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WAR TORN: CAN SOLDIERS PREVENT IGUN WITH ADVANCE PLANNING?

Adapted from the writings of Dayan Yitzhak Grossman

R' Asher Weiss recently discussed what he described as one of the most painful *sheilos* that he has been asked since the war in Gaza began:

Many soldiers are so, so worried. They think they might be taken into captivity, as a hundred and fifty people were, and it's heartbreaking...[they don't know] whether their wives will be *agunos*.

The *poskim* say you cannot give a *get al tnai*—that's out, that's off the table, even though in days of yore you do find, in the Mishnah and the Gemara, *get al tnai*.

But could one be *memaneh* (appoint) a *shaliach* (proxy)? "If they won't know my whereabouts, *mimah nafshach*: If I'm dead, then my wife could remarry; if I'm alive, I want you to write a *get*." Is that legitimate?

If I would give a *psak* to one individual that it's OK, there will be a thousand people doing it, and it is clear to me that that will be a

terrible *muchshol* (pitfall)...Being *memaneh* a *shaliach* is complicated, you need to be *memaneh* the *eidim* (witnesses) and the *sofer*, so this is something we should not do. And the Army is also very much against this, because they think it'll have a terrible effect on the morale of the troops.

So instead of giving a halachic *psak*, how to be *memaneh* a *shaliach*, I give *brachos*, and I tell everyone: "Don't be worried, you're going to come safely home, and you're going to spend wonderful years *ad ziknah veseivah* with your wife and your family. And then when the people leave my home, or when I put down the telephone, I look up to Hakadosh Baruch Hu and say: "Ribono Shel Olam, I gave *brachos lema'an kvod Shimcha* (for the sake of the honor of Your Name); it's not for me, it's just for You. So please, please see to it that my *brachos* will

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PARSHAS VAYEIRA

TURNOVERS

Excerpted and adapted from a shiur by
Dayan Yitzhak Grossman

And they called to Lot and said to him,
"Where are the men who came to you
tonight? Bring them out to us, that we may
know them."

Bereishis 19:5

When non-Jews demand that one Jew from a group be surrendered to be killed (or, in the case of women, defiled), or else the entire group will suffer the same fate, the Mishnah (Trumos 8:12) and Tosefta (Trumos 7:23) rule that they may not turn anyone over. The Tosefta notes one exception, where a person is asked for by name, as was Sheva ben Bichri in Sefer Shmuel (Bais perek 20).

There is a dispute in the Yerushalmi (ibid.) whether the Tosefta's exception applies only to someone who is deserving of death, like Sheva ben Bichri (Reish Lakish), or to anyone (R' Yochanan). The Ran rules with R' Yochanan, the Rambam (Yesodei HaTorah 5:5) with Reish Lakish. The Rama (Y.D. 157) and the later Acharonim follow the Rambam. The Bach and the Chazon Ish write that if the person named by the non-Jews was guilty under secular law, he may be turned in. They explain that in this case, the guilty person is a *rodeif* (pursuer) endangering the others. The

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Blackstrap

Q The black color of my tfillin *retzuos* (straps) is fading. At what point must I blacken them? Is special tfillin dye required, or may black shoe polish be used? May a woman or child do it?

A A halacha leMoshe miSinai dictates that the *retzuos* must be black (Menachos 35a, Shulchan Aruch O.C. 33:3). If they lose their blackness, the tfillin may not be worn (Biur Halacha ibid. c.f. Halacha). They are to be "black as a raven" (Mishnah Brurah ibid. 19), but the Biur Halacha (ibid. s.v. *Haretzuos*) rules that *bedi'eved* they are kosher even if faded, so long as they look black, but *lechaf'chilah* they should be reblackened.

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be *mekuyam*, because if not, that's going to be very bad. *Asei lema'an kvod Shimcha hagadol*, it's going to be a chillul Hashem, so I really hope that at least this time my *brachos* will be *mekuyam*, and all those people will, *besiyata diShmaya*, come safely home.¹

As we shall see, the matter is not quite this simple: A get *al tnai* may be given when absolutely necessary and no viable alternative is available, and some *poskim* explicitly endorsed doing so in certain contexts involving wartime gittin; *minui shaliach* is undoubtedly complicated, but the procedure was indeed sanctioned by major *poskim* in the context of wartime gittin, and the concern for military morale, while indeed accepted by some modern-day halachic authorities, is rejected by others.

In this article and a follow-up, we discuss the history of writing gittin (and issuing authorizations for writing gittin) for soldiers heading off to war.

The Gemara states:

R' Shmuel bar Nachmani said in the name of R' Yonasan: Whoever would go out to fight in a war of the House of Dovid would write a bill of divorce for his wife.²

Rashi explains that these divorces were conditional upon the death of the writer in battle (or, in a refinement suggested by Tosfos, upon his failure to return home at the conclusion of the war), while Rabeinu Tam explains that the divorces were unconditional. According to the simple reading of Rashi that the divorces were conditional upon the writers' deaths, their purpose must have been only to avoid the need for *yibum* (levirate marriage) or *chalitzah* (a release from the *yibum* obligation). According to Tosfos's refinement of Rashi's view and according to Rabeinu Tam, they served to allow the writers' wives to remarry in the event that their husbands would not return but their deaths were unconfirmed.³

It is unclear how prevalent this procedure was in subsequent eras; it is not discussed in the major halachic codes, and limited historical evidence is available. R' Yitzchak ben Sheishess (the Rivash) recommended the procedure for a community of merchants and seafarers, who "constantly" disappeared and left their wives agunos, but we do not have a record of its actual implementation.⁴

R' Malkiel Tannenbaum (the Divrei Malkiel, d. 5670/1910) is apparently one of the first modern-day *poskim* to endorse the practical

implementation of a variation of this procedure, in which soldiers would merely execute *authorizations* to write, sign, and deliver gittin, but the actual gittin would generally be written later:

Since it is now a time of war, many of *acheinu* Bnei Yisrael are going out suddenly to battle, and they wish to divorce their wives so that they should not *chas* veshalom remain agunos, or so that they should not require *chalitzah*. But they nevertheless desire that when they return in peace from the war, they should be able to live with their wives as before. And there are kohanim among them, and if they divorce them, they will not be able to remarry them afterward (as a kohein may not marry a divorcee, even his own). And various rabanim have asked me to explain how to handle this matter, since when [the soldiers] are in a rush to be on their way, the *rav* who arranges [the get] does not have time to look into this, and additionally, it will sometimes happen that many gittin will need to be done on the same day, and this can result in a *meichshol*, *chas* veshalom...

The Divrei Malkiel proceeds to provide detailed, annotated instructions for the form of the authorization:

When one goes to serve in the army, and he has time to come to *bais din* at least briefly, he should then issue instructions, before the *bais din* and the scribe...

The precise details of these instructions are beyond the scope of this article, but the Divrei Malkiel concludes:

In this manner one can write the get subsequently without pressure and calmly, as is appropriate. If they have children (so there is no need for *chalitzah*), there is no need to hurry to give the get to her, since they can give it to her after the conclusion of the war if they see that this man has not returned from the war. It seems, however, that it is preferable to write and sign it earlier, because over a long period of time, it is possible that something will happen to one of the men involved in this get that will render him unable to write or sign it, and it is also possible that the witnesses will forget the matter over time. But once the get and the authorization are prepared, they can transfer [the get] to her afterward, as above...

He explains that when the couple has no children, so there is a concern for *chalitzah*,

then it is necessary to give the get without delay, but before it is given, the wife should accept upon herself with a *cheirem* (a commitment backed by an anathema) and

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If the black has faded or flaked off from parts of the *retzuah* while the majority of the *retzuah* remains black, some permit it *bedieved* (Salmas Chaim 40), but others don't (Teshuvos Vehanhagos 2:22). But even the stringent view allows insignificantly small faded spots (*ibid.*). If the loss of color is in a part of the *retzuah* beyond its required length, the *Biur Halacha* (*ibid.*) is unsure, but R' Shlomo Zalman Auerbach (*Halichos Shlomo* Tfillin note 41) rules leniently.

Some *poskim* require the dye to be made *lishmah* (with intent for the mitzvah), so it is preferable to use specially manufactured dye to accommodate their view. (It is sold in *sfarim* stores). If dye made *lishmah* isn't available, any black ink or polish that doesn't contain nonkosher animal products may be used (*Mishnah Brurah* 32:8).

The making of tfillin and the writing of the parshiyos must be done by someone obligated in the mitzvah, so women and children are excluded (O.C. 39:1), but they are eligible to blacken the *batim* and *retzuos* (*Mishnah Brurah* 33:23). The blackening must be done *lishmah*, so a child must be directed by an adult.

a *shvuah* (oath) before the *bais din* that she will not marry another man for a period of two years, and that if her husband arrives within this period, she will marry him...

He adds that if the husband is a kohein, and the couple has no children so there is a concern for *chalitzah* (so the get must be given immediately, as above), there is no choice but to execute a conditional get (despite the general custom to avoid conditional gittin).⁵

The Divrei Malkiel then proceeds to give instructions for securing authorizations from soldiers who are already deployed in distant locations where there is no *bais din*.⁶

In a follow-up article, we shall *iy"H* survey the positions of various halachic authorities that came after the Divrei Malkiel on this topic.



RAV ARYEH FINKEL

1 R' Asher Weiss, *Siege in Halacha & Other War-Related Questions*, YouTube (38:40-40:53).

2 Ksubos 9a-b.

3 Rashi *ibid.* sv. *Get krusis*, Tosfos *ibid.* sv. *Kol hayotzei*.

4 Shu"t Rivash *siman* 377 sv. *Umah shekasavta od le'esor ha'ishah hazos*.

5 See Rama to Shulchan Aruch E.H. 145:9, and cf. Shulchan Aruch *ibid.* 147:3; Pis'chei Teshuvah *ibid.* s.k. 1; Shu"t Igros Moshe E.H. *cheilek* 1 end of *siman* 147 sv. *Umah sheratzeh ha'ish hahu litein get al tnai*.

6 Shu"t Divrei Malkiel, end of *cheilek* 4 *siman* 156 pp. 208-212.

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Bach addresses a case where Christians accused

a specific Jew of stealing a Christian object of worship and demanded that he be handed over for execution or the Jewish

community's leaders would be killed instead. The Bach rules that if he indeed did what they say he did, he may be turned in.

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