

J. Jean Ajdler
33 Bellariastrasse
8002 Zurich
Switzerland

Letter to the editor.
Concerns: A Halakhah in Mishneh Torah

Congratulations to R. Asher Benzion Buchman for this nice paper on a subject that was unknown to me until now. Unfortunately I note that the edition of R. Shabtai Frenkel, contrary to its claim, does not always reestablish the original division. This is the case in Hilkhoh Shemitah ve Yovel chapter 11 and in Hilkhoh Ishut chapter 5. It is interesting to note that all the commentators, except the Rav ha-magid, worked on printed editions and accepted the proposed division without any discussion.

In a similar field, R. Shimshon Morpurgo claimed that the title of the different chapters of Shulhan Arukh were introduced by the printer (Shemesh Zedakah, I don't remember the siman).¹ What is the merit of this surprising claim ?

To pursue on the last example in Hilkhoh Ishut chapter 5 and according to the logic developed, we could say, that if the debt was already due because the delay was overstayed, then the kiddushin should have been valid and if at this point he was renouncing the repayment, a fortiori the kiddushin should be valid. However Rambam does not raise the issue. Can we rest on this apparent logic?

Thanks to the examination of this chapter I have perhaps better grasped and even explained another problem raised by a responsum of Rashba.

In the responsa of Rashba, Helek 4, siman 40, Rashba writes that when a man gives a get under duress, the get is passul (or batteel). However if he receives money, this invalid get becomes valid because of the Talmudic principle: "Taluha ve zavin, zevinei zevinei"

Rashba requires an effective transfer of money but the annulment of a debt would not help. Rashba does not make any difference whether the debt is already due or not.

This position of Rashba is unique and not discussed by other rulers because they follow Rivash.

In Hilkhoh Mekhira 10: 1, which deals with a similar problem, Rambam does not raise explicitly the problem although he speaks about a payment, which not necessarily happen before witness (in contradiction with Rabad). Apparently there is effective payment.

But in Hilkhoh Ishut 5 :15, Rambam explicitly requires fresh money and not an annulment of a debt.

Maybe the same rule prevails in Mekhira 10: 1 and this would justify the position of Rashba. Anyhow thank you for this important paper, which will interest all the passionately fonds of Rambam.

¹ Rabbi Morpurgo was trying to explain the offensive title of Orach Hayyim Siman 605, as it appeared in the first editions of Shulhan Arukh.