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תשובות קכז–קע

Volume 4 — Teshuvos 127–170

Phrase-by-Phrase English Translation
Explanations and Summaries
Indexes of Sources & Subjects

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Dedication

This volume is dedicated to the enduring legacy of Rabbi Akiva Eiger (1761–1837), one of the foremost *gedolei ha'acharonim*, whose penetrating brilliance in Torah was matched by extraordinary humility, purity of character, and unwavering devotion to *Klal Yisrael*.



Born into a distinguished family of Torah and shaped in the great centers of learning of his time, Rabbi Akiva Eiger rose to become a preeminent authority in *halachah*, serving as *Rav* and *Rosh Yeshivah* in the illustrious community of Posen. His *Teshuvos* and *Chiddushim*, marked by precision, depth, and clarity, remain foundational to the study of Gemara and *psak*, guiding generations of *talmidei chachamim*.



Yet alongside his unparalleled greatness stood profound modesty and simplicity. As recorded by the Mitteler Rebbe, who met him in Posen, he was "a genuine person… humble and unpretentious with all people," embodying a life of complete dedication to Torah and to the needs of his community.



This Kornitzer Edition of *Shailos u'Teshuvos Rabbi Akiva Eiger*, presenting the original Hebrew text with faithful elucidation, is dedicated by the Kornitzer family, descendants of Rabbi Akiva Eiger, as an expression of gratitude to Hashem for the privilege of transmitting his Torah and ensuring that his voice continues to illuminate future generations.



May the merit of learning this *sefer* bring blessing to all who engage with it, and may we soon merit, with the coming of *Moshiach*, to hear new *chiddushim* in Torah from Rabbi Akiva Eiger himself. And may this effort serve toward fulfilling the longing so often expressed by the Lubavitcher Rebbe—that through the dissemination of Torah, illuminated for our generation, we hasten the true and complete *Geulah*. May *Moshiach* come speedily in our days, ממש.





תשובה קכז

Conditional Get After Husband's Death



Family Law > Laws of the Get

Summary

Correspondent and Context: This teshuvah is by Rabbi Moshe Sofer, the Chasam Sofer and Av Beis Din of Pressburg. He wrote it to his brother-in-law Rabbi Shlomo Eiger. Avraham, another son of Rabbi Akiva Eiger, included it in the collection and added bracketed notes. The Chasam Sofer agrees with Rabbi Shlomo Eiger's permissive ruling but gives his own reasons.

The Question (Sha'ila): A man gave his estranged wife a conditional *get*. She had to move from his city to her father's hometown within one year. The condition arose from a business dispute with the husband's family. He died about four months later. She wanted to move and thereby avoid *chalitzah*. An objector cited the Bahag's *Rabanan Kadma'ei*: just as an act after the husband's death cannot invalidate a *get*, it cannot fulfill a condition and validate one.

The Ruling (Teshuvah): The Chasam Sofer permits the woman to remarry without *chalitzah*. He distinguishes conditions meant for financial benefit from those meant to distress the wife. He argues that a dying husband is presumed to waive a distress-based condition. This distinction answers the objections to the Bahag and may also fit the Rambam's rulings. Here, relocation can validate the *get* under either possible motive. The ruling depends on the wording: the condition must require a one-time move, not permanently bar her from living in a city.

Shulchan Aruch Background: The main sources are Even HaEzer 143 and Beis Shmuel 143:9. They discuss conditions in a *get* and whether they can be waived through *mechilah*. The teshuvah also cites Choshen Mishpat 21 concerning *oness* in conditional agreements.

Key Disputes (Machlokes): The main dispute is whether an act after the husband's death can affect a conditional *get*. The Bahag's *Rabanan Kadma'ei* say it cannot. The Ran and Maggid Mishneh object that this should make "all the days of your life" valid *kerisus*. If nothing after his death can invalidate the *get*, the condition would bind her only during his life. The Chasam Sofer answers that presumed forgiveness at death is not certain. The husband could refuse to forgive, so the *get* does not create definite severance. He also discusses the Tanna Kamma and Rabban Shimon ben Gamliel in Gittin 74a, Rashi, the Rambam, and the Ra'avad.

[אָמַר אַבְרָהָם בֶּן הַמְחַבֵּר רְאֵה זֶה מָצָאתִי דְּאָתָא לִידִי. תְּשׁוּבַת מַר גִּיסִי הַגָּאוֹן הַמְפֻרְסָם בְּיִשְׂרָאֵל מוֹרֵנוּ הָרַב רַבִּי מֹשֶׁה סוֹפֵר נֵרוֹ יָאִיר אַב בֵּית דִּין דִּקְהִלָּה קְדוֹשָׁה פְּרַעשְׁבּוּרְג, אֲשֶׁר הֵשִׁיב אֶל אָחִי נֵרוֹ יָאִיר עַל שְׁאֵלָה הַנּוֹזָכָר לְעֵיל. וְאַצִּיגָה אוֹתָהּ

[Said Avraham, son of the author: See, this I found, that it came to my hand. This is an editorial note by Avraham, son of Rabbi Akiva Eiger, introducing the teshuvah that follows. **The teshuvah of my brother-in-law, the Gaon renowned in Israel, our teacher Rabbi Moshe Sofer, may his light shine —** (this is the Chasam Sofer, Rabbi Akiva Eiger's son-in-law) **head of the rabbinical court of the holy community of Pressburg, who responded to**

בָּזֶה, וְאוּלָם אֲשֶׁר חָזַר מַר אָחִי נֵרוֹ יָאִיר לְהָשִׁיב עַל זֶה אֵין אִתִּי וְאִם יִרְצֶה הַשֵּׁם לְכְשֶׁתָּבֹא לְיָדִי אֶכְתְּבֶנָּה בַּחֲלָקִים אֲחֵרִים. עד מהרה יזכני השם להוציאם לאורה]:

שָׁלוֹם וְכָל טוּב לְרַב טַב, הוּא הָרַב מַר גִּיסִי הַגָּאוֹן הַגָּגִיד, נְגִידוּת יְדַבֵּר כְּבוֹד מוֹרֵנוּ הָרַב שְׁלֹמֹה אִיגֶר נֵרוֹ יָאִיר

Peace and all good to the excellent Rabbi, that is, my brother-in-law, the Gaon, the distinguished leader, who speaks with nobility — the honorable our teacher Rabbi Shlomo Eiger, may his light shine.

יִקְרַת דִּבְרֵי קָדְשׁוֹ הִנַּחְתִּים. עַד צֵאת קֹרֵית חוּצוֹת בְּשׁוּקֵי בָּרָאִי לִשְׁאֹף אֲוִיר צַח בְּסוֹף יְמֵי הַקַּיִץ כְּדַרְכִּי. אָז שִׂעֲשַׂעְתִּי הַיּוֹם פֹּה יַעַרְגֶן סָמוּךְ לִפְרַעְשְׁבּוּרְג וְטִיַּלְתִּי בֵּין עֲרוּגוֹת שׁוֹשַׁנִּים שִׂפְתוֹתָיו נוֹטְפוֹת דְּבָרִים עֲמֻקִּים. מְדֻבָּשׁ מְתוּקִים, אֵלֶּה הַתּוֹרוֹת וְהַחֻקִּים. וּבְגוּף הַדִּין הִנְנִי מַסְכִּים וְעוֹלֶה לְהַתִּיר הָאִשָּׁה מִכַּבְלֵי יִבּוּם. מִטְּעָמִים אֲשֶׁר אֲבָאֵר אִם יִרְצֶה הַשֵּׁם. וְדִבְרֵי קָדְשׁוֹ יִהְיוּ לָנוּ לְשַׁעֲשׁוּעִים:

I set aside his precious holy words until I went out to the open streets on my excursions to breathe fresh air at the end of the summer days, as is my custom. Then today I delighted [in studying them] here in Jaergen, near Pressburg, and I strolled among beds of roses — his lips drip with deep matters. A poetic expression for savoring Torah insights. **Sweeter than honey — these Torah teachings and statutes. And regarding the substance of the law, I agree and conclude to permit the woman from the fetters of yibum.** The woman does not need *chalitzah*. **For reasons that I will explain, God willing. And his holy words shall be a delight to us.**

זֶה לְשׁוֹן הַשְּׁאֵלָה, אִישׁ אֶחָד עוֹד בִּימֵי נְעוּרָיו עָזַב אֶת אִשְׁתּוֹ וְזֶה שְׁנָתַיִם נוֹדַע וְכוּלִי. גֵּרְשָׁהּ עַל תְּנַאי שֶׁבְּעוֹד שָׁנָה תַּעֲקוֹר מִשְׁכָּנָהּ מֵעִירוֹ לְעִיר מוֹלַדְתָּהּ לְבֵית אָבִיהָ. מִשּׁוּם שֶׁהָיָה מִסְחָר אֶחָד לָהּ וּלְמִשְׁפַּחַת הַבַּעַל. וְרָקַד הַקִּנְאָה בֵּינֵיהֶן, וְהִנֵּה כְּמוֹ אַרְבָּעָה חֳדָשִׁים אַחַר הַגֵּרוּשִׁין שָׁבַק הַבַּעַל חַיִּים לְכָל חָי. וְהִיא רוֹצִית לְקַיֵּים תְּנָאָהּ שֶׁלֹּא לְהַצְטָרֵךְ חֲלִיצָה. וְיֵשׁ מִי שֶׁעוֹרֵר לָחוּשׁ לְסֶבֶרֶת בַּעַל הֲלָכוֹת גְּדוֹלוֹת שֶׁכָּתַב בְּשֵׁם רַבָּנָן קַדְמָאֵי הֶבִיאָה הַמַּגִּיד מִשְׁנֶה פֶּרֶק ח', בְּהִתְנָה עַל מְנָת שֶׁלֹּא תִשְׁתֶּה יַיִן כָּל יְמֵי חַיֵּי פְּלוֹנִי. וְנִשֵּׂאת וּמֵת הַבַּעַל הַמְגֹרָשׁ וְשׁוּב שָׁתְתָה בְּחַיֵּי פְּלוֹנִי לֹא נִתְבַּטֵּל הַגֵּט. וּמִסְתַּבְּרָא כְּמוֹ דְּאֵין מַעֲשֶׂה

This is the language of the question: A certain man, while still in his youth, abandoned his wife, and two years ago it became known, etc. He divorced her on a condition that within a year she would uproot her dwelling from his city to her hometown, to her father's house. Because she and the husband's family shared a business. And jealousy danced between them. And behold, approximately four months after the divorce, the husband departed from all the living. And she wishes to fulfill the condition so as not to require chalitzah. If the *get* is valid, she does not need *chalitzah*. If it is invalid, she does. **And someone raised [the concern] to be wary of the view of the Baal Halachos Gedolos (Bahag), who wrote in the name of the Rabanan Kadma'ei (early authorities) —** [1] **cited by the Maggid Mishneh, Chapter 8: [In a case where] he stipulated: "On condition that you not drink wine all the days of so-and-so's life." And she married, and the divorcing husband died, and she subsequently drank wine during so-and-so's lifetime — the get is not invalidated.** The *Rabanan Kadma'ei* hold that no act after the divorcer's

[1] Maggid Mishneh on Rambam, Hilchos Geirushin, Chapter 8. The Maggid Mishneh cites the Bahag's report of the *Rabanan Kadma'ei* and discusses whether post-mortem acts can affect the validity of a conditional *get*.

דְּלְאַחַר מִיתַת הַמְגָרֵשׁ מְבַטֵּל גֵּט. כֵּן אֵין מַעֲשֶׂה מוֹעִיל לְקַיֵּים גֵּט. וְדַעַת הָרַב הַשּׁוֹאֵל נוֹטָה שֶׁאֵין לָחוּשׁ לִסְבָרָא זוֹ. שֶׁהֲרֵי הר"ן פֶּרֶק הַמְגָרֵשׁ וְהַמַּגִּיד מִשְׁנֶה פֶּרֶק ח' דְּחוּ אֶת זֶה בִּרְאָיָה מַכְרַעַת. וְתוּ בְּשֶׁלְחָן עָרוּךְ לֹא הֵבִיא דָּבָר זוֹ כְּלָל. עַד כָּאן לְשׁוֹנוֹ הַשְּׁאֵלָה. וּמַר גִּיסִי נֵרוֹ יָאִיר הֶעְמִיק עִיּוּן וְהֶעֱלָה לְהַתִּיר. וְגַם אֲנִי אַחֲרָיו. וַאֲבָאֵר דְּבָרַי בְּעֶזְרַת הַשֵּׁם יִתְבָּרַךְ:

Now, the objecting rabbi was concerned about the Rabanan Kadma'ei, because the Bahag was concerned for their view, even though the Ran and the Maggid Mishneh raised the difficulty: If so, [a condition of] "all the days of your life" should also constitute kerisus [complete severance] when the divorcer dies! If nothing after the husband's death can invalidate the *get*, the condition binds her only during his lifetime. It should therefore provide *kerisus*. **And my brother-in-law, may his light shine, also raised [a point] [2] based on Rashi's commentary in Perek HaMegaresh: "On condition that you not be intimate with my father or your father." [Rashi] explains: "On condition that you not be intimate with so-and-so" — we are concerned that she might be intimate with him. And this means even after the divorcer's death.** The implication is that Rashi considers the condition operative even after death, contrary to the *Rabanan Kadma'ei*. **We derive from this that Rashi, too, does not hold like the Rabanan Kadma'ei. Nevertheless, we do not dismiss the words of the Bahag on account of a difficulty, for all his words are words of received tradition.** The Bahag transmits early traditions that carry great authority. **And the objecting rabbi was concerned to derive from this [a rule] regarding fulfillment of the condition: Just as a condition cannot fail after death, so too there is no fulfillment of a condition [after death].**

הִנֵּה הָרַב הַמְעָרְעֵר חָשַׁשׁ לְרַבָּנָן קַדְמָאֵי מִשּׁוּם דְּבַעַל הֲלָכוֹת גְּדוֹלוֹת חָיֵישׁ לְהוּ אַף עַל גַּב דְּהר"ן וְהַמַּגִּיד מִשְׁנֶה הִקְשׁוּ אִם כֵּן כָּל יְמֵי חַיֶּיכִי נַמֵּי חֲוֵי כְּרִיתוּת לְכְשֶׁיָּמוּת הַמְגָרֵשׁ. וְגַם מַר גִּיסִי נֵרוֹ יָאִיר הִתְעוֹרֵר עַל פִּי פֵּירוּשׁ רַשְׁ"י פֶּרֶק הַמְגָרֵשׁ עַל מְנָת שֶׁלֹּא תִּבָּעֲלִי לְאַבָּא וּלְאָבִיךְ. פֵּירוּשׁ עַל מְנָת שֶׁלֹּא תִּבָּעֵל לִפְלוֹנִי חָיְישִׁינַן שֶׁמָּא תִּבָּעֵל לוֹ. וְהַיְינוּ אַחַר מִיתַת הַמְגָרֵשׁ. שְׁמַע מִינָּה גַּם רַשְׁ"י לֹא סְבִירָא לֵיהּ כְּרַבָּנָן קַדְמָאֵי. מִכָּל מָקוֹם מִפְּנֵי קֻשְׁיָא לֹא נִדְחֶה דִּבְרֵי בַּעַל הֲלָכוֹת גְּדוֹלוֹת שֶׁכָּל דְּבָרָיו דִּבְרֵי קַבָּלָה. וְחָיֵישׁ הָרַב הַמַּעֲרְעֵר לִלְמֹד מִזֶּה לְקִיּוּם הַתְּנַאי. כְּשֵׁם שֶׁאֵין בְּטוּל תְּנַאי אַחַר מִיתָה הוּא הַדִּין אֵין קִיּוּם הַתְּנַאי:

At first glance, the objector seeks to derive the rule about fulfillment from the rule about failure. But it turns out he has derived failure from fulfillment. The circularity is that the rule about failure was itself derived from fulfillment. **For [the principle**

וְלִכְאוֹרָה דָּבָר זֶה בָּא הַמְעָרְעֵר לִלְמֹד קִיּוּם מִבְּטוּל. וְנִמְצָא לָמֵד בְּטוּל מִקִּיּוּם. דְּקִיּוּם שֶׁאֵינוֹ מוֹעִיל אַחַר מִיתָה תַּנָּיָא. וּבְטוּל לֹא תַּנָּיָא. אֶלָּא

[2] Rashi on Gittin 82a. In the context of Perek HaMegaresh, Rashi discusses conditions on divorce, including: גמ' על מנת הוא — על מנת שלא תנשאי לפלוני — "The Gemara [explains:] it means 'on condition' — on condition that you not marry so-and-so." Rashi further explains that the concern about potential violation of such a condition extends even beyond the divorcer's lifetime.

that] fulfillment is not effective after death is explicitly taught. But the rule that a condition cannot fail after death is not explicitly taught, Rather, we derive it from [the rule about] fulfillment. Thus he cannot use the derived failure rule to prove the fulfillment rule. [3] **And this is [found] in Yoma (folio 13b) in the Talmud: "If he sees that [she] is about to die, he should rush and enter the synagogue," etc.** The Gemara discusses conditional divorces meant to ensure that the Kohen Gadol has a wife during the Yom Kippur service. **And Tosfos raised a difficulty: Why does he need to "rush and enter"? Even if he enters after her death, the get should take effect retroactively, like [the case of] "if I do not come from now until twelve months," and he dies within twelve months, where [the get] takes effect even after his death, retroactively.** After twelve months, his failure to return validates the *get* retroactively, even though he died during that period. [4] **וְזֶה לְשׁוֹנוֹ — And the Tosfos Yeshanim answered, and these are their words: "There, she fulfilled the condition in that she remained alive past twelve months."** In the twelve-month case, the wife's survival during the full period constitutes fulfillment of the condition during her lifetime. **"But here [in Yoma], she died before the condition was fulfilled." End of their words.** The wife died before the Kohen Gadol could enter the synagogue to finalize the *get*. **Their words require further investigation. What difference does it make whether she died or he died? Since the get can take effect retroactively. It therefore appears, at first glance, that after death there is no [effective] fulfillment. And similarly, a condition cannot fail after her death or after his death.** This would support the Bahag's position. **However, in the "after twelve months" case, the fulfillment of the condition and the death come simultaneously. Furthermore, the fulfillment of the condition preceded the completion of death — at the time just before death, when he is a goseis [moribund], we know that he will not survive once he has collapsed. Therefore, she is divorced immediately. Except that she must wait until after twelve months due to a rabbinic decree. As Tosfos and the Ran wrote at the end of Perek Mi She'Achazo.[5] But here, on Yom Kippur, if he enters the synagogue after her death, and [the condi-**

נֵילַף מִקִּיּוּם. וְהוּא בְּיוֹמָא (דַּף י"ג עַמּוּד ב') בַּשַּׁ"ס אִי חָזֵי דְּקָבָעֵי לְמֵימַת קָדִים וְעָיֵיל לְבֵי כְּנִישְׁתָּא וְכוּלֵי וְהִקְשׁוּ הַתּוֹסָפוֹת לָמָּה לִי קָדִים וְעָיֵיל אֲפִלּוּ אִי עָיֵיל אַחַר מִיתָתָהּ יְהֵא גֵּט לְמַפְרֵעַ כְּמַן אִם לֹא בָּאתִי מִכָּאן עַד שְׁנֵים עָשָׂר חֹדֶשׁ דְּחָיֵיל גַּם אַחַר מִיתָתִי לְמַפְרֵעַ. וְתֵירְצוּ תּוֹסָפוֹת יְשָׁנִים דְּהָתָם קַיְימָתָהּ לִתְנַאי שֶׁחַיְּתָהּ עַד אַחַר שְׁנֵים עָשָׂר חֹדֶשׁ. אֲבָל הָכָא מֵתָה קֹדֶם שֶׁקִּיְּמָה הַתְּנַאי עַד כָּאן לְשׁוֹנוֹ. שֶׁדִּבְרֵיהֶם צָרִיךְ עִיּוּן. מַה לִּי מֵתָה הִיא אוֹ מֵת הוּא. כֵּיוָן שֶׁהַגֵּט מָצֵי לְמֵיחַל לְמַפְרֵעַ. עַל כָּרְחֲךָ נִרְאֶה לִכְאוֹרָה דְּלְאַחַר מִיתָה אֵין קִיּוּם. וְהוּא הַדִּין אֵין בְּטוּל לְאַחַר מִיתָתָהּ וְלֹא אַחַר מִיתָתוֹ. אַךְ בְּאַחַר שְׁנֵים עָשָׂר חֹדֶשׁ קִיּוּם הַתְּנַאי וּמִיתָה בָּאִים כְּאֶחָד. וְעוֹד שֶׁקָּדַם קִיּוּם הַתְּנַאי קֹדֶם גְּמַר מִיתָה שָׁעָה סָמוּךְ לְמִיתָה וְהוּא גּוֹסֵס יוֹדְעִים שֶׁלֹּא יִחְיֶה אַחֲרֵי נְפִילוֹ. מִשּׁוּם הָכִי מְגֹרֶשֶׁת מִיָּד. אֶלָּא שֶׁצְּרִיכָה לְהַמְתִּין עַד אַחַר שְׁנֵים עָשָׂר חֹדֶשׁ מִשּׁוּם גְּזֵרָה. כְּמוֹ שֶׁכָּתְבוּ הַתּוֹסָפוֹת וְהָרַ"ן סוֹף פֶּרֶק מִי שֶׁאָחֲזוֹ. אֲבָל הָכָא בְּיוֹם הַכִּפּוּרִים אִי עָיֵיל לְבֵית הַכְּנֶסֶת אַחַר מִיתָתָהּ וְלֹא נִתְקַיְּים בַּחַיִּים לֹא מוֹעִיל קִיּוּם אַחַר מִיתָתָהּ וְהוּא הַדִּין אַחַר מִיתָתוֹ. וּמִשָּׁם יָלְפִינַן לְבָטוּל הַתְּנַאי:

[3] Yoma 13b. The Gemara discusses the Kohen Gadol's conditional divorce arrangement for Yom Kippur: אי חזי דקבעי למימת קדים ועייל לבי כנישתא — "If he sees that [she] is about to die, he should rush and enter the synagogue." The passage addresses how to ensure the Kohen Gadol retains a "household" (wife) throughout the Yom Kippur service.

[4] Tosfos Yeshanim on Yoma 13b. This is a collection of Tosfos distinct from the standard printed Tosfos on Yoma, preserving an alternative answer to the question of why the Kohen Gadol must rush to enter the synagogue.

[5] Tosfos and the Ran, at the end of Perek Mi She'Achazo in Gittin. They discuss the case of "if I do not come within twelve months" and the rabbinic decree requiring the wife to wait the full period despite the *get* theoretically taking effect earlier.

tion] was not fulfilled during [her] lifetime, the fulfillment after her death is not effective, and the same applies after his death. And from there we derive the same principle regarding failure of the condition. This suggests that neither fulfillment nor failure of a condition can occur after either party's death.

אֲמָנָם מִגִּיטִין פֶּרֶק מִי שֶׁאָחֲזוֹ (דַּף ע"ד עַמּוּד א') קַשְׁיָא. דְּתַנְיָא הֲרֵי זֶה גִּיטֵּךְ עַל מְנָת שֶׁתִּתְּנִי לִי מָאתַיִם זוּז וּמֵת וְכוּלֵי. וּבְשִׁלָּמָא מַהֲדוּרָא קַמָּא דְּסָבִירָא לֵיהּ הַגֵּט בָּטֵל לֹא קַשְׁיָא מִידֵּי הָא אֵין בְּטוּל לְאַחַר מִיתָה. יֵשׁ לוֹמַר מִיתָתוֹ וּבְטוּלוֹ בָּאִים כְּאֶחָד. אַף עַל גַּב דְּהָכָא לֹא שַׁיָּיךְ כְּדִלְעֵיל בְּאִם לֹא בָאתִי עַד שְׁנֵים עָשָׂר חֹדֶשׁ דְּהָתָם כְּבָר בְּחַיָּיו שָׁעָה קַדֶּם מוֹתוֹ נִתְקַיְּים הַתְּנַאי מַה שֶּׁאֵין כֵּן הָכָא. מִכָּל מָקוֹם נוֹכַל לוֹמַר מִיתָה וּבְטוּל בָּאִים כְּאֶחָד. אֲבָל מֵרַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל קַשְׁיָא. דְּסָבִירָא לֵיהּ שֶׁתִּתְקַיְּים הַתְּנַאי לַיּוֹרְשִׁים אַחַר מִיתָתוֹ, הֲרֵי דְּקִיּוּם הַתְּנַאי מוֹעִיל אַחַר מִיתָתוֹ. וְגַם מַר גִּיסִי נֵרוֹ יָאִיר עָמַד בַּקּוּשְׁיָא הַלָּזוֹ. אַךְ מַה יוֹסִיף לָן קוּשְׁיָא כְּבָר כָּתַבְתִּי מִפְּנֵי קוּשְׁיָא לֹא נִדְחֶה דִּבְרֵי בַּעַל הַלָּכוֹת גְּדוֹלוֹת וְרַבֵּנוּ קַדְמָאֵי:

However, from Gittin, Perek Mi She'Achazo (folio 74a), there is a difficulty. For the Baraisa teaches: "This is your get on condition that you give me two hundred zuz," and he died, etc. Now, according to the first version [of the teaching], who holds the get is void, there is no difficulty: But a condition cannot fail after death! If the get cannot be invalidated after death, why is it void? **It can be said that his death and the failure of the condition occur simultaneously, Even though here it is not the same as above in "if I do not come within twelve months," where there, already during his lifetime — a moment before his death — the condition was fulfilled, which is not the case here.** In the two hundred zuz case, there was no near-fulfillment shortly before death. **Nevertheless, we can say that death and the failure of the condition occur simultaneously, But from Rabban Shimon ben Gamliel, there is a difficulty. For he holds that she should fulfill the condition [by paying] to the heirs after his death. So we see that fulfillment of the condition is effective after his death! And my brother-in-law too raised this very difficulty. But what does an additional difficulty gain us? I have already written: we do not dismiss the words of the Bahag and the Rabanan Kadma'ei on account of a difficulty.**

אַךְ נִרְאֶה לִי דְּהָרְאָיָה מֵהַתּוֹסָפוֹת הַנְּזָכָר לְעֵיל אֵינָהּ מֻכְרַחַת. גַּם דּוֹחַק לְהַעֲמִיד בְּכַוָּנַת תּוֹסָפוֹת הַנְּזָכָר לְעֵיל. נִרְאֶה לְפִי עֲנִיּוּת דַּעְתִּי קוּשְׁיַת תּוֹסָפוֹת דְּיוֹמָא לֹא קַשְׁיָא מִידֵּי וְאוּלַי לָזֶה נִתְכַּוְּנוּ הַתּוֹסָפוֹת, וְהוּא דְּכֵיוָן דְּאִי אֶפְשָׁר לוֹ לִכָּנֵס לְבֵית הַכְּנֶסֶת לְקַיֵּים הַתְּנַאי לְגָמוֹר הַגֵּירוּשִׁין דְּחָיְישִׁינַן לְמִיתָה דְּחַד דְּאִידָּךְ אִשָּׁה וְקָם בְּלֹא בַּיִת. וְהִנֵּה גֵּירֵשׁ לֵאָה אִם לֹא תָּמוּת וְאָז אִשְׁתּוֹ רָחֵל עִמּוֹ בְּנִין עֲדֵי עַד. וְאֵינוֹ רוֹצֶה בְּגֵרוּשִׁין שֶׁל רָחֵל. אַךְ צָרִיךְ לָחוּשׁ שֶׁמָּא תָּמוּת רָחֵל וְתִשָּׁאֵר

However, it seems to me that the proof from the aforementioned Tosfos is not compelling. He will explain Tosfos without relying on the Bahag. **It is also strained to interpret the intention of the aforementioned Tosfos [in the manner suggested above]. It appears, in my humble opinion, that the question of the Tosfos in Yoma poses no difficulty at all, and perhaps this is what Tosfos intended. The idea is: since it is impossible for him to enter the synagogue to fulfill the condition and finalize the divorce — because we are concerned about the death of the one other wife, leaving him without a household.** The Kohen Gadol must have a wife during the Yom Kippur service. Divorcing one wife risks leaving him with none if the other dies. **Now, he divorced Leah [on condition] "if [Rachel] does not die," and then his wife Rachel is with him as an everlasting building.** If Rachel sur-

[6]Gittin 74a. The Gemara presents the Baraisa: על מנת שתתני לי מאתים זוז — "on condition that you give me 200 zuz." The Tanna Kamma holds the get is void if the husband dies before receiving payment; Rabban Shimon ben Gamliel holds she can fulfill the condition by paying the heirs.

vives, Leah's *get* is valid and Rachel remains his sole wife. **And he does not want Rachel to be divorced. But he must be concerned that perhaps Rachel will die, and Leah will remain for him.** If Rachel dies, Leah's condition ("if Rachel doesn't die") fails, voiding Leah's *get*, so Leah would again be his wife. **And he would have performed part of the service with two households.** If Rachel dies, Leah's *get* is void retroactively. He would then have had two wives during part of the service. **Therefore, he should enter the synagogue to finalize Rachel's divorce retroactively before her death. Nevertheless, he cannot enter the synagogue until after her death. And if so, throughout her lifetime she is bound to him, and this is not kerisus.** The issue is *kerisus*, not whether a condition can be fulfilled after death. **Therefore, the Talmud needed to say that even during Rachel's lifetime her get should take effect, because when she is approaching death and they know she will not survive, he should go to the synagogue and Rachel's get will take effect during her lifetime, and we are not concerned about Leah's death. For that would be the death of two [wives],** The death of both wives is extremely unlikely. **But if he could not have rushed to go to the synagogue [while Rachel was alive], it would be like [the condition] "all the days of your life." For this is not kerisus. For even though regarding "on condition that you eat pork," we say, "She could eat it and receive lashes" —** (the theoretical possibility of fulfilling the condition suffices for *kerisus*) **and here too, it is possible that he could enter the synagogue without being concerned that the other [wife] might die, and he would perform the service without a household — this does not seem plausible. Since the atonement of all Israel depends on him.** The Kohen Gadol cannot recklessly risk performing the Yom Kippur service without a wife. **It is virtually impossible that he would do so, like [the condition] "you shall not be intimate with my father or your father" (Gittin 82a) —**[7] **see there.** The comparison is to an act that is theoretically possible but practically unthinkable. **However, [in the case of] "if I do not come," since he is alive, it is a [valid] get. And it constitutes proper kerisus. And the question of Tosfos poses no difficulty whatsoever. And perhaps this is what they intended in their answer. Except that the language is somewhat unclear. And even if Tosfos did not intend this, but rather [intended to rely] on the words of the Bahag mentioned above, nevertheless, there is no**

לוֹ לֵאָה. וְהָיָה חֲצִי עֲבוֹדָה בִּשְׁנֵי בָתִּים. עַל כֵּן יִכָּנֵס לְבֵית הַכְּנֶסֶת לִגְמוֹר גֵּירוּשֵׁי רָחֵל לְמַפְרֵעַ קֹדֶם מוֹתָהּ. מִכָּל מָקוֹם אִי אֶפְשָׁר לוֹ לִכָּנֵס לְבֵית הַכְּנֶסֶת עַד אַחַר מִיתָתָהּ. וְאִם כֵּן כָּל יְמֵי חַיֶּיהָ הִיא אֲגִידָה בֵּיהּ וְאֵין זֶה כְּרִיתוּת. מְשׁוּם הָכִי הוּצְרַךְ הַשׁ"ס לוֹמַר דְּגַם בְּחַיֵּי רָחֵל יָחוּל גִּיטָהּ כִּי מִקָּרְבָה לָמוּת שֶׁיּוֹדְעִים שֶׁלֹּא תִחְיֶה עוֹד, יֵלֵךְ לְבֵית הַכְּנֶסֶת וְיָחוּל גִּיטָהּ שֶׁל רָחֵל בְּחַיֶּיהָ וּלְמִיתַת לֵאָה לֹא חָיְישִׁינַן. דַּהֲוֵי מִיתָה דְּתִרֵי, אֲבָל אִי לֹא הֲוֵי מָצֵי לְהַקְדִּים לֵילֵךְ לְבֵית הַכְּנֶסֶת הֲוָה לֵיהּ כְּמוֹ כָּל יְמֵי חַיֶּיכִי. דְּאֵין זֶה כְּרִיתוּת. דְּאַף עַל גַּב בְּעַל מְנָת שֶׁתּאכְלִי בְּשַׂר חֲזִיר אָמְרִינַן אֶפְשָׁר תֹּאכַל וְלָקְיָא, וְהָכִי נַמִּי אֶפְשָׁר שֶׁיִּכָּנֵס לְבֵית הַכְּנֶסֶת וְלֹא יָחוּשׁ שֶׁתָּמוּת אַחֶרֶת וְעָבִיד עֲבוֹדָה בְּלֹא בַּיִת. זֶה לֹא נִרְאֶה. כֵּיוָן דְּכַפָּרַת כָּל יִשְׂרָאֵל תָּלוּי בּוֹ. הֲוֵי מִן הַנִּמְנָע שֶׁיַּעֲשֶׂה כֵּן, כְּמוֹ לֹא תִבָּעֲלִי לְאַבָּא וּלְאָבִיךְ (גִּיטִּין דַּף פ"ב עַמּוּד א') עַיֵּין שָׁם. מַה שֶּׁאֵין כֵּן אִם לֹא בָּאתִי כֵּיוָן שֶׁהוּא חַי הֲוֵי גֵּט. וּכְרִיתוּת מְעַלְיָא, וְלֹא קַשְׁיָא מִידֵי קוּשְׁיַת תּוֹסָפוֹת וְאֶפְשָׁר שֶׁלָּזֶה כִּוְונוּ בְּתֵירוּצָם. אֶלָּא שֶׁהַלָּשׁוֹן מְגוּמְגָּם קְצָת. וְאִם לֹא נִתְכַּוְונוּ תּוֹסָפוֹת לְכָךְ אֶלָּא לְדִבְרֵי בַּעַל הֲלָכוֹת גְּדוֹלוֹת הַנִּזְכָּר לְעֵיל מִכָּל מָקוֹם אֵין הֶכְרֵחַ לְבַעַל הֲלָכוֹת גְּדוֹלוֹת מִכָּאן כִּי עַל כָּל פָּנִים נוֹכַל לְתָרֵץ כְּמוֹ שֶׁכָּתַבְתִּי:

[7] Gittin 82a. The Gemara discusses the condition "on condition that you not be intimate with my father or your father" (על מנת שלא תבעלי לאבא ולאביך). The condition is considered valid *kerisus* because the prevention of intimacy with these persons does not stem from the husband's bond but from the inherent nature of the relationship.

proof for the Bahag from here, for in any event we can answer as I have written.

וְאָשׁוּב וְאֵרְאֶה בְּיִשּׁוּב קֻשְׁיַת מַר גִּיסִי הַנָּזְכָּר לְעֵיל הַנּוֹפֶלֶת עַל הַבַּעַל הֲלָכוֹת גְּדוֹלוֹת אֲשֶׁר לֹא הִרְגִּישׁוּ בָּהֶם הָרָ"ן וְהַמַּגִּיד מִשְׁנֶה. וּמַדּוּעַ לֹא הִרְגִּישׁוּ וּתְחִלָּה נֹאמַר כִּי סְבָרַת רַבָּנָן קַמָּאֵי לָאו חֻקָּה הִיא. אֶלָּא סְבָרָה נְכוֹנָה וְיָשָׁרָה וּמְזֻקָּקִים אֶתְבּוֹנָן:

And I will return to address the resolution of my brother-in-law's aforementioned difficulty, which falls upon the Bahag — (Namely, the difficulty from Rabban Shimon ben Gamliel in Gittin 74a, who permits fulfillment after death) **which the Ran and the Maggid Mishneh did not notice.** They raised a different objection ("all the days of your life") but not this one. **And why did they not notice it? First, let us state that the reasoning of the Rabanan Kadma'ei is not an arbitrary decree. Rather, it is a correct and straightforward logic, and "from the elders I gain understanding."** This quotes Tehillim 119:100 and refers to the wisdom of earlier authorities.

הִנֵּה הָרַמְבַּ"ם (פֶּרֶק ח' מִגֵּרוּשִׁין הֲלָכָה כ"א) וְחָזַר וְאָמַר מְחוּלִין לָךְ וְכוּלֵי. הָיָה נוּסְחָא לְפָנֵי הָרָאָבַ"ד שָׁלְמוּ שְׁלֹשִׁים יוֹם וְלֹא נְתָנָה הֲרֵי זוֹ מְגוֹרֶשֶׁת. וְכָתַב הָרָאָבַ"ד מִסְּבָרָא דְנַפְשֵׁיהּ כֵּיוָן דְּאָמַר מְחוּלִין לָךְ וּמֵת תּוֹ לָא אָמְרִינַן לְצַעוֹרָהּ קָמְכַוֵּון עַד כָּאן לְשׁוֹנוֹ. אֶלָּא שֶׁכָּתַב הַמַּגִּיד מִשְׁנֶה שֶׁנּוֹסְחָא מוּטְעֵית הִיא וְגָרְסִינַן אֵינָהּ מְגוֹרֶשֶׁת. וּמִלְּתָא בְּאַפֵּי נַפְשָׁהּ הִיא וְלֹא קָאֵי אַמְּחוּלִין:

[8] **Now, the Rambam (Chapter 8 of Hilchos Geirushin, Halachah 21): [discusses one who] retracted and said "they are forgiven to you," etc.** The Rambam discusses a case where the husband imposed a monetary condition on the *get* and then waived the debt. **There was a textual version before the Ra'avad [that reads:] "If thirty days passed and she did not give [the money], she is divorced."** According to this variant, when the husband dies after having said "they are forgiven to you," the *get* takes effect. **And the Ra'avad wrote from his own reasoning: "Since he said 'they are forgiven to you' and then died, we no longer say that he intended to distress her." End of the Ra'avad's words.** The Ra'avad treats explicit *mechilah* followed by death as enough to remove the condition. **However, the Maggid Mishneh wrote that this textual version is erroneous, and we should read "she is not divorced." And it is a separate matter entirely, and does not refer to [the case of] "they are forgiven."**

עַיֵּן שָׁם. מִכָּל מָקוֹם נָחֵזִי אֲנַן בְּסְבָרַת הָרָאָבַ"ד שֶׁלֹּא הִשִּׂיג עַל הָרַמְבַּ"ם אֶלָּא בִּקֵּשׁ רְאָיָה וּמְנַיִן. אֲבָל הַסְּבָרָא בְּעַצְמָהּ יְשָׁרָה בְּעֵינָיו. וְהַיְנוּ כִּי בְּאוֹמֵר עַל מְנָת שֶׁתִּתֵּן יֵשׁ לוֹמַר דְּלַהֲרָוָחָה דִּידֵיהּ קָמְכַוֵּין. וְלָזֶה מוֹעִיל מְחִילָה וַהֲרֵינִי כְּאִלּוּ הִתְקַבַּלְתִּי. אֶלָּא אֲנַן חָיְישִׁינַן דְּלְצַעוֹרֵי דִּידָהּ כֵּיוָן. וְלָזֶה אֵין מְחִילָה מוֹעִיל זוּלַת שֶׁמּוֹחֵל גּוּף הַתְּנַאי דְּלְצַעוֹרָהּ. אֲבָל מְחִילַת נְתִינַת

See there. Nevertheless, let us examine the Ra'avad's reasoning, for he did not object to the Rambam, but merely sought a proof and a source. But the reasoning itself was upright in his eyes. The idea is: when [the husband] says "on condition that you give [me money]," one can say that he intends it for his own financial benefit (leharvacha). And for this, mechilah is effective — [he is saying] "I am as if I have received it." However, we are concerned that he intended to distress her (letzaara). And for this [distress purpose], mechilah of the money is not effective, unless he forgives the very essence of the condition — namely, the distress aspect. But forgiveness of the monetary payment

[8] Rambam, Hilchos Geirushin 8:21. The Rambam rules: הרי זה גיטך על מנת שתתני לי מאתים זוז מכאן ועד שלשים יום... חזר ואמר לה בתוך השלשים יום — הרי הן מחולין לך אינה מגורשת, שהרי לא נעשה התנאי — "This is your get on condition that you give me 200 zuz within 30 days... If he retracted and said within 30 days 'They are forgiven to you,' she is not divorced, for the condition was not fulfilled."

alone is not effective. Waiving the debt does not address the distress motivation. [9] **See Gittin (74b) and the Ran in the name of the Rashba. Now, we are witnesses [i.e., it is self-evident]: Whenever [a husband] intended to distress [his wife], a person does not want to cause distress to his fellow, and all the more so to his wife, at the time of his death. On the contrary, a person wishes to rest peacefully on his deathbed, and to forgive all who have aggrieved him, and that others not be distressed on his account. It is as though he explicitly forgave the distress at the time of death. Yet, nevertheless, [this alone] does not suffice, for perhaps he intended [the condition] for [his own] financial benefit, and not to distress her at all. And there is no sin in his requiring it. And there is no self-evident presumption [of forgiveness] here.** A financially motivated condition is not presumed forgiven at death. **However, if he explicitly forgave [the monetary debt], which is effective regarding the financial benefit of the money. And then he died, and the death forgives the distress.** Death addresses the *letzaara* possibility. Together, the waiver and death cover both possible motives. **She is [then] divorced, and the condition is nullified. This is the Ra'avad's reasoning. And see the Ran, Perek HaMadir, in the discussion of blemishes — for the Rambam and the majority of authorities hold aside from the Rashba — that an "on condition" stipulation can be forgiven [through mechilah].** [10] **See the Beis Shmuel (Siman 143, subsection 9).**

הַמָּמוֹן אֵינוֹ מוֹעִיל. עַיֵּן גִּיטִּין (דַּף ע"ד עַמּוּד ב') וּבָרָ"ן בְּשֵׁם רַשְׁבָּ"א. וְהִנֵּה אֲנַן סָהֲדֵי כָּל שֶׁכֵּיוָן לְצַעֲרָהּ אֵין אָדָם רוֹצֶה לְצַעֵר אֶת חֲבֵירוֹ וּמָה גַּם אֶת אִשְׁתּוֹ בְּשָׁעַת מִיתָה. אַדְרַבָּא רוֹצֶה אָדָם לָנוּחַ עַל מִשְׁכָּבוֹתָיו וְלִמְחוֹל לְכָל מַאן דְּצַעֲרֵיהּ וְלֹא יְצַעֲרוּ אֲחֵרִים בְּגִינוֹ. וּכְאִלּוּ מָחַל הַצַּעַר לְהֶדְיָא בְּשָׁעַת מִיתָה אֶלָּא מִכָּל מָקוֹם לֹא יוֹעִיל דִּדְלְמָא לַהֲרָוָחָה כִּיוֵּן וְלֹא לְצַעֵר אוֹתָהּ כְּלָל. וְאֵין בּוֹ עָוֹן אֲשֶׁר חָטָא. וְלֵית כָּאן אֲנַן סָהֲדֵי. אָמְנָם אִם מָחַל לְהֶדְיָא דְּמַהֲנֵי לְגַבֵּי הַרְוָחַת הַמָּעוֹת. וְשׁוּב מֵת וּמִיתָה מוֹחֶלֶת הַצַּעַר. הֲרֵי הִיא מְגוֹרֶשֶׁת וּבָטֵל הַתְּנַאי. וְהוּ סְבָרַת הָרָאָב"ד. וְעַיֵּן ר"ן פֶּרֶק הַמַּדִּיר סוּגְיָא דְּמוּמִין, דְּסָבְרָא לֵיהּ לְרַמְבַּ"ם וּלְרוֹב הַפּוֹסְקִים לְבַד מֵרַשְׁבָּ"א דְּעַל מְנָת יָכוֹל לִמְחוֹל. עַיֵּן בֵּית שְׁמוּאֵל (סִימָן קמ"ג סָעִיף קָטָן ט'):

[Said Avraham, son of the author: According to the words of my brother-in-law the Gaon, may his light shine — (the editor raises a question on the Chasam Sofer's theory) [11] **in the case of a conditional get "on condition that you nurse my son," where the husband died before she began nursing — it should, by rights, be a fully valid get. For regardless: If [the condition is] for [his] benefit — he no longer needs it [since he is dead]. And if [it is] to distress her — his death nullifies the condition! Furthermore, in this case there can be no doubt that the condition was not for benefit at all, for if there were such a doubt, she would need to nurse for the full two years. And since one day suffices [to fulfill the condition], it must be because it is clear to us that he intends to distress her. So why did the Rambam rule in this case**

[אָמַר אַבְרָהָם בֵּן הַמְחַבֵּר לְפִי דִּבְרֵי מַר גִּיסִי הַגָּאוֹן נֵרוֹ יָאִיר. בְּמַתְנָה עַל מְנָת שֶׁתְּנִיקִי אֶת בְּנִי וּמֵת קוֹדֶם שֶׁהִתְחִילָה לְהָנִיק. מֵהָרָאוּי שֶׁיִּהְיֶה גֵּט מַעֲלְיָא. דְּמִמָּה נַפְשָׁךְ אִי לַהֲרָוָחָה. הָא לֹא אִיצְטְרִיךְ. וְאִי לְצַעוֹרֵי הָא בְּמוֹתוֹ מְבַטֵּל הַתְּנַאי וְתוּ דְּעַל כָּרְחָךְ בָּזֶה לֵיכָא סָפֵק דְּלַהֲרָוָחָה כְּלָל דְּאִי הָיָה סָפֵק הָיָה צוֹרֶךְ לְהָנִיק שְׁתֵּי שָׁנִים. וּמִדְּסַגְיָא בְּיוֹם אֶחָד. עַל כָּרְחָךְ מִשּׁוּם דְּבָרוּר לָנוּ דְּלְצַעוֹרֵי מְכַוִּין. וְלָמָּה פָּסַק הָרַמְבַּ"ם בָּזֶה דְּאֵינוֹ גֵּט, וְהִנְנִי

[9] Gittin 74b. The Ran there cites the Rashba regarding the distinction between *mechilah* of the monetary payment and *mechilah* of the condition itself, particularly when the condition was imposed to cause distress (*letzaara*).

[10] Beis Shmuel, Even HaEzer 143:9.

[11] Gittin 76a. The Baraisa teaches: הרי זה גיטיך על מנת שתניקי את בני שתי שנים — "This is your get on condition that you nurse my son for two years." Despite the two-year stipulation, the halachah is that nursing for even a single day suffices, indicating the condition was imposed to cause distress rather than for practical benefit.

רַק מְעוֹרֵר כִּי חָלִילָה לֹא לְהַשִּׂיג בָּאתִי. ובפרט שהענין עמוק ואין הזמן מסכים לעיין היטב]:

וְכֵיוָן שֶׁזָּכִינוּ לַדִּין. אִם כֵּן בְּעַל מְנָת שֶׁלֹּא תִּשְׁתִּי יַיִן כָּל יְמֵי חַיֵּי פְלוֹנִי דִּלֵּיכָא אֶלָּא לְצַעוֹרָא. אִי מַיֵּית הַמְגָרֵשׁ בִּטֵּל הַתְּנַאי וּמְחָלוֹ וּמְתֻּרֶת לִשְׁתּוֹת יַיִן לְכַתְּחִילָה. וְעַל כֵּן לֹא תִּקְשֵׁי מֵאִם לֹא תְּבָעֲלִי לְפְלוֹנִי הָתָם קִנְאַת חֲמַת גֶּבֶר בֵּינֵיהֶם שֶׁחֲשָׁדָהּ מֵהָאִישׁ הַהוּא וְכַיּוֹצֵא בּוֹ וְזֶהוּ לֹא מָחַל. וְכֵן אִם לֹא בָּאתִי מִכָּאן וְעַד שְׁנַיִם עָשָׂר חֹדֶשׁ. הָתָם אֵינוֹ מוּכְרָח שֶׁהָיְתָה דַּעְתּוֹ לְצַעוֹרָא אֶלָּא אֶפְשָׁר לְפַיְּסָהּ בְּאוֹתָן הַיָּמִים כְּדִמַשְׁמַע שָׁם עַל כֵּן אֵינוֹ בָּרוּר שֶׁמָּחַל כִּי לֹא יְמָצֵא עָוֹן בָּזֶה, וְכֵן בִּמְאתַיִם זוּז. אֶפְשָׁר דַּעְתּוֹ לַהֲרָוָחָה [אָמַר אַבְרָהָם בֶּן הַמְחַבֵּר לְפִי עֲנִיּוּת דַּעְתִּי לְמָה שֶׁכָּתַב מַר גִּיסִי הַגָּאוֹן נֵרוֹ יָאִיר דְּהַקּוּשְׁיָא רַק מֵרַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל. אֵין צוֹרֶךְ לְמָה שֶׁכָּתַב אֶפְשָׁר דַּעְתּוֹ לַהֲרוָחָה. אֶלָּא הָיָה לוֹ לוֹמַר דְּרַבָּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל לְשִׁיטָתֵיהּ (דְּסָבַר גַּבֵּי אַצְטְלִית דְּנוֹתֶנֶת לוֹ דָּמֶיהָ) דְּוַדַּאי לְהַרְוָחָא קָא מְכַוֵּין] מַה שֶּׁאֵין כֵּן אַל תִּשְׁתִּי יַיִן שֶׁהוּא רַק לְצַעוֹרָהּ יֵשׁ לוֹמַר בְּוַדַּאי מָחַל הַתְּנַאי שֶׁלֹּא יָשִׂים אָשָׁם נַפְשׁוֹ, וּכְסִבְרַת הָרַאֲב"ד הַנִּזְכָּר לְעֵיל. וּמִשּׁוּם הָכִי לֹא קַשְׁיָא לְהָרָ"ן וְלִהַמַּגִּיד מִשְׁנֶה אֶלָּא מִכָּל יְמֵי חַיֶּיכִי דַּהֲוֵי גַּם כֵּן לְצַעוֹרָהּ וְאַף עַל פִּי כֵן אֵינוֹ כְּרִיתוּת. וּבָזֶה קַשְׁיָא. אַמַּאי הָא נִכְרָת הַגֵּט כְּשֶׁיָּמוּת הַבַּעַל וּמִכָּל מָקוֹם נִרְאֶה לְפִי עֲנִיּוּת דַּעְתִּי לְהַלִּיץ וּלְיַיֵּשֵׁב קוּשְׁיָא זוֹ. דְּנֵהֵי דַּחֲזָקָה דְּמָחַל הַתְּנַאי בִּשְׁעַת מִיתָה מִכָּל מָקוֹם הַשְׁתָּא לָא הֲוֵי כְּרִיתוּת. דְּעַל כָּל פָּנִים אֲגִידָה בֵּיהּ לְעוֹלָם. וְאִם יֵאָרַע שֶׁבִּשְׁעַת מִיתָה

that it is not a [valid] get? This seems to contradict the Chasam Sofer's theory that *letzaara* conditions are waived at death. **I am merely raising the question, for God forbid that I have come to object. Especially since the matter is deep, and the time does not permit me to investigate it properly.]**

And since we have merited [to arrive at] this legal conclusion — The Chasam Sofer now applies his theory to specific cases. **Then [in the case of] "on condition that you not drink wine all the days of so-and-so's life," which is nothing but for the purpose of distress — if the divorcer dies, the condition is nullified and forgiven, and she is permitted to drink wine ab initio. And therefore, [the case of] "do not be intimate with so-and-so" poses no difficulty: There, it is the jealous fury of a man between them, for he suspected her with that man and the like, and this he did not forgive.** Jealous rage is not something a dying person necessarily relinquishes; it is not mere *letzaara* but a deep personal affront. **And similarly [regarding] "if I do not come from here until twelve months": There, it is not necessarily the case that his intent was to distress, for perhaps [he intended] to appease her during those days, as is implied there [in the Gemara]. Therefore, it is not clear that he forgave, for there is no guilt in this. And similarly with the two hundred zuz — perhaps his intent was for financial benefit. [Said Avraham, son of the author: In my humble opinion, regarding what my brother-in-law the Gaon wrote — that the difficulty is only from Rabban Shimon ben Gamliel — there is no need for what he wrote: "perhaps his intent was for financial benefit." Rather, he should have said that Rabban Shimon ben Gamliel follows his own view (for he holds, regarding the cloak [case], that she gives him its monetary value), that certainly [the husband] intended for financial benefit.]** According to Rabban Shimon ben Gamliel, the condition is financially motivated, so *mechilah* at death does not apply. **However, [regarding] "do not drink wine," which is solely for distress, we can say that he certainly forgave the condition, so as not to burden his soul. In accordance with the Ra'avad's reasoning mentioned above. And therefore, the Ran and the Maggid Mishneh only raised a difficulty from [the condition] "all the days of your life," which is also for the purpose of distress, and yet it is not kerisus.** Even under the Chasam Sofer's theory, the Ran's original question remains: if the condition will be forgiven at death, why isn't "all the days of your life" considered *kerisus*? **And in this lies the difficulty: Why? For the get should constitute severance when the husband dies! Nevertheless, it appears in**

my humble opinion that I can defend and resolve this difficulty. For granted, there is a presumption that he forgave the condition at the time of death, nevertheless, currently [during his lifetime] it is not kerisus. For in any event, she is bound to him forever. And if it should happen that at the time of death he says "I do not forgive the condition," then [the get] does not sever [the bond]. We merely presume that he will presumably forgive. But in any case, it does not sever [the bond] as things stand now. And the words of the Rabanan Kadma'ei cited by the Bahag are vindicated. Their ruling stands because presumed forgiveness at death is not present severance.

יֹאמַר אֵינֶנִּי מוֹחֵל הַתְּנַאי הֲרֵי אֵינוֹ כּוֹרֵת. אֶלָּא שֶׁאָנוּ תּוֹלִין מִסְתָּמָא יִמְחוֹל. אֲבָל מִכָּל מָקוֹם אֵינוֹ כּוֹרֵת כְּמוֹ שֶׁהוּא עַתָּה. וְצָדְקוּ דִּבְרֵי רַבָּנָן קַדְמָאֵי דְּבַעַל הֲלָכוֹת גְּדוֹלוֹת:

And it is not far-fetched in my view that this is also the opinion of the Rambam, even according to the version [of the text] before us. "If he died within thirty days, she is not divorced." And this does not refer to the [case discussed] above [involving mechilah]. And [the Rambam] ruled there regarding one who said "on condition that you give me" without specifying a time: She performs chalitzah but may not undergo yibum. The Maggid Mishneh wrote the reason: because [the condition] requires actual failure or fulfillment, and he derives this from [the case of] "if I do not come within twelve months," where we do not permit [her to remarry] until after twelve months, when [the condition] is fulfilled in practice. And just as there it is a doubt whether they permitted her immediately or [only] after twelve months, so too here it is a doubt — and she performs chalitzah but may not undergo yibum. This is the intent of the Maggid Mishneh. And it is very difficult to say that the Talmud is uncertain about a novel reasoning — whether [the condition] requires actual failure or fulfillment, or whether potential failure or fulfillment suffices. And [the Talmud] did not explain to us what the uncertainty is about, and did not mention this reasoning at all. The Talmud's doubt must have a simpler explanation. **Rather, we must say with certainty: If in [the case of] "if I do not come within twelve months" his intent was to appease her, then when he died, he did not forgive his condition, and it needs to be fulfilled in practice.** Appeasement is not distress; there is no presumption of forgiveness at death. **And as long as it was not fulfilled in practice, she undergoes yibum. But perhaps his intent was to distress her, and when he died he forgave the condition, and once the condition is forgiven, no fulfillment is required — neither in potential nor in practice — and she is permitted to [marry] anyone. And since we are uncertain about his intent, she performs chalitzah but may not undergo yibum.** The

וְלֹא רָחוֹק בְּעֵינַי שֶׁזֶּהוּ דַּעַת הָרַמְבַּ"ם גַּם כֵּן אֲפִלּוּ לְפִי הַגִּרְסָא שֶׁלְּפָנֵינוּ. אִם מֵת בְּתוֹךְ שְׁלֹשִׁים אֵינָהּ מְגוֹרֶשֶׁת. וְלֹא קָאֵי אַלְעֵיל, וּפָסַק שָׁם בְּאָמַר עַל מְנָת שֶׁתִּתֵּן לִי וְלֹא קָבַע זְמַן חוֹלָצֶת וְלֹא מִתְיַבֶּמֶת. כָּתַב הַמַּגִּיד מִשְׁנֶה הַטַּעַם מִשּׁוּם דְּבָעֵי בִּיטּוּל וְקִיּוּם בְּפוֹעַל וְיָלִיף כֵּן מֵאִם לֹא בָאתִי עַד שְׁנֵים עָשָׂר חֹדֶשׁ דְּלָא שָׁרִינַן עַד אַחַר שְׁנֵים עָשָׂר חֹדֶשׁ שֶׁנִּתְקַיֵּים בְּפוֹעַל. וּכְשֵׁם שֶׁהָתָם סָפֵק אִי לְאַלְתַּר הִתִּירוּהָ אוֹ לְאַחַר שְׁנֵים עָשָׂר חֹדֶשׁ. הָכִי נָמֵי סָפֵק. וְחוֹלָצֶת וְלֹא מִתְיַבֶּמֶת. וְזֶהוּ כַּוָּנַת הַמַּגִּיד מִשְׁנֶה וְקָשֶׁה מְאֹד לוֹמַר דְּהַשַּׁ"ס מְסַפְּקָא לֵיהּ בְּסָבָרָא חֲדָשָׁה אִי בָּעֵי בִּיטּוּל וְקִיּוּם בְּפוֹעַל אוֹ סַגִּי בְּכֹחַ. וְלֹא פֵּירַשׁ לָן בְּמַאי מְסַפְּקָא, וְלֹא הִזְכִּיר סְבָרָא זוֹ כְּלָל. אֶלָּא עַל כָּרְחָךְ יֵשׁ לוֹמַר בְּוַדַּאי. אִי בְּאִם לֹא בָאתִי עַד שְׁנֵים עָשָׂר חֹדֶשׁ הָיָה כַּוָּנָתוֹ לְפַיְּסָהּ נִמְצָא כְּשֶׁמֵּת לֹא מָחַל תְּנָאוֹ וְצָרִיךְ שֶׁיִּתְקַיֵּים בְּפוֹעַל. וְכָל שֶׁלֹּא נִתְקַיֵּים בְּפוֹעַל מִתְיַבֶּמֶת אַךְ אוּלַי הָיְתָה כַּוָּנָתוֹ לְצַעֲרָהּ וּמִשֶּׁמֵּת מָחַל הַתְּנַאי וּמִשֶּׁמָּחַל הַתְּנַאי לֹא צָרִיךְ קִיּוּם לֹא בְּכֹחַ וְלֹא בְּפוֹעַל וּמֻתֶּרֶת לְעָלְמָא. וּמִדְּמְסַפְּקִינַן אֲנַן בְּדַעְתֵּיהּ חוֹלָצֶת וְלֹא מִתְיַבֶּמֶת וְהָכִי נָמֵי בְּמָאתַיִם זוּז אִי הָיָה כַּוָּנָתוֹ לְהַרְוָחָא וְלֹא מָחַל הַתְּנַאי בָּעֵי בִּיטּוּל בְּפוֹעַל.

וְכֵיוָן שֶׁמֵּת אִי אֶפְשָׁר לְבַטְּלוֹ בְּפוֹעַל. וְאִי כַּוָּנָתוֹ לְצַעוֹרָהּ כֵּיוָן שֶׁמֵּת בָּטֵל הַתְּנַאי וְלֹא בָּעֵי לֹא כֹּחַ וְלֹא פּוֹעַל. וּמִסְפֵּיקָא חוֹלֶצֶת וְלֹא מִתְיַיבֶּמֶת. וַהֲרֵי לִסְבָרָא שֶׁל רַבָּנָן קַמָּאֵי יֵשׁ רְאָיָה מִסְפֵּיקָא דְּשַׁ"ס גַּבֵּי אִי לֹא בָאתִי מִכָּאן וְעַד שְׁנֵים עָשָׂר חֹדֶשׁ הַנִּזְכָּר לְעֵיל:

doubt is whether he intended to appease her or distress her. **And similarly with the two hundred zuz [case]: If his intent was for financial benefit and he did not forgive the condition, the condition must actually fail. And since he died, the condition cannot actually fail. And if his intent was to distress her, since he died, the condition is nullified, and it requires neither potential nor practice. And out of doubt, she performs chalitzah but may not undergo yibum. And indeed, for the reasoning of the Rabanan Kadma'ei there is proof from the Talmud's doubt regarding "if I do not come from here until twelve months," mentioned above.** The Talmud's doubt supports the distinction between distress-based conditions and other conditions.

וְכֵיוָן שֶׁזָּכִינוּ לְיַיֵּשֵׁב דִּבְרֵי רַבָּנָן וּלְסַלֵּק מֵעֲלֵיהֶם כָּל קוּשְׁיָא וְהָרַאֲב"ד יֵשׁ לוֹמַר סְבִירָא לֵיהּ כְּסִבָרָתָם וְגַם הָרַמְבַּ"ם, וְיֵשׁ רְאָיָה מִשַּׁ"ס. אִם כֵּן אַחְלִיט אֲנִי שֶׁזּוֹהִי סְבָרָתָם בֶּאֱמֶת. וּמִמֵּילָא בְּנָדוֹן שֶׁלְּפָנֵינוּ בֵּין יִהְיֶה כַּוָּנָתוֹ לְהַרְוָחַת בְּנֵי מִשְׁפַּחְתּוֹ בְּמִסְחָרָם. בֵּין לְצַעַר אִשְׁתּוֹ. אִם תְּקַיֵּים הַתְּנַאי וּמַרְוִיחַ מָקוֹם לִבְנֵי מִשְׁפַּחְתּוֹ, הֲרֵי הִיא מֻתֶּרֶת לַשּׁוּק בְּלִי חֲלִיצָה לְפִי עֲנִיּוּת דַּעְתִּי אַךְ כָּל אֵלּוּ הַדְּבָרִים נֶאֱמָרִים אִם הָיָה לְשׁוֹן הַתְּנַאי נִכְתָּב בִּשְׁאֵלָה. שֶׁבְּתוֹךְ שָׁנָה תִּסַּע מִשְׁכּוּנָתָהּ וְעִירָהּ וְתָדוּר בְּעִיר אָבִיהָ שֶׁאִם תִּסַּע לְשָׁם וְתָדוּר שָׁם שְׁנֵים עָשָׂר חֹדֶשׁ אוֹ תִּקְנֶה בַּיִת שָׁם שֶׁהִיא בִּכְלַל בְּנֵי הָעִיר שָׁם. הֲרֵי נִתְקַיֵּים הַתְּנַאי וַהֲרֵי זֶה כְּרִיתוּת. אַף עַל פִּי שֶׁאִפְשָׁר שֶׁאַחַר כָּךְ תַּחֲזוֹר לָדוּר בִּמְקוֹמָהּ הָרִאשׁוֹן וְתַפְסִיד לִבְנֵי מִשְׁפַּחְתּוֹ בְּמִסְחָר. מִכָּל מָקוֹם יֵשׁ לוֹמַר שֶׁלֹּא חָשַׁשׁ הַבַּעַל לָזֶה. מִכֵּיוָן שֶׁכְּבָר עָבְרָה סִיכִי וּמִשְׁכְּנָהּ. וְקָבְעָה דִּירָתָהּ בְּמָקוֹם אַחֵר. לֹא תָּשׁוּב עוֹד מִשָּׁם לִמְקוֹמָהּ הָרִאשׁוֹן. כְּמוֹ שֶׁכָּתַב הָרַמְבַּ"ן בַּחוּמָשׁ גַּבֵּי בָּתֵּי עָרֵי חוֹמָה וּלְפִי זֶה שַׁפִּיר חֲזֵי כְּרִיתוּת. אֲבָל אִם

And since we have merited to resolve the words of the Rabanan [Kadma'ei] and to remove from them every difficulty, and the Ra'avad, one can say, holds like their reasoning, and the Rambam as well, and there is proof from the Talmud — then I will firmly conclude that this is indeed their reasoning. And consequently, in the case before us: Whether his intent was for the financial benefit of his family members in their business, or to distress his wife — if she fulfills the condition and creates space for his family [in the business], she is permitted to remarry without chalitzah, in my humble opinion. However, all of these matters apply [only] if the language of the condition was as written in the question: That within a year she shall travel from her neighborhood and city and dwell in her father's city. So that if she travels there and dwells there for twelve months or purchases a house there — [such that] she is [considered] among the residents of that city, then the condition has been fulfilled, and this constitutes kerisus. Even though it is possible that afterward she might return to dwell in her original place and harm his family's business — nevertheless, one can say the husband was not concerned about this. Since she has already uprooted her stakes and her dwelling. And established her residence in another place, she will not return from there to her original place. [12] עַיֵּן שָׁם, — As the Ramban wrote on the Torah regarding houses of walled cities — see there. The Ramban discusses the principle that once a person uproots and resettles, they are presumed not to return. **And accordingly, it is proper kerisus. But if the language and intent of the condition is "on condition that she not dwell in the city of his family" — and we hold that one who says generically "on condition that you not enter your**

[12] Ramban on the Torah, regarding *Batei Arei Chomah* (houses in walled cities, Vayikra 25:29–30). The Ramban discusses the principle that once a person has uprooted and relocated, they are presumed not to return to their original dwelling.

לְשׁוֹן הַתְּנַאי וְכַוָּנָתוֹ עַל מְנָת שֶׁלֹּא תָּדוּר בְּעִיר בְּנֵי מִשְׁפַּחְתּוֹ. וְקַיְימָא לַן הָאוֹמֵר סְתָם עַל מְנָת שֶׁלֹּא תִּכָּנֵס לְבֵית אָבִיהָ כַּוָּנָתוֹ לְעוֹלָם, וְהָכִי נָמֵי כַּוָּנָתוֹ לְעוֹלָם לֹא תָּדוּר. אִם כֵּן אֵין זֶה כְּרִיתוּת כְּלָל. וְלֹא נִשְׁאֲלָה שְׁאֵלָה עַל זוֹ. עַל כֵּן אֶסְתַּגֵּר בְּקַמַּיְיתָא. וְהַנִּרְאֶה לַעֲנִיּוּת דַּעְתִּי כָּתַבְתִּי:

father's house" means forever — so too here, his intent is that she should never dwell [there]. Then this is not kerisus at all. A permanent prohibition binding her forever does not constitute severance. **And this [latter formulation] was not the subject of the question. Therefore, I will confine myself to the first [interpretation]. And I have written what appears to my humble opinion.**

וְעַתָּה אָבֹא קְצָת לְהִשְׁתַּעֲשֵׁעַ בְּדִבְרֵי מַר גִּיסִי נֵרוֹ יָאִיר, וְהִנֵּה בְּמַה שֶׁכָּתַב וְהֶאֱרִיךְ בְּאֵין אוֹנֶס בְּגִיטִּין לֹא הִזְכִּיר כְּלָל חִלּוּק בֵּין אוֹנֶס רַחֲמָנָא פַּטְרֵיהּ וּבֵין אוֹנֶס רַחֲמָנָא חַייְבֵיהּ. וּבֵין אוֹנְסָא כְּמַאן דְּעָבֵד. אוֹ אוֹנְסָא דְּעָבַר. וְיֵשׁ לְעַיֵּן בְּכָל זֶה בְּשִׁפְתֵי כֹּהֵן חוֹשֶׁן מִשְׁפָּט (סוֹף סִימָן כ"א) וּמִשְׁנֶה לַמֶּלֶךְ (פֶּרֶק י"א מִמְּכִירָה) עַל כֵּן לֹא אַכְנִיס עַצְמִי בָּזֶה כָּעֵת. וּמַר גִּיסִי נֵרוֹ יָאִיר קְצֵר אַף עַל פִּי שֶׁהֶאֱרִיךְ:

And now I will come to engage briefly with the words of my brother-in-law, may his light shine. Now, regarding what he wrote at length about the rule "ein oness begittin," that oness (duress/impossibility) does not count in matters of gittin, he did not mention at all the distinction between "oness — the Torah exempts [one]," and "oness — the Torah holds [one] liable." And [also the distinction] between "oness [is treated] oness [is treated] as if one did the act," and "oness that merely occurred." These distinctions affect how *oness* applies to conditional *gittin*. **And all of this should be investigated in the Shach, Choshen Mishpat (end of Siman 21), and Mishneh LeMelech (Chapter 11 of [Hilchos] Mechirah). Therefore, I will not enter into this matter at present. And my brother-in-law, may his light shine, was brief despite being lengthy.** He means that the long discussion still omitted key distinctions.

וּמַה שֶּׁכָּתַב וְרָמֵי דִּבְרֵי רַמְבַּ"ם אַדִּבְרֵי רַבָּנָן קַמָּאֵי. כֵּיוָן דְּלָא הֲוֵי קִיּוּם וּבְטוּל בְּפֹעַל. כְּבָר כָּתַבְתִּי לְעֵיל דְּכֵיוָן דְּבָמוֹתוֹ בָּטְלוּ עֶשְׂתְּנוֹת תְּנָאָיו. תּוּ לֹא שַׁיָּיךְ לֹא כֹּחַ וְלֹא פֹּעַל. וְלִדְבָרֵי מַר גִּיסִי נֵרוֹ יָאִיר עַל כָּל פָּנִים הָאִשָּׁה אֲסוּרָה לְבַעְלָהּ מְשׁוּם סְפֵק אֲסוּרָה לַבּוֹעֵל, וּבָנִים סְפֵק מַמְזֵרִים וְזֶה אֵינוֹ בְּמַשְׁמַע:

And regarding what he wrote, setting the words of the Rambam against the words of the Rabanan Kadma'ei — since there is no actual fulfillment or failure [of the condition after death]. I have already written above that since upon his death, the designs of his conditions are nullified. The concepts of "in potential" and "in practice" are no longer relevant. And according to the words of my brother-in-law, may his light shine, in any event, the woman would be forbidden to her [second] husband, due to the principle that one who is doubtfully forbidden [to her first husband] is also forbidden to her paramour, and [her] children would be doubtful mamzerim — and this is not implied [by the sources]. He argues that Rabbi Shlomo Eiger's approach leads to results not implied by the sources.

וּמַה שֶּׁכָּתַב מִדְּיוּקָא וְיִתּוּרָא דְּכָל יְמֵי חַייֶכִי מוּכָח אֲפִלּוּ אַחַר מִיתָתוֹ קָאָמַר, הָיָה דָּבָר נָאֶה וְהָגוּן, אִי לָאו דְּקַשְׁיָא עָלָיו מַה שֶּׁהִרְגִּישׁ מַר גִּיסִי נֵרוֹ יָאִיר. אִם כֵּן מַאי טַעְמָא נָקַט שְׁלֹשִׁים יוֹם. וְהָלֹא אֲפִלּוּ בְּסָתָמָא

And regarding what he wrote — from the precise inference and the superfluity of [the phrase] "all the days of your life" — proving that [the condition extends] even after his death: this was a fine and fitting [argument], were it not that there is a difficulty against it — which my brother-in-law, may his light shine, himself perceived: If so, why did [the Talmud] specify thirty days?

נָמֵי שַׁרְיָא, וְזֶה הָיָה חִדּוּשׁ נִפְלָא, וְלֹא הָוָה לֵיהּ לְהש"ס לְמִישְׁתַּק מִינַּיהּ, וְתֵירוּצוֹ אֵינוֹ מַסְפִּיק לְרַפְּאוֹת שֶׁבֶר גָּדוֹל, אֲבָל הָאֱמֶת בְּיִשּׁוּב קוּשְׁיַית מִשְׁנֶה לַמֶּלֶךְ שָׁם וְקוּשְׁיַית מִכְתָּב אֵלִיָּהוּ, אָנוּ אֵין לָנוּ אֶלָּא תֵּירוּץ קַמָּא דְּשַׁעַר הַמֶּלֶךְ שֶׁהֵם דְּבָרִים נְכוֹנִים וּרְאוּיִים לְמִי שֶׁאָמָרָן. תו פֹּשׁ גַּבַּן לְבָרוּרֵי סְבָרַת הָרַ"ן וְהַמַּגִּיד מִשְׁנֶה, בְּמַה שֶׁכָּתַב בְּדַעַת הָרַמְבַּ"ם בְּעַל מְנָת שֶׁלֹּא תִּבָּעֲלִי לִפְלוֹנִי לְעוֹלָם וְשֶׁלֹּא תִּכָּנְסִי לְבֵית אָבִיךְ לְעוֹלָם מִשּׁוּם שֶׁלֹּא הֻתַּר מַה שֶּׁאָסַר לָהּ, פֵּירוּשׁ הָעִנְיָן כִּי אֵין זֶה כְּרִיתוּת, כֵּיוָן שֶׁמֻּחֶמֶת הָאֲגַד שֶׁלּוֹ וְהַתְּנַאי נִמְנָעָה לִכָּנֵס לְבֵית אָבִיהָ, אוֹ דְּהַבַּעַל לִפְלוֹנִי, שֶׁהֲרֵי בְּלֹא הַתְּנַאי הָיְתָה יְכוֹלָה, וְהַמְנִיעָה הוּא מֻחֶמֶת הָאֲגַד, אַף עַל פִּי שֶׁבְּסוֹף מִיפְסַק הָאֲגוּדָה בְּמִיתַת פְּלוֹנִי אוֹ אָבִיהָ, מִכָּל מָקוֹם נִכְנְסָה מִמְּנִיעָה לִמְנִיעָה, שֶׁהֲרֵי כְּשֶׁיָּמוּת הָאָב אֵין לָהּ בֵּית אָב, וּכְשֶׁיָּמוּת פְּלִיגִי אִי אֶפְשָׁר שֶׁתִּבָּעֵל לוֹ, אַף עַל פִּי שֶׁמְּנִיעָה הַשְּׁנִיָּה אֵינָהּ מֻחֶמֶת אֲגַד שֶׁל הַבַּעַל, מִכָּל מָקוֹם כֵּיוָן שֶׁתְּחִלָּתוֹ הָיָה מֻחֶמֶת אֲגוּדָתוֹ וְנִתְגַּלְגֵּל מִמְּנִיעָה לִמְנִיעָה אֵין זֶה כְּרִיתוּת, מַה שֶּׁאֵין כֵּן שֶׁלֹּא תִּבָּעֵל לְאַבָּא וּלְאָבִיךְ שֶׁתְּחִלַּת הַמְנִיעָה לֹא הָיָה מֻחֶמֶת אֲגוּדָתוֹ, שֶׁהֲרֵי בְּלָאו הָכִי לֹא הָיוּ שׁוֹמְעִים לָהּ לָבֹא עָלֶיהָ, וְכֵיוָן שֶׁהַמְנִיעָה הָרִאשׁוֹנָה אֵינָהּ מֻחֶמֶת הַתְּנַאי הֲרֵי זֶה כְּרִיתוּת, מַה שֶּׁאֵין כֵּן לְפְלוֹנִי שֶׁהַדָּבָר הָיָה תָּלוּי וְעוֹמֵד אִם תִּרְצֶה תִּבָּעֵל לוֹ, אֶלָּא שֶׁהַתְּנַאי מְנָעָהּ הֲוֵי תְּחִלַּת הַמְנִיעָה עַל יְדֵי הַתְּנַאי, וְנִכְנֶסֶת מִמְּנִיעָה לִמְנִיעָה אֵין זֶה כְּרִיתוּת, וְאֵין דּוֹמֶה אִם יֹאמַר שֶׁלֹּא תֹּאכְלִי בְּשַׂר חֲזִיר לְעוֹלָם הָתָם הַמְנִיעָה הָרִאשׁוֹנָה מֻחֶמֶת הַתְּנַאי כִּי תָּלוּי וְעוֹמֵד אִי בָּעִית אָכְלָה וְלָקֶיָא. וְהִיא נִמְנַעַת מֻחֶמֶת הָאֲגוּד. וְאֵין זֶה

For even without any specification, she should be permitted [to remarry]! And this would have been a remarkable novel teaching, and the Talmud should not have remained silent about it. And his answer is insufficient to heal this great breach. But the truth regarding the resolution of the Mishneh LeMelech's difficulty there, and the difficulty of the Michtav Eliyahu — we have nothing but the first answer of the Sha'ar HaMelech, which are correct words, worthy of the one who spoke them. There still remains for us to clarify the reasoning of the Ran and the Maggid Mishneh, regarding what was written about the Rambam's view, concerning [the condition] "on condition that you not be intimate with so-and-so forever," and "that you not enter your father's house forever" — because what he [the husband] prohibited to her was not lifted. The explanation of the matter is: this is not kerisus, since it is because of his bond and his condition that she is prevented from entering her father's house, or from being intimate with so-and-so. For without the condition, she would have been able [to do so], and the prevention is due to the bond. Even though the bond eventually breaks upon the death of so-and-so or her father, nevertheless, she enters from one prevention into another: For when the father dies, she has no father's house [to enter], and when so-and-so dies, it is impossible to be intimate with him. Even though the second prevention is not due to the husband's bond, nevertheless, since initially it was due to him, and it rolled from one prevention to another — this is not kerisus. The husband's condition caused the first restraint. It then continues as a natural impossibility, so there is no severance. **However, [regarding] "that you not be intimate with my father or your father," the initial prevention was not due to his bond, for even without [the condition] they would not agree to be intimate with her. And since the initial prevention is not due to the condition, this is kerisus.** The condition imposes no actual limitation beyond what already existed. **However, [regarding] "to so-and-so," where the matter was contingent: If she wishes, she could be intimate with him. But the condition prevented her. The initial prevention is [therefore] due to the condition, and entering from one prevention to another — this is not kerisus. And there is no comparison to the case where he says "that you not eat pork forever" — there, the initial prevention is due to the condition, for it remains her choice: if she wishes, she may eat it and receive lashes. And she refrains due to the bond. And this is not kerisus. And in my opinion, these matters are straightforward to any understanding person. But**

כְּרִיתוּת. וּלְדַעְתִּי הַדְּבָרִים פְּשׁוּטִים לְכָל מֵבִין, אַךְ יַעַן רָאִיתִי מַר גִּיסִי בָּנָה דִּיּוּק עַל תְּשׁוּבַת הָרַאֲנַ"ח (סִימָן ו'). וַאֲנִי אוֹמֵר אִי דַּיְיקִינַן הָכִי. לָא תָּנִינַן, וּלְפִי הָעֲנִיּוּת דַּעְתִּי הָאֱמֶת כַּנִּזְכָּר לְעֵיל:

since I saw that my brother-in-law built a deduction upon the Teshuvah of the Ranach (Siman 6), I say: if we scrutinize in this manner, we will have learned nothing. This Talmudic phrase warns against drawing conclusions this way. **And in my humble opinion, the truth is as stated above.**

[אָמַר אַבְרָהָם בֶּן הַמְחַבֵּר לְדַעְתִּי לֹא בָּנָה מַר אָחִי נֵרוֹ יָאִיר דִּיק עַל תְּשׁוּבַת הָרַאֲנַ"ח. כִּי אִם הוּא הוֹצִיא הַדְּבָרִים מִדַּעְתּוֹ עַל פִּי הַקְדָּמוֹת וְהַצָּעוֹת וְאָמַר שֶׁבְּהָכִי נִיחִין דִּבְרֵי הָרַאֲנַ"ח, אַף שֶׁלֹּא הָיָה כַּוָּנָתוֹ לְכָךְ, וְהוּא עַל דֶּרֶךְ נִיבָּא, וְלֹא יָדַע מָה נִיבָּא. וְכֵן מַשְׁמָעוּת לְשׁוֹנוֹ עַיֵּין שָׁם] וּמַאן חַכִּים כְּמַר גִּיסִי נֵרוֹ יָאִיר לְשַׁדֵּד עֲמָקִים. כָּל דִּילָדָה אִימָא כְּוָתֵיהּ תֵּלֵד, זוּלַת זֶה דִּבְרֵי מַר גִּיסִי נֵרוֹ יָאִיר מְסַלְּאִים בַּפָּז, חַרִיפִים וּשְׁנוּנִים. וְהַדִּין דִּין אֱמֶת, וְהַכֹּל מְתוּקָן לְתַעְוּדָה וְלַתּוֹרָה, וְהָיָה זֶה שָׁלוֹם לְמַר וּלְתוֹרָתוֹ כְּנַפְשׁוֹ הַיְקָרָה וְנֶפֶשׁ אוֹהֲבוֹ נֶאֱמָנוֹ גִּיסוֹ.

[Said Avraham, son of the author: In my opinion, my brother, may his light shine, did not build a deduction upon the teshuvah of the Ranach. Rather, he derived the ideas from his own reasoning, based on premises and propositions, and then said that with this [approach], the words of the Ranach are also resolved, even though [the Ranach] did not intend [his words] in this manner. It is in the manner of "he prophesied, but did not know what he prophesied." A Talmudic expression meaning one arrives at a correct insight without intending it. **And so too is the implication of his [Rabbi Shlomo Eiger's] language — see there.] And who is wise like my brother-in-law, may his light shine, to plumb the depths? May every mother bear children like him! Beyond this, the words of my brother-in-law, may his light shine, are more precious than fine gold, sharp and incisive. And the ruling is a true ruling. And all is prepared for testimony and for Torah. May this be peace to him and to his Torah learning, as his precious soul [desires], and the soul of his faithful friend and brother-in-law.**

מֹשֶׁה הַקָּטָן סוֹפֵר מִפֹּה פְּרַנְקְפוּרְט דְּמַיִן.

Moshe the humble, Sofer, from Frankfurt am Main. The signature of the Chasam Sofer, who identified himself by his family's city of origin.

[אָמַר אַבְרָהָם בֶּן הַמְחַבֵּר הוֹאִיל דַּחֲבִיבִין לִי שְׁמַעְתְּתֵיהּ דְּרַב הַאי גִּיסִי הָאָדוֹן מוֹפֵת הַדּוֹר הַגָּאוֹן דפ"ב נֵרוֹ יָאִיר כּוּלֵי הַאי, אֶשְׁתַּעֲשַׁע בָּהֶם עוֹד רֶגַע. הִנֵּה הַיְסוֹד שֶׁיִּסַּד בְּהֶתֵּר זֶה, דְּטַעְמָא דְּרַבָּנַן סָבוֹרָאֵי מִשּׁוּם שֶׁכָּל תְּנַאי שֶׁהוּא לְצַעוֹרֵי שָׁבַק וּמָחַל בִּשְׁעַת מִיתָתוֹ. טוֹב בִּסְבָרָא וְנֶחְמָד לְהַשְׂכִּיל וּלְהָבִין עַל יָדוֹ הַגִּרְסָא שֶׁל הָרַמְבַּ"ם שֶׁהָיָה לִפְנֵי הָרַאֲבַ"ד דְּאִם מֵת הֲרֵי זוֹ מְגוֹרֶשֶׁת, וּמָה דְּצָרִיךְ מְחִילָה מִקּוֹדֶם הוּא מִשּׁוּם סָפֵק דִּלְמָא לְהַרְוָחָה קָמְכַוִּין, וְכַוָּנַת הָאָדוֹן בְּמַה שֶׁכָּתַב סָפֵק לְרַוָּחָה, הוּא לְמַה שֶׁכָּתַב

[Said Avraham, son of the author: Since the teachings of this great rabbi, my brother-in-law, are dear to me — the master, wonder of the generation, the Gaon of Pressburg, may his light shine — so greatly, I will delight in them for another moment. Now, the foundation he established for this permissive ruling — that the reasoning of the Rabbanan Savora'ei is that any condition which is for the purpose of distress, [the husband] abandons and forgives at the time of his death. [This] is good in reasoning, and it is desirable for understanding through it the version of the Rambam that was before the Ra'avad — [which reads:] "If he died, she is divorced." And the reason that mechilah is needed beforehand is because of the doubt — perhaps he intended [the condition] for financial benefit. And the intent of the master [the Chasam Sofer] when he wrote "doubt regarding

רַשִׁ"י זִכְרוֹנוֹ לִבְרָכָה (דַּף ע"ד עַמּוּד ב') דְּכָתַב בְּדִיבּוּר הַמַּתְחִיל דְּלְצַעוֹרָה אַכְוִין בָּזֶה הַלָּשׁוֹן, דְּסָתָם מְגָרֵשׁ אֶת אִשְׁתּוֹ מִשּׁוּם אֵיבָה הוּא מְגָרְשָׁהּ הִלְכָךְ מִסָּפֵקָא אָמְרִינַן לְצַעוֹרֵי אִיכְוִין, וּמָה מָתוֹק הוּא מִדְּבַשׁ לְפִי מַה שֶּׁכָּתַב מַר גִּיסִי דְּזֶהוּ טַעַם הָאִיבַּעְיָא, לְאַלְתַּר הִתִּירוּהָ אוֹ לְאַחַר שְׁנֵים עָשָׂר חֹדֶשׁ הִתִּירוּהָ דְּהַיְינוּ דְּמִסָּפֵקָא אִי אָמְרִינַן לְצַעוֹרֵי אִיכְוִין אוֹ לְהַרְוָחָה, וּבְכָךְ נִרְאֶה לִי לְיַישֵׁב מַה שֶּׁהִמְצִיא רַשִׁ"י זִכְרוֹנוֹ לִבְרָכָה דְּטַעְמָא דְּרַבָּנַן בְּאָבְדָה אַצְטְלִיתוֹ מִשּׁוּם סְפֵק לְצַעוֹרֵי כַּנּוּזָכָר לְעֵיל וּמָה הִכְרִיחוֹ לְכָךְ. וּבִפְרָט דְּבִפְשׁוּטוֹ מוּכָח לְהֵיפוּךְ מִדְּסַגְיָא בַּהֲנָקָה יוֹם אֶחָד, אַלְמָא דְּוַדַּאי לְצַעוֹרֵי, וְנִצְטָרֵךְ לְדָחוֹק וּלְחַלֵּק, וְלָמָּה לֵיהּ לְרַשִׁ"י כּוּלֵי הַאי, אֲבָל לְפִי דְּבְרֵי מַר גִּיסִי הַגָּאוֹן נֵרוֹ יָאִיר חֲרֵי זֶה נָכוֹן, דְּהָא זֶה אִיבַּעְיָא וְלֹא אִיפְּשְׁטָא וַהֲוֵי סָפֵק, וְאוּלָם עִם כָּל זֶה בַּל זָכִיתִי לֵירֵד לְסוֹף דַּעַת גִּיסִי נֵרוֹ יָאִיר. וְאֵיךְ אֶפְשָׁר לְהַעֲמִיס כֵּן בְּכַוָּנַת הָרַמְבַּ"ם וְהָרָאָבַ"ד, דְּאִם כֵּן הֵם הַדְּבָרִים, מֵהָרָאוּי שֶׁבְּאָבְדָה אִיצְטְלִיתוֹ יִהְיֶה גֵּט סָפֵק, דְּלְצַד דְּלְהַרְוָחָא בְּדָמִים סַגְיָא וְלָמָּה כָּתַב הָרַמְבַּ"ם אֵינוֹ גֵּט, דְּהַיְינוּ בָּטֵל וַדַּאי כַּנּוֹדָע כָּל לָשׁוֹן אֵינוֹ גֵּט שֶׁבָּרַמְבַּ"ם, וְהָרָאָבַ"ד גַּם הוּא שָׁתַק לֹא עָנָה אוֹתוֹ וְאוֹדוּיֵי אוֹדוּ לֵיהּ בָּזֶה, אלמא דהם לא סבירי להו כרש"י]:

financial benefit" accords with what Rashi wrote (folio 74b),[13] **where he wrote in the comment beginning "that he intended to distress," in these words: "A person who divorces his wife ordinarily does so because of enmity; therefore, out of doubt, we say he intended to distress her." And how sweet as honey [are these words], according to what my brother-in-law wrote: that this is the reason for the Talmudic inquiry: "Did they permit her immediately, or did they permit her after twelve months?" Meaning, [the Talmud] is uncertain whether we say he intended to distress her or for financial benefit. And with this, it seems to me to resolve what Rashi innovated: that the Rabbanan's reason [in the case where] his cloak was lost is due to "doubt [whether it is] to distress," as mentioned above — and [one might ask:] what compelled him to [explain it] this way? Especially since the plain reading proves the opposite: From the fact that nursing for one day suffices, it is evident that it is certainly for distress.** If it were for financial benefit, one day of nursing would not suffice. **And we would need to strain and draw distinctions, so why would Rashi need all of this [the "doubt" framework]? But according to the words of my brother-in-law the Gaon, may his light shine, this is correct: For this is a Talmudic inquiry that was not resolved, and it remains a doubt.** The unresolved *ibaya* is precisely the source of Rashi's "doubt" formulation. **However, despite all this, I have not merited to fully fathom the opinion of my brother-in-law, may his light shine.** The editor now raises his own difficulty with the Chasam Sofer's approach. **And how is it possible to impose this interpretation upon the Rambam and the Ra'avad? For if this is indeed the case, it would be appropriate that in [the case where] his cloak was lost, the ruling should be that the get is doubtful — for on the possibility that [the condition is] for financial benefit, its monetary value would suffice [to fulfill it], so why did the Rambam write "it is not a get"? Meaning: it is certainly void, as is known — every formulation of "it is not a get" in the Rambam means it is completely void. And the Ra'avad, too, was silent and did not respond to him [on this point], and conceded to him on this. This proves that they [the Rambam and Ra'avad] do not hold like Rashi.]** The editor notes that if the Rambam and Ra'avad held that there is a genuine doubt whether conditions are *letzaara* or *leharvacha* (as Rashi states), the lost-cloak case should yield a doubtful *get*, not a definitively void one.

[13] Rashi on Gittin 74b, s.v. דלצעורה אכוון. Rashi writes: דסתם מגרש את אשתו משום איבה הוא מגרשה, הלכך מספיקא אמרינן לצעורי איכוין — "A person who divorces his wife ordinarily does so because of enmity; therefore, out of doubt, we say he intended to distress her."