

The Use Of A Videoteleconference For A Get Procedure

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Introduction

In a conventional situation, a *Get* procedure involves a husband and wife both appearing before a *Beth Din* to execute a *Get*. Even if both parties live a great distance from each other, they may both appear in Rabbinic Courts in their respective areas and the *Get* is executed through the use of an agent. It is especially important for the husband to present himself to the *Beth Din* since he must directly issue orders to a scribe and two witnesses to respectively write and sign the *Get*.

Sometimes, though, either the husband or the wife is situated a great distance from a *Beth Din* that is competent and recognized to supervise a *Get* proceeding. Halachic authorities have been grappling with the problem for centuries, and various proposals have been suggested and sometimes implemented. In this century, it has been suggested that the husband appoint a scribe and witnesses by speaking to them on the telephone. No consensus, however, has emerged concerning this question. This author seeks to demonstrate that almost all decisors would agree that a *Get* may be executed through the means of a videoteleconference, in which the husband, the scribe, and

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witnesses may speak to each other simultaneously.

This article will first survey rabbinic opinion regarding the older questions of whether a husband may appoint a scribe and witnesses in writing instead of making a verbal appointment, and whether the husband may make a verbal appointment without the scribe and witnesses being present. Subsequently, the newer question of appointing a scribe and witnesses by speaking on the telephone will be discussed. Then we will suggest evidence that in case of urgent need halacha permits a husband to issue orders to a scribe and witnesses via a videoteleconference.

I. Appointing A Scribe And Witnesses In Writing

The Mishnah (*Gittin* 67b) teaches that a husband who cannot verbally appoint a scribe and witnesses because he cannot speak, but seeks to divorce his wife, is asked whether he wishes a *Get* to be written on his behalf. If he responds by nodding his head in the affirmative, then a scribe may write a *Get* on his behalf. This mishnah yields the important insight that halacha does not require the husband to make a verbal appointment. Tosafot (*Gittin* 72a *s.v. kolo*) explain "since we know that the husband wishes to have the *Get* written on his behalf, we do not require that the husband's voice be heard [by the scribe]."

The question is whether a husband's appointment of a scribe and witnesses, made in writing and not articulated verbally, is halachically acceptable. The Talmud (*Gittin* 71a) cites the statement of Rav Kahane in the name of Rav that a deaf mute who is able to communicate through writing may appoint a scribe and witnesses in writing. The Talmud, though, subsequently cites a *Braita* which conclusively rejects the opinion of Rav Kahane in the name of Rav.

Some *Rishonim* interpret the Talmud's conclusion as a rejection of the option of the husband's appointing a scribe

and witness in writing. Other *Rishonim* assert that the Talmud's rejection of Rav Kahane's opinion pertains exclusively to a deaf mute, whose appointment of a scribe and witnesses is not recognized as valid due to his status as a mentally incompetent individual.¹ Rambam² adopts the second approach and rules that one who is unable to talk but is capable of hearing may issue a written appointment of a scribe and witnesses.³ Many other *Rishonim* adopt the first approach and rule that a husband may not appoint a scribe and witnesses in writing.⁴ These authorities include Rosh,⁵ Rashba,⁶ Ran,⁷ Mordechai,⁸ and *Hagahot*

1. See Rabbi J. David Bleich, *Contemporary Halachic Problems*, II: 368-375, for a discussion of this topic and its current applicability.

2. *Hilchot Gerushin* 2:16.

3. It is unclear whether Rambam's ruling applies to everyone or only to one who is unable to speak. Rabbi Joseph Karo in his work *Beth Yoseph* (chapter 120) is inclined to interpret the Rambam's position as pertaining to any man. However, in the *Shulchan Aruch* (120:5), Rabbi Karo appears to present Rambam's ruling to be limited to a man who cannot speak.

4. The obvious question on this approach is that the Mishnah's ruling permitting a mute husband to appoint a scribe and witnesses by nodding indicates that halacha does not require the husband to issue a verbal appointment. Accordingly, why should a written appointment differ from appointing by nodding one's head? Rosh (*Gittin* 7:19) explains, the difference is that nodding the head is a bodily act and is therefore analogous to speech. One may still ask, though, if writing is not also a bodily act. Rabbi Zalman Nechemia Goldberg, *dayan* in the *Beth Din* of Jerusalem, explained to this author that although writing is a bodily act, one cannot discern the writer's intention from the *act* of writing itself. Nodding the head is analogous to speech, on the other hand, because one can discern the intent of the husband from his bodily action *alone*.

5. *Gittin* 7:19.

6. *Ibid.* 72a *s.v. kolo*

Maimoniyot.⁹ These authorities cite as proof the *Tosefta*¹⁰ which states:

Even if [the husband] instructs the scribe in writing to write a *Get*, and similarly instructs witnesses to sign a *Get*, even though they wrote, signed, and delivered the *Get* to the wife, the *Get* is invalid until they hear verbal instructions from the husband to write and sign the *Get*.

Shulchan Aruch (120:5) rules in accordance with the many *Rishonim* who rule that a written appointment is not valid.¹¹ *Ba'er Heitev* (120:10), however, cites *Maharadach* 23 and *Haram Mitrani* (2:155) as ruling that the lenient opinions may be relied upon in a situation of extremely urgent need. This is also the view of *Get Pashut* (120:26), an authoritative work on the laws of *Gittin*.

II. A Verbal Appointment Not Issued In The Presence Of A Scribe And Witnesses

In *Gittin* 72a, the Talmud cites a *Braita* which strongly implies that a husband may not issue appointments by telling a third party to appoint a scribe and witnesses. *Rishonim*, in

7. 33a in the pages of the *Rif s.v. heresh sheyachol*.

8. *Gittin* 417.

9. *Hilchot Gerushin* 2:16:200.

10. *Gittin* 2:10.

11. The stricter opinion is presented in *Shulchan Aruch* as the first opinion without attribution or comment, and the lenient opinion is presented second, as "there are those who validate" a *Get* authorized by the husband in writing. Commentaries to the *Shulchan Aruch* agree that when Rabbi Karo presents two differing opinions in this manner, he is indicating that he regards the first opinion to be normative. See *Pri M'gadim*, introduction to *Yoreh Deah*, rule no. 1.

turn, disagree whether the appointments may be issued in a slightly different manner: the husband designates a scribe and witnesses, not in their presence, and requests a third party to inform the scribe and witness of the appointment. *Ra'ah* and *Ran*¹² believe that such appointment is valid since the husband appoints the scribe and witnesses, and not an agent. *Ramban*¹³ disagrees and rules that even this manner of appointment is invalid. He explains that "the scribe and witnesses cannot act as agents of the husband unless they hear [the authorization] from his mouth." It is important to note, though, that even *Ramban* concedes that this law applies only to divorce actions (*Gittin*), as otherwise an agent is not required to be present at the time of his appointment.

The major commentaries on *Shulchan Aruch – Bet Shmuel* (120:7), *Chelkat Mechokek* (120:12), and *Pri Chadash* (120:6) – cite both opinions without stating which opinion is regarded as authoritative. Instead, by presenting both opinions without comment, these decisors are indicating that the issue is not resolved – a "*s'feika d'dina*." *Maharshal*¹⁴ rules that one may rely on the lenient rulings of *Ra'ah* and *Ran*.

Pitchei Teshuva (120:18) cites *Maharim Mi'Brisk* who also ruled leniently in a case of very urgent need and developed a novel solution to this problem. He suggested that a husband situated very far from a *Beth Din* appoint scribe and witnesses both verbally and in writing. This approach utilizes the halachic mechanism of "double doubt" – *s'feik s'feika* – in which one may rule leniently (in certain instances) if there exist two reasonable but questionable arguments which are

12. *Gittin s.v. ve'hiksha Ha'Ramban*.

13. *Ibid.* 66b *s.v. amar Rav Chisda*.

14. *Yam Shel Shlomo, Gittin* 6:15.

combined into a compelling argument. In our case, this mechanism functions as follows: a verbal appointment is made to satisfy the opinions of Ra'ah and Ran, and a written appointment is made to satisfy the opinion of those authorities who rule that a written authorization is valid. Indeed, this may even satisfy the opinion of Ramban, which might rule that only a verbal appointment is invalid when issued without the scribe and witnesses being present, but might accept a written appointment executed without the presence of the scribe and witnesses.

Almost all great halachic authorities of the past two centuries have ruled leniently in cases where it would otherwise be impossible to obtain a *Get* on behalf of the wife. These authorities, generally speaking, either adopted the approach of the Maharim Mi'Brisk or ruled that a written appointment is valid if no viable alternative exists.¹⁵

A small minority of decisors do not accept the use of this procedure even in the most dire circumstances. These include *Pri Chadash* (*Even Haezer* 120:6) and *Chazon Ish* (*Even Haezer* 85). However, Rabbi Eliezer Waldenburg (*Tzitz*

15. These authorities include *Beit Ephraim* (*Even Haezer* 80), *Keter Kehuna* (no. 76), *Divrei Chaim* (*Even Haezer* 2:86), *Sho'eil U'Meishiv* (1:149), *Tzemach Tzedek He'Chadash* (*Even Haezer* 267), *Ein Yitzchak* (*Even Haezer* 2:6), *Aruch Hashulchan* (*Even Haezer* 120:64), *Maharsham* (3:352 and 5:44), *Ridbaz* (no. 2), *Avnei Neizer* (*Even Haezer* 2:156), *Chelkat Yoav* (*Even Haezer* 30), *Shaarei Deah* (1:141 and 2:120), *Even Yekara* (*Even Haezer* 1:40 and 1:42), *Zekan Aharon* (2:114), *Heichal Yitzchak* (*Even Haezer* 2:35), *Iggerot Moshe* (*Even Haezer* 1:116 and 1:119), *Minchat Shlomo* (no. 78), and *Tzitz Eliezer* (10:47).

Rabbi Moshe Feinstein in his responsum posits a somewhat different solution to the problem, and presents a step-by-step guide on how to execute his suggested approach. Some Rabbinic Courts have adopted Rabbi Feinstein's suggestion in practice.

Eliezer 10:47) of the Supreme Rabbinic court in Jerusalem notes that "virtually all" Rabbinic Courts in Israel permit an authorization in writing in case of very urgent need. Rabbi Gedalia Schwartz, the head of both the *Beth Din* of the Rabbinical Council of America and the *Beth Din* of Chicago, reports that this is also, generally speaking, the practice of Rabbinic Courts in North America.

III. Appointing A Scribe And Witnesses By Telephone

A telephone can be useful in executing a *Get* in a situation where a written appointment of a scribe and witnesses cannot be performed. Examples of this situation include: (1) A *Get* must be performed in short order and there is no time for three observant Jews to go to the husband and obtain from him a written appointment of a scribe and witnesses. (2) A husband is located in a remote or dangerous area where three observant Jews would be unable to enter. (3) A husband is situated in a country which would not permit three observant Jews to enter. (4) A husband refuses to sign a document authorizing a scribe and witnesses to write and sign a *Get* but will issue a verbal appointment.

Rabbinic authorities have vigorously debated this issue for many years,¹⁶ but no consensus has emerged.¹⁷ Some

16. For discussions of this issue see *Beit Yitzchak* (*Even Haezer* 2:53), *Shaarei Deah* (1:194), *Maharshag* (2:250), *Tzitz Eliezer* (10:47), *Beit Avi* (1:155), *Pri Yehoshua* (no. 22), Rabbi Yosef Teunim (*Ha'Pardes* 5704), Rabbi Gedalia Felder (*Nachlat Tzvi* pp. 213-216, and Rabbi Moshe Steinberg (*Ha'Darom*, Nissan 5727). Rabbi Elimelech Schachter, in *Sefer Kevod Ha'Rav* pp. 268-272, writes that both Rabbi Joseph B. Soloveitchik and Rabbi Moshe Feinstein told him that a husband may appoint a scribe and witnesses on the telephone. In an essay entitled "*Kabalat Eidut*

Rabbinic Courts rule leniently if there is no alternative, and some do not. The debate is focused primarily on two issues: First, does an appointment of a scribe and witnesses on the telephone satisfy Ramban's requirement that the husband appoint a scribe and witnesses directly? Second, can the husband speaking on the telephone be properly identified?

Rabbi Yitzchak Schmelkes (*Beit Yitzchak, Even Haezer* 2:53) rules that an appointment issued over the telephone is invalid since the scribe and witnesses have not heard the actual voice of the husband (most authorities agree that halacha does not recognize an electronically-transmitted voice as the equivalent of the actual voice of the speaker).

Most authorities, on the other hand, do not believe that Ramban requires the scribe and witnesses to hear the actual voice of the husband. Rather, they believe that Ramban requires direct communication between the husband and the scribe and witnesses, which is accomplished when an appointment is issued over the telephone. Those authorities who do not permit an authorization to be executed over the telephone, generally speaking, have not accepted Rabbi Schmelkes' argument. Instead, they rule stringently because an individual cannot be properly identified over the telephone and because a fraud is relatively easy to perpetrate over the telephone.

Al Iska She'nestah Be'teliphon" (*Techumin* 12:300-306) Rabbi Chaim David Halevi discusses whether hearing a telephone conversation constitutes admissible evidence in a *Beth Din* proceeding concerning a monetary dispute.

Rabbi Ezra Basri of the Jerusalem Beth Din informed this author that his *Beth Din* occasionally executes a *Get* where the husband issues his appointments both by telephone and in writing.

17. For discussion of this topic see *Minchat Shlomo*, no. 9; *Yechave Daat* 3:54; and Rabbi J. David Bleich, *Contemporary Halachic Problems*, p. 231.

The authorities who rule leniently believe that the husband may be identified by means of voice recognition. They note that the Talmud (*Gittin* 23a and *Chulin* 96a) recognizes the viability of voice recognition. They also cite the halacha which states that in case of very urgent need a *Get* may be written even if the parties have not been identified.¹⁸

IV. Appointing A Scribe And Witnesses By Videoteleconference

Although no consensus has emerged regarding issuing an appointment over the telephone, this author believes that it is possible that a consensus of rabbinic opinion will emerge to permit the issuance of appointments of a scribe and witnesses by videoteleconference. Interestingly, Rabbi Schmelkes (*Beit Yitzchak, Even Haezer* 2:53) anticipated the invention of the videoteleconference and indicated¹⁹ that if such an invention arose, it could *not* be used for a husband's appointment of a scribe and witnesses. Rabbi Schmelkes believes Ramban requires hearing the actual voice of the husband and not an electronically-transmitted voice. When Rabbi Schmelkes' responsum was mentioned to Rabbi Zalman Nechemia Goldberg of the Jerusalem *Beth Din*, he

18. *Shulchan Aruch* 120:3, *Taz* 120:13, *Pitchei Teshuva* 120:26, but see *Noda Be'Yehuda* II: *Even Haezer* 123 and Rabbi Melech Schachter, *Sefer Kevod Ha'Rav* pp. 268-272.

19. He writes that a videoteleconference may possibly be used for a wife to appoint an agent to accept a *Get* on her behalf. The clear implication, as noted by Rabbi Waldenburg (*Tzitz Eliezer* 10:47), is that a husband would not be permitted to do so. Ramban's stringent ruling applies only to the husband's appointment of a scribe and witnesses and not to the wife's appointment of an agent. A wife may appoint an agent even not in the latter's presence.

pointed out that Tosafot, in *Gittin* 72a (mentioned earlier), explain why a husband who is unable to speak is able to appoint a scribe and witnesses by nodding his head: Since we know what the husband wishes, we do not require the scribe and witnesses to hear his voice. Tosafot's comments appear clearly to disprove Rabbi Schmelkes' contention that the scribe and witnesses must hear the actual voice of the husband.

Rabbi Goldberg also pointed out that the Chazon Ish and Rabbi Moshe Feinstein interpret Ramban's position very differently than does Rabbi Schmelkes. Chazon Ish (*Even Haezer* 85) writes that Ramban requires "that the will of the husband and the will of the scribe and witnesses should be unified in one moment, and that the husband should be aware of the will of the scribe and the scribe should be aware of the will of the husband, and it all should occur simultaneously." This requirement is certainly fulfilled if a husband appoints the scribe and witnesses by videoteleconference.

Rabbi Moshe Feinstein (*Iggerot Moshe, Even Haezer* 1:116) asserts that Ramban essentially does not require the scribe and witnesses to be present when the husband issues the order, but rather, that they be absolutely convinced that it is truly the husband who has issued them the order to write and sign the *Get*. Since a scribe and witnesses would see and hear the husband speaking to them on a videoteleconference call, a *Get* executed thereby might be valid even according to Ramban.

Rabbi Goldberg offered the following analogy to illustrate that the scribe and witnesses are not required to hear the actual voice of the husband.²⁰ A husband is standing a great

20. It is worthwhile to note that utilizing this type of analogy

distance from the scribe and witnesses so that when he issues his orders, they only see his lips moving but do not hear his voice. If the scribe and witnesses are able to read the lips of the husband, they may write and sign a *Get*, since they are certain of the husband's will. The *Get* is valid since the husband communicated his wishes by an action of his body. Similarly, when a husband appoints a scribe and witnesses by videoteleconference, they are aware that he appointed them by an action of his body, and the *Get* may be written and signed even though they have not heard the actual voice of the husband.²¹

Rabbi Waldenburg²² describes how rabbinic decisors have rejected Rabbi Schmelkes' contention, in the following interesting manner. According to Rabbi Schmelkes, an individual who uses a hearing-aid to hear would not be fit to serve as a scribe to write a *Get*, since he cannot hear the actual voice of the husband. However, Rabbi Waldenburg relates that in Israel recently there was a scribe who wore a hearing aid and wrote *Gittin* for many years in various Rabbinic Courts, without encountering any objection from

as a component of a halachic analysis is characteristic of the halachic approach of Rabbi Goldberg's eminent father-in-law, Rabbi Shlomo Zalman Auerbach; for example, see *Minchat Shlomo* p. 61, p. 95, and p. 110.

21. One should also note that a careful examination of Ramban's words (and the words of *Beit Shmuel* 120:7 and *Chelkat Mechokeik* 120:12, who cite Ramban) reveals that Ramban does not specifically require the husband to be *physically* present before the scribe and witnesses. Rather, he specifically requires that there be direct contact between the husband and the scribe and witnesses. In addition, it is clear from the words of Chazon Ish and Rabbi Feinstein, that they do not believe that Ramban requires the husband to be physically present before the scribe and witnesses when he issues his orders to them.

22. *Tzitz Eliezer* 10:47

any rabbinic judge.

The opinions of Ra'ah and Ran, who rule that the husband may make an appointment without the presence of the scribe and witnesses, should also be considered as a factor to accept an appointment made through the use of a videoteleconference. Although halachic authorities do not accept Ra'ah and Ran's opinions as normative, their view is not rejected and undoubtedly may serve as a "*snif l'hake!*" – a consideration for a lenient ruling.

The main focus of concern of those who do not accept the use of a telephone for the purpose of a *Get* is fear of fraud. This concern is obviated, though, with the use of a videoteleconference. One can see (on more sophisticated models) displayed on the screen, any pieces of identification that a *Beth Din* normally requests from people who appear before them.

If one would counter that a fraud is still possible to be perpetrated in the use of a videoteleconference, one could reply that documents such as passports and drivers' licenses, which can be forged, are routinely accepted as identification in Rabbinic Courts in Israel and in the United States. Apparently, Rabbinic Courts accept documents that cannot be forged easily and are not concerned with the possibility of professional forgery (although a skillful *Beth Din* is required to check carefully in order to prevent incidence of fraud).

Similarly, it is not easy to perpetrate a fraud on a videoteleconference and would require a professional to do so; therefore it should be acceptable for use in a *Get* proceeding. However, since this technology is still in relative infancy, no clear halachic consensus has as yet emerged.

Pruzbul

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Sources And Reasons

In the Torah, we find the command to observe a Sabbatical Year, the *shemita* (*Devarim* 15:1–11). There are two aspects of this mitzvah: the land is not to be worked and all debts are cancelled. The latter feature is not as well known as the imperative to let the fields lie fallow. Moreover, unlike the agricultural aspect of *shemita*, the directive cancelling all debts between Jews applies not only in Eretz Yisrael, but all over the world.¹ Wherever a Jew owes another Jew money,

1. "*Nohaig bechol makom uvechol zeman.*" This means that when it is in force, the directive applies in all places and for all times. However, the imperative to cancel debts (*shemitat kesafim*) is in effect only when the Jubilee (*yovel*—the fiftieth year) is also observed. Since the Jubilee is no longer applicable today, there is no biblical imperative to observe *shemita*. (Tosafot to *Gittin* 36b indicate that the rabbis did not institute that *yovel* should be observed, on a rabbinic level, because of the hardship involved in not farming the land for two consecutive years.)

However, according to most rabbinic authorities, there is still a mitzvah *derabbanan*—to keep the *shemita* with all its requirements because the rabbis have decreed that we should continue the biblical practice, although there are some who consider that there is not even a rabbinic requirement to cancel debts. See Ramo, *Choshen Mishpat* 67:1 and *Aruch HaShulchan*, *ibid*, note 1.

Even though only a minority of authorities consider that *shemitat kesafim* is no longer in practice, that minority opinion has been

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