife on the presumption that it was a financial document? (ח': ב')
- Can a woman be handed a *get* while she is sleeping? (ח': ב')
- Is a *get* valid if it was cast at the wife's feet while standing in the public domain? (ח': ב')
- For which two other areas does the law dealt with in the previous question apply? (ח': ג')
- If a *get* was thrown to a woman while she was standing on a roof and was destroyed prior to landing, when do we say that the *get* is valid? (ח': ג')
- What is a *get yashan* and can it be used? (ח': ד')
- What is the law regarding a case where the husband wrote his wife a *get* dated from the time of the destruction of the *Beit Ha'Mikdash* and she then remarried? (ח': ה')
- What two other cases (not related to *gittin*) share the same law raised in the previous question? (ח': ו'-ז')

Local Shiurim

Sunday -Thursday
Between mincha & ma'ariv
Mizrachi Shul

Friday & Shabbat
10 minutes before mincha
Mizrachi Shul

Audio Shiurim on-line!

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- www.shemayisrael.com/mishna/



Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
22 nd April ד' אייר	23 rd April ה' אייר	24 th April ו' אייר	25 th April ז' אייר	26 th April ח' אייר	27 th April ט' אייר	28 th April י' אייר
Gittin 8:8-9	Gittin 8:10-9:1	Gittin 9:2-3	Gittin 9:4-5	Gittin 9:6-7	Gittin 9:8-9	Gittin 9:10- Kidushin 1:1

