

A Problem Concerning the Divorce of Converso Couples: The Capacity of Coverts to Write Divorce Documents

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The article briefly presents some of the difficulties Iberian converso couples faced if they wished to divorce according to Jewish law before the expulsion from Spain. It discusses more extensively some halakhic decisions written by Shim'on b. Tsemah Duran and by his grandson, Tsemah b. Shelomo Duran regarding the halakhic capacity of converted Jews to write divorce documents themselves. The responsa presented in the article treat the case of a Majorcan scribe (sofer) who after his conversion to Christianity was still entrusted with tasks pertaining to his profession; and deals with the case of another Majorcan converso who wrote a get to his wife himself.

The phenomenon of forced or voluntary conversion that gravely afflicted Iberian Jewry at the end of the 14th century and during the 15th century, undermined the family structure of Jewish communities. Naturally, the conversion of an individual affected family relationships as well. As forced conversion was generally imposed upon communities as a whole, in most cases entire families converted.¹ This is not to say that all members of an extended family were necessarily baptized by force, but households or married couples were likely to undergo forced conversions together. However, it was possible that a couple became separated by conversion if one of them was baptized and the other was not. In such cases if they wished to remain together, they either had to leave for a land where they could both practice Judaism openly, or the one who had not been converted yet had to accept baptism. The other possibility would have been to continue conjugal life in a mixed marriage, but this was not tolerated by Christian society. Although cohabitation not sanctified by the Church

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¹ It is important to recall that collective, literally *forced* conversions that confronted the communities with the option of baptism or death happened only during the riots of 1391 and in Majorca in 1435. The massive conversions of the 15th century were motivated by political, social and psychological pressure, but were not caused by imminent threat of death.

occurred during the Late Middle Ages, it was not a viable option for those who has recently converted, or for members of a marginalized minority who were constantly under the watchful and frequently viewed with hostility by their Christian neighbours². If the couple decided to separate, the woman faced a difficult situation in case she wished to remarry under Jewish law. In order to do so she had to leave Christian territory with or without her children if she had any, establish herself in a wholly new environment, and be able to present a *get* (divorce document) acceptable for the rabbinical court of law testifying that she was no longer bound to her former husband. Also if they were both baptized, eventually only one of them decided to leave Christian territory, which led to the same problems as the ones enumerated above. The fact that the *responsa* deals only with cases of women wanting to obtain a divorce from their baptized husbands, complies with Jewish law that did not grant equality to genders: if a woman converted and wanted to stay Christian, the husband remaining Jewish (or returning to Judaism) could marry another woman without any difficulty. However, if a man converted, the wife had to obtain a bill of divorce from her converso husband in order to remarry. Therefore divorce appeals by men are not to be found in the *responsa*, since they caused no *halakhic* problem. This should be kept in mind in order to avoid the erroneous impression that women were more eager to return to Judaism than men. Summing up the possibilities a couple had if one of them converted: a) the party remaining Jewish could accept baptism; b) they could emigrate together to Granada, North-Africa or elsewhere and live as Jews; c) the party adhering to Judaism could emigrate alone, in which case the woman had to obtain a Jewish bill of divorce from the husband staying behind so that she could remarry. This last point is the one discussed in the *responsa*, since only this constituted a *halakhic* problem.

Obviously, obtaining a valid divorce document was not at all simple. It needed first of all the husband's consent to grant it, and then a competent person to write a proper bill of divorce, witnesses to sign it, and eventually an agent to deliver it to the woman. Leaving aside *halakhic* considerations one should ask whether convert husbands were ready to write (or at least, sign) such documents connecting them to

² It has to be remembered that before the foundation of the National Inquisition in 1481 the Papal Inquisition (established by George IX in 1230-1232) already has been operating in Iberia. About marital life, sexual relations and related issues of Mediaeval Iberian Jews, see Assis 1988. Cf. Deut. 24:1.

their former faith at all; whether witnesses were willing to participate; whether convert witnesses and husbands were not afraid of using their former Jewish names; whether the document could be delivered to the wife; whether there remained any connection between them at all if great distance separated them.

Divorce According to Jewish Law

Dissolution of Jewish marriage is possible by handing over a divorce document by the husband to his wife. The basic formal requirements of this act are referred to in the Torah³ and were elaborated by the rabbinical authorities. According to Maimonides there are ten requisites deduced from this passage which are indispensable for the validity of the divorce document: 1) the husband should divorce his wife by his free will; 2) he should divorce her by means of a written document; 3) it should be stated explicitly that the husband sends out his wife (and not only that he leaves her); 4) it should be stated explicitly that the *get* severs the relationship between the husband and the wife ; 5) the document should specify the husband's and the wife's names; 6) the *get* should be complete, lacking only the act of handing it over in order to be effective; 7) it should be given to the wife; 8) it should be given to her in the presence of witnesses; 9) it should be given to her with the intention of divorce; 10) it should be given to her by the husband or by his agent.⁴ Rabbinical sources include other requirements, such as those concerning dating and signatures of the witnesses. The Mishnah enumerates five categories of those who are unfit for writing the divorce document, among them Gentiles.⁵ With respect to the issue of conversos an important and much quoted statement made by Maimonides establishes that a convert is like a Gentile⁶ and it may be deduced from this statement that he is unfit to write a divorce document.

Divorce becomes effective when the *get* reaches the hand of the wife. If for some reason the husband cannot deliver the *get* personally, he can appoint an agent for the delivery, who conveys the divorce document to the wife. On the other hand,

³Deut 24:1.

⁴ Cf. MT, Hilkhot Gerushin 1:1.

⁵ Cf. Git 2:5.

⁶ MT, Hilkhot Gerushin 3:15. See the discussion of this passage below.

the wife can appoint an agent for acceptance who can receive the *get* on her behalf. In this case the divorce becomes effective when the *get* reaches the hand of the agent. If the husband is unable to make the arrangements for the divorce himself, he can appoint a scribe, witnesses and an agent of delivery to settle the whole process of the divorce. In this case the husband must state his intention in the presence of the scribe, the witnesses and the agent by saying “write and give a *get* to my wife”. Sometimes, if the couple became separated, one of them decided to leave the land of persecution and to immigrate to another country while the other remained there, in which case, if they could not arrange the divorce before their separation, the *get* had to be sent with an agent. Originally, the possibility of delivering a *get in absentia* was not meant to solve the problems of conversos, but this *halakhic* procedure became of paramount importance in times of religious persecutions when couples easily became separated by the circumstances.

The following cases mentioned in the *responsa* can illustrate hardships and adversities such couples faced: for example, Shim'on b. Shelomo Duran: *Yakhin u-Boaz* 2:19 discusses the case of a woman who escaped conversion by climbing out of a window leaving behind her suckling son and her husband, and wanted to marry again without obtaining a *get* from her husband. Yitshaq b. Sheshet Perfet: *Responsa*, no. 14 treats the case of an engaged couple who were forcibly converted to Christianity. The bridegroom, following the 1391 riots, left for Muslim territory by ship, while the girl remained with her family in Majorca. Before the departure of the ship, the girl's mother and the bridegroom hastily reconsidered the terms of marriage defined previously, and the betrothal was carried out. However, the father of the girl did not give his consent, and the witnesses were converts. The question was whether the girl (in Majorca) was obliged to obtain a *get* from the bridegroom, who left for North Africa. Tsemah b. Shelomo Duran: *Yakhin u-Boaz* 1:107 discusses the case of a woman who was baptized and then left her husband without divorcing him. She married a forced convert and they lived together for 18 years. Finally they decided to return to Judaism together and to establish their marital union according to Jewish law, and they asked the first husband to write a *get* for the woman. Otro caso, este tomado de los *responsa* de Shim'on b. Tsemah Duran (*Responsa*, 2:176) deals with the litigation between a husband who managed to escape forced conversion, and his wife who was forcibly baptized by the rioters who plundered their home. The wife

rented a boat and followed her husband to North Africa, leaving behind his properties, including goods stored up in a warehouse. After rejoining her husband, he decided to divorce her, but refused to pay her *ketubbah* stating that he was not liable to finance the escape of his wife.

The validity of divorce documents written, witnessed and delivered by conversos was discussed by eminent *halakhic* authorities, among them Shim'on b. Tsemah Duran (1361, Majorca – 1444, Algiers) and his grandson, Tsemah b. Shelomo Duran (15th century, Algiers). One of the problems that emerged was the *halachik* capacity of the conversos to write a divorce document themselves. I will hereby present three examples of *responsa* concerning this issue.

Shim'on b. Tsemah Duran: Responsa Nos. 3:40, 3:43: About a Converso Scribe

Both *halakhic* decisions are related to the same situation: the validity of a divorce document written by a converso scribe (“*sofer meyushar be-ktivato*”⁷). The fact that a converso could continue to pursue this profession to any extent is interesting in itself. In accordance with Jewish tradition a scribe must be an irreproachable person, since he is supposed to write down the name of God, an act that should be carried out with a proper intention and in a state of ritual purity. The divorce document does not contain the name of God and the conditions of its writing differ completely from that of a *mezuzah* for instance, but people in general were not fully aware of distinctions of this kind.⁸ In any case it is noteworthy that a converso scribe was entrusted with a task which pertains to the religious sphere.

The question of *responsum* no. 3:40 is missing. As can be concluded from the answer, a convert⁹ scribe in Majorca wrote a divorce document for a woman in

⁷ Shim'on b. Tsemah Duran: *Responsa*, 3:43.

⁸ That is the reason why every kind of documents can be found in the *genizot* where in principle only sacred texts, or texts that contain the name of God should be stored. As people could not differentiate between the various types of texts, they tended to store every kind of texts, sacred and profane alike, in order not to destroy something that might contain the name of God. About the above mentioned conditions of writing a *get* on the one hand, and sacred texts on the other, see especially MT, Hilkhote Tefillin, Mezuzah we-Sefer Torah 1:13, 15; Hilkhote Gerushin 3:15.

⁹ The expression that appears in the text is *meshummad* (voluntary convert). However, from the other *responsum* dealing with this case it is obvious that the person in question was a forced convert.

Tenes¹⁰ who was divorced by means of this *get* and married another man. Duran stated that the *get* was invalid since the person who wrote it committed idolatry and desecrated the Shabat publicly, consequently he had to be considered as one who disregarded the entire Torah.¹¹ Therefore he became similar to a Gentile, and as such was unfit to write the divorce document.¹² Consequently, if the woman had children from the second man, they should be considered as *mamzerim* (offspring from an adulterous union), and if she wanted to remarry she had to divorce her first husband properly. However, according to *Halakha*, she was forbidden to marry her second husband, as she had had an adulterous relation with him. Shim'on b. Tsemah Duran suggested that the leaders of the Majorcan Jewish community specify why they held the converso scribe suitable for writing divorce documents. Until the answer of the Majorcan community arrived, the discussion should be suspended.

The *responsum* which contains the requested details is no. 3:43. It comprises substantial information supplied by the Majorcan community about the converso scribe who wrote the *get*. Unfortunately, the full text of the evidence given by them is not included in the *responsum*, but the main points are disclosed: the scribe was forcibly converted but he always made every effort to observe the Jewish laws when it was possible. On the other hand, he undoubtedly participated in Christian worship and desecrated the Shabat publicly when his life was in danger. As can be inferred from the *responsum*, he refused to partake of the sacraments before his death: "...even when he died he did not follow the custom of the Gentiles, so they did not want to bury him, as [it is their] custom [with] those who abjure their religion, until his wife spent a lot of money [in order to bribe them to bury him]".¹³

Shim'on b. Tsemah Duran's answer discusses the passage in the *Mishneh Torah* according to which it might seem that converts are unfit to write divorce documents: "Everyone is suitable for writing a *get*, with the exception of five: a Gentile, a servant, a deaf-mute, a mentally retarded person and a minor. [...] A Jew who becomes a voluntary convert (*nishtamed le-avodah zarah*), or violates the laws

¹⁰ Tenes is a port city between Mostaganem and Algiers.

¹¹ Hul 5a: "Idolatry is so grave that he who denies it is as if he accepted the whole Torah". It is inferred from this that he who accepts idolatry is as if he denied the whole Torah.

¹² Cf. Git 23a and MT, Hilkhoh Gerushin 3:15.

¹³ Shim'on b. Tsemah Duran: Responsa, 3:43.

of Shabat in public, is like a Gentile in every respect".¹⁴ In his opinion, this ascertainment might imply a contradiction: if the converso is unfit to write the *get*, he would presumably be unfit to conclude a marriage, since there is no legal basis for a distinction between one and the other. However, Maimonides himself declares the marriage of a convert to be valid,¹⁵ for this is clearly established in the Talmud, even in case of a voluntary convert or a proselyte who returns to his former faith.¹⁶ Now, if the marriage of a voluntary convert was valid, it could be supposed that a *get* given or written by him was valid as well.¹⁷ Shim'on b. Tsemah Duran added that this argument was already proposed by Yitshaq b. Abba Mari, the author of *Sefer ha-Ittur*.¹⁸ Furthermore, according to Shim'on b. Tsemah Duran, it was a widespread custom among converts to marry and divorce according to Jewish ritual, and the validity of such marriages or divorces was not questioned by anyone. The latter remark was repeated with the same phraseology by his grandson, Shim'on b. Shelomo Duran in two of his *responsa* dealing with marriage. In the first instance (*Yakhin u-Boaz* 2:19) he does not specify the origin of the phrase, but in the second *responsum* (*Yakhin u-Boaz* 2:31) he attributed it to Yitshaq b. Abba Mari. Apparently he had copied it from the *responsum* of his grandfather, Shim'on b. Tsemah Duran, as it can be seen from the correspondence of the wording of the two *responsa* in these passages, and he attributed the remark to Yitshaq b. Abba Mari because the latter was mentioned in his source immediately before the quoted phrase.

Shim'on b. Tsemah Duran explained the apparent contradiction among the two passages of the *Mishneh Torah*¹⁹ by stating that the ruling established in Hilkhoh Gerushin 3:15 is peculiar and relevant to the problem discussed there (writing a *get*) exclusively; however, it is irrelevant as to the question of marriage. In his view a Gentile was unfit for writing a divorce document for two reasons. Firstly, issuing the *get* was an act of agency. A Gentile was unfit for marriage, consequently he was unfit

¹⁴ MT, Hilkhoh Gerushin 3:15.

¹⁵ Ibid., Hilkhoh Ishut 4:15: "If a voluntary convert (*meshummad*) betroths a woman his marriage is absolutely valid, even if he commits idolatry by his own free will; and she needs *get* [in order to be divorced]".

¹⁶ Cf. Yeb 16b, 47b; Bek 30b.

¹⁷ It is needless to say that if the marriage of a voluntary convert is valid, that of a forced convert must be valid as well.

¹⁸ Cf. Yitshaq b. Abba Mari: *Sefer ha-Ittur*. Qof (Qiddushin) nos. 37-42, p. 78a.

¹⁹ Hilkhoh Ishut 4:15 declaring valid the betrothal of a voluntary convert; and Hilkhoh Gerushin 3:15 establishing that a convert Jew is similar to a Gentile and consequently unfit for writing a divorce document.

for divorce, and therefore he could not act as an agent in tasks related to it.²⁰ This reason evidently does not apply in the case of a converted Jew, since a convert is fit for marriage, and also for divorce. Secondly, according to the explanation of Duran, writing the *get* required proper intention. But a Gentile is not subject to Jewish law, consequently he follows his own intention and does whatever he wishes, therefore proper intention for writing the *get* cannot be assumed in his case. A converted Jew, however, if he agrees to write a divorce document would presumably follow the intention demanded by the *halakhic* authorities.

These observations concerning the quoted passage of the *Mishneh Torah* were only of theoretical interest, since Shim'on b. Tsemah Duran closed his discussion remarking that these considerations are redundant in the case under question, where it was testified by witnesses that the converso who wrote the *get* observed the Jewish laws as far as it was possible and committed transgressions only under severe pressure. Therefore, the *get* written by him was valid even according to Maimonides' ruling.

*Tsemah b. Shelomo Duran: Yakhin u-Boaz 1:125: On a Converso Writing a Get to his Wife*²¹

The *responsum*, sent to Shelomo Zalmati of Játiva, was written by Tsemah b. Shelomo Duran when he was suffering from an illness in Majorca (as is mentioned in the first lines of the text), which makes possible its approximate dating. Tsemah b. Shelomo Duran returned from Majorca to Algiers in 1468²², therefore the *responsum* was written before that date.

In this case it is not explicitly stated that the converso writing the divorce document was a professional scribe. However, the *responsum* shows some similarity to the former one, especially because the deliverer of the question gave testimony about the personality and the attitude of the converso who wrote the *get*: "...he is a God-fearing person and he does not eat meat of an animal which was not slaughtered in compliance with the laws of ritual slaughter, and he does not eat leavened food

²⁰ MT, Hilkhot Ishut 3:17/

²¹ See a brief discussion of this *responsum* in Netanyahu 1966: 51-52. Cf. also Orfali Levi 1982: 32.

²² Cf. Zimmels 1971: 307.

during the Passover, and he refrains from every transgression as far as he can, and he never desecrates the Shabat”.²³

In the opinion of Tsemah b. Shelomo Duran, there is no general rule that would allow determining whether a convert is fit for the writing of the divorce document. He referred to the passage of the *Mishnah* (Git. 2:5) and the *Mishneh Torah* (Hilkhot Gerushin 3:15) discussed before, and ascertained that the two criteria for determining the status of a converso were participation in idolatric ceremonies and public desecration of the Shabat. He added however, that the forced converts were evidently not willful idolaters, and that they had no faith in the religion which they were forced to adopt: “I say concerning these forced converts that it is evident that they do not commit idolatry voluntarily, and they have no faith in it at all”.²⁴ He remarked also that many of them observed the Shabat as well.²⁵ As to the case in question it was obvious for Tsemah b. Shelomo Duran that the *get* written by the forced convert who adhered to Judaism in secret was valid.

Conclusion

The legal opinions presented in cited documents agreed upon the fact that in accordance with the ruling of Maimonides a voluntary convert was unfit for writing a divorce document. However, both authors obviously held that forced conversos differed from willful apostates and therefore they were not necessarily disqualified from writing a *get*. On the other hand, they were not to be held unconditionally fit for writing it either. Evidently the conversos did not form a homogeneous group, all members of which could have been assumed to violate the Shabat and to participate in Christian worship even if not under imminent danger of life; but neither could it be supposed that all of them observed Jewish law in secret. Therefore, in each controversial case an investigation had to be carried out; if the local Jewish community could certify that the converso in question adhered to Judaism as far as he could, then he was considered fit for writing divorce documents. In the cases under

²³ Tsemah b. Shelomo Duran: *Yakhin u-Boaz* 1:125.

²⁴ *Idem*.

²⁵ Cf. the contrary opinion expressed by his father, Shelomo b. Shim'on Duran: *Responsa* no. 553 about testimony concerning wine, in which the author states that all of the forced converts violate the Shabat publicly, even if they are not literally forced to do so.

discussion such an investigation was feasible, or had already been carried out with the result that the converso was declared observant of the Jewish law to a certain extent. Consequently, these rabbinical decisions did not put the divorced women in extremely difficult situations. It has to be remarked however, that this situation underwent a dramatic change following the expulsion of the Jews from the unified kingdom of the Catholic Monarchs, when such investigations were no longer conceivable.

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