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On Restoring the Shaliah l'Kabalah

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שאלה

Jewish law permits the appointment of a שליח (agent) to act on a person's behalf and the action of the שליח is considered as effective and as binding as if done by the principal. Thus, a man, for his convenience or for any other reason, may designate agents to write and deliver a *get* (writ of divorce) to his wife and the marriage is dissolved when the *get* is delivered to her possession. In Talmudic times it was equally possible for the wife to appoint a שליח to accept the *get* from her husband and thus not be required to be personally present for the delivery to her, with the *get* becoming effective upon delivery to her שליח.

In the Middle Ages, Ashkenazic Jews, while retaining the capability of the husband to appoint a שליח to act on his behalf in the divorce procedure, began to deny that capability to the wife. The rule denying the wife the privilege of appointing a שליח לקבלה (an agent to accept the *get* on her behalf) is attributed to Rabbenu Peretz. The general custom now prevalent among Ashkenazic Jews is that the wife may not appoint a שליח to act on her behalf in the ritual acceptance of the *get*.

Inasmuch as in modern times, the wife may possibly be as involved in economic and social activities as the husband, requiring her personal involvement in the procedure can be as burdensome for her as it is for the husband. Therefore, for moral and ethical reasons, should the CJLS rescind the discriminatory practice now prevalent and reinstate the ability of the wife to appoint a שליח to represent her in the *get* procedure?

תשובה

There is no question that, halakhically, a woman may appoint a שליח לקבלה (an agent to accept the *get* for her). This is derived from a baraita which states:

"ושלח" מלמד שהוא עושה שליח: "ושלחה" מלמד שהיא עושה שליח:
"ושלח ושלחה" מלמד שהשליח עושה שליח (קדושין מ"א:).

ושלח implies that he may appoint an agent; ושלחה implies that she may appoint an agent; ושלח ושלחה implies that the agent may appoint an agent (Kiddushin 41b).

The Mishnah (Gittin 6:1,2) specifically deals with the effectiveness of a woman to appoint a שליח לקבלה. In Mishnah 1 it is clear that if the woman instructs her שליח with the language: התקבל לי גטי, "Accept my *get* for me," once the husband has given it to the שליח, the husband can no longer retract. As Rashi explains:

כיון דאיהי שויחיה שליח הרי הוא כידה ונתגרשה מיד בקבלתו של זה.

Since she has made him her שליח, he is the equivalent of her hand and she is divorced immediately upon his acceptance of it.

R. Shimon ben Gamaliel adds that the language of agency appointment does not have to be specifically התקבל לי גטי ("Accept my *get* for me") but even טול לי גטי ("Take my *get* for me") would have the same effect. The Gemara (63b) cites a baraita that expands it even further by adding שא לי ויהי לי בידך, "Pick up for me, let it be mine in your hand," as valid language of agency appointment.[1] Mishnah 2 only delineates the proof required for her to establish her status as a divorcee since, as the Gemara notes (64a), בשעת גזרה שנו: "This was taught at a time of foreign oppression," meaning that it was dangerous to keep גטין and they were destroyed immediately upon delivery to the שליח – a further indication of the effectiveness of the שליח לקבלה as finalizing the procedure.[2]

Both the Shulhan Arukh and the Rambam codify this in no uncertain terms. In Even HaEzer 140:3 it states:

האשה עושה שליח לקבלה והיא מגורשת בקבלתו מיד כשיגיע הגט לידו ודינו כדין האשה לכל דבר לענין אם זרק גט לחצרו.

The wife may appoint a שליח לקבלה and she is divorced immediately upon his acceptance when the *get* was thrown into his courtyard.

In 140:4 the precise language of agency appointment is specified, אמרה לו התקבל לי גיטי או טול לי גיטי כולן לשון קבלה הן: "If she said 'Accept my *get* for me', or 'Take my *get*', these are both valid expressions for agency appointment," with the Rema (Rabbi Moses Isserles) adding ויש אומרים דה"ה שא לי: "And there are those who say that the same is true if she said, 'Pick up for me,'" clearly based on the baraita cited *supra*.[3]

It should be pointed out that the Rema – who, in the sections of the Even HaEzer cited above, voices no objection to the institution of a שליח לקבלה – in Sec. 141:29, which describes the procedure of delivery to the שליח לקבלה, adds the following gloss:

וכל זה מדינא, אבל י"א שנכון להחמיר שלא לגרש ע"י שליח לקבלה כלל. וכן נוהגין.

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[1] The גירסא of the Rif leaves out שא לי.

[2] The requirement of proof by witnesses of delivery by the husband and receipt by the שליח לקבלה as necessary only when the *get* itself is unavailable is clearly stated by the Rambam in Hilkhot Gerushin 6:2: בשאבד הגט או נקרע אבל אם היה הגט יוצא מתחת ידי שליח קבלה אינו צריך עדים במד"א. See also Even HaEzer 101:10.

[3] The Shulhan Arukh evidently follows the גירסת הרי"ף with the רמ"א adding שא לי which is found in our texts, as a יש אומרים.

> This is entirely in accordance with the law, but there are some who say that it is proper to be more strict and not divorce through a שליח לקבלה at all, and that is our practice.

The permissibility of a שליח לקבלה is expressed by the Rambam in Hilkhot Gerushin 6:1:

> השליח שעושה האשה לקבל לה גט מיד בעלה הוא הנקרא שליח קבלה ומשיגיע הגט ליד שלוחה תתגרש כאילו הגיע לידה.

> The שליח that the wife appoints to accept her *get* for her from the hand of her husband is called שליח לקבלה and when the *get* reaches his hand she is divorced as if it had come directly to her hand.

Despite this clear mandate, it has nevertheless become customary not to allow a שליח לקבלה. When this became the general rule is not easily ascertained since, as we have already seen, the Shulhan Arukh permits it and even indicates the procedure for such an agency appointment (Even HaEzer 101:8). Also, as late an authority as the נודע ביהודה (Rabbi Ezekiel Landau 1713-1793) permits it, only raising questions as to the specificity of the appointment language. Similarly, an even later source, the קב נקי (Kav Naki), delineates the procedure (סדר שליח לקבלה סעיף ב׳), differing from the Even HaEzer only by requiring that it be before a bet din and not only in the presence of two witnesses, as the Even HaEzer requires.[4]

There are two reasons usually advanced for the disallowal of a שליח לקבלה. One reason given is that it is a בזיון לבעל (disrespectful of the husband). Yet this rationale is applied in the Gemara only to the case of שליח to שליח. There is a dispute between Rav and R. Hanina (Gittin 63b), with Rav saying אין האשה עושה שליח לקבל לה גיטה מיד שליח בעלה (the wife may not appoint a שליח to accept her *get* for her from her husband's שליח), and R. Hanina maintaining אשה עושה שליח לקבל לה גיטה מיד שליח בעלה (the wife may appoint a שליח to accept her *get* for her from her husband's שליח). When the Gemara asks מ"ט דרב, "What is Rav's rationale?" they give two possible rationales: איבעית אימא משום בזיון דבעל, אב"א משום חצרה הבא לאחר מכן ("if you wish, I can say that his reason is disrespect of the husband, or if you wish, I can say his reason is on account of the possibility of her courtyard being acquired later"). The latter rationale statement means that while it is true that the *get* must be acquired by her, it can be acquired by חצרה (her courtyard) as an extension of ידה (her hand): חצר איתרבאי משום ידו, "A courtyard has been included as subsumed under his hand" (Bava Metzia 12a). However, if she acquired the courtyard after the *get* was placed there, the acquisition is ineffective since the *get* must be transferred to her, either into her hand or into her courtyard as an extension of her hand, and at the time of transfer, the courtyard was not hers. Rashi then explains that permitting a שליח לקבלה to accept it from the husband's שליח could create a false analogy with the courtyard by denoting the courtyard as the husband's שליח and then by her acquiring the courtyard it becomes her שליח לקבלה.

In any event, whatever the rationale of Rav, his view is apparently rejected by most of the major poskim. That a woman may appoint a שליח לקבלה to accept the *get* on her behalf from her husband's שליח is stated in Even HaEzer 141:1, where the Rema, like the נודע ביהודה (Noda Biyhudah – Rabbi Ezekiel Landau), only raises the question of the specificity of language required. In the Rambam (Hilkhot Gerushin 6:9) it states quite clearly: ויש לאשה לעשות שליח קבלה לקבל לה גיטה מיד שלוחו של הבעל, "A wife may appoint a שליח לקבלה to receive her *get* for her from her husband's שליח." The מגיד משנה (Magid Mishnah

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[4] The Kav Naki attributes the rule to Rabbenu Peretz. He cites later authorities who found many objections to the rule. He cites the only reason for their reluctance to reinstitute the שליח לקבלה – שלא לפגוע בכבודו של רבנו פרץ וחבריו – "Not to offend the honor of Rabbenu Peretz and his colleagues."

ad locum) quotes the view of Rav in the Gemara from Gittin cited *supra* but adds, citing the Halakhot Gedolot and R. Hai Gaon, that הלכה כר׳ חנינא – "the law is in accordance with R. Hanina." He sees this as also the view of the Rambam, R. Tam and the Rashba, adding וזה עיקר – i.e., the predominant position. His statement also reflects the view of the Rif (Rabbi Isaac Alfasi) who says clearly that הלכה כר׳ חנינא – "the law is in accordance with R. Hanina" – and who also cited R. Hai Gaon.

Nevertheless, the Shulhan Arukh, op. cit., adds:

> וי״א שאין האשה יכולה לעשות שליח לקבל מיד שליה בעלה.
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> There are those who say that a wife may not appoint an שליח to accept from her husband's שליח.

The Bet Shmuel *ad locum* cites the rationales ascribed to Rav in the Gemara adding that if we accept the rationale of בזיון לבעל (disrespect to the husband) this would create a חשש דאורייתא (a concern regarding the validity of the *get* under Torah law), since the husband might not be transferring the *get* with full and unconditional volition. Parenthetically, he quotes a responsum of the Rashba (Rabbi Solomon b. Adret) stating that similarly the husband cannot appoint a שליח to give the *get* to the wife's shaliah, משום בזיון דהאשה (because of disrespect to the wife). He goes on to state that if we accept the second rationale משום דדומה לחצרה הבאה אח״כ (because it is similar to a courtyard acquired later by her) then there is only a חשש דרבנן (a concern only vis-à-vis rabbinic law). He then further elaborates:

> ואם היא עשתה שלוחה בתחילה אז משום חצירה הבאה אח״כ ליכא ומשום בזיון איכא אע״ג דהיא עשתה שלוחה קודם לכן ואם היא היתה טרודה בעת שהביא לה גט ומחמת טרדה עשתה שליח לקבלה י״א בכה״ג ליכא משום בזיון הבעל והר״ן כתב אף בכה״ג איכא משום בזיון דהבעל וכתב בתשו׳ ריב״ש סי׳ נ״ה דהעיקר הוא דהאשה יכולה לעשות שליח לכן היכא דאיכא שום חשש איסור אם ישלח ע״י שליח לידה עדיף טפי שתעשה היא ש״ק לקבל מיד שלוחו.
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> If she appointed her שליח first, then the rationale regarding the later-acquired courtyard would not apply but the rationale regarding disrespect of the husband would still be applicable even if she appointed her שליח first. But if she was occupied at the time that he [her husband's שליח] brought her the *get* and because of her preoccupation she appointed a שליח לקבלה, there are those who say that in that case there is no disrespect of the husband. But the Ran (Rabbenu Nissim) wrote that even in those circumstances there is disrespect of the husband. But in the Responsa of Rabbi Isaac b. Sheshet, No. 55, it is written that the basic principle is that a wife may appoint a שליח. Therefore where there is any concern regarding forbidden relations when the *get* is sent via a שליח it is preferable that she appoint a שליח לקבלה to receive it from the husband's שליח.

However, the פתחי תשובה quotes ספר גט מקושר who disagrees with the last point.

One is prompted to ask what constitutes בזיון הבעל (disrespect of the husband). In other words, in what way is the husband humiliated or offended by her appointment of a שליח לקבלה to accept the *get* from his שליח להולכה (delivery שליח)? The statement of the Ran cited by Bet Shmuel, *supra*, is instructive. Rabbenu Nissim takes issue with the conclusion of the Rif that הילכך הלכה כר״ח – "Therefore the law is in accordance with R. Hanina." The Rif comes to that conclusion based upon the case cited by the Gemara in

connection with the dispute between Rav and R. Hanina wherein the husband's שליח found the wife while she was kneading, and rather than interrupt her kneading, she responded to the שליח by saying להוי בידך (גרסת הריף: להוי פקדון בידך) – "Let it be in your hand" (the reading of the Rif, "Let it be a bailment in your hand"). Since the subsequent discussion of the case and its determination focused only on the fact that in that case לא חזרה שליחות אצל הבעל (agency had not returned to the husband), and when there was a separate שליח לקבלה that issue would not arise, the Rif said, הלכך הלכה כר"ח – "Therefore the law is in accordance with R. Hanina." Rabbenu Nissim, however does not necessarily accept the inference drawn by the Rif and R. Hai Gaon. He states as follows:

> זהו דעתם ז"ל ואחרים דוחין דליכא למפשט מהא דקי"ל כרבי חנינא אלא היכא דוקא דליכא בזיון דבעל כי הכא כיון דקא לשה ליכא בזיון אבל היכא דאיכא למיחש לבזיון דבעל אפשר דלא קיי"ל כוותיה ולא נהירא דבכי האי גוונא נמי איכא בזיון כיון שלא הפסיקה לישתה לקבל גיטה... ומשכחת לה אפילו אליבא דרב כגון דבעל לא קפיד וליכא משום בזיון דידיה וקדמה איהי ושויה שליחא וליכא למיחש משום חצרה הבאה לאחר מכן.
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> This is their opinion but "others" reject it, for one cannot infer from this that it establishes that the law is in accordance with the view of R. Hanina except where there is specifically no humiliation of the husband as in this case; since she was kneading there was no disrespect. But where there is concern for humiliation of the husband, perhaps the law would not be established in accordance with his [R. Hanina's] view. But this is not understandable for also in this case there is humiliation, since she did not cease her kneading to accept her *get*. But it [her ability to appoint a שליח לקבלה] could occur even in consonance with the view of Rav, in a case where the husband would not take umbrage and he would not consider it disrespectful; and if she appointed her שליח first there would not be concern regarding the later-acquired courtyard issue.

In other words, the בזיון הבעל (the husband's humiliation) seems to consist of seeing her appointment of a שליח לקבלה after the husband has gone to the trouble and expense of writing the *get* and sending it by a שליח, as cavalier and disdainful on her part. But even the אחרים (the "others"), who reject the conclusion of the Rif, would seem to accept that there is no humiliation in those cases where the personal acceptance of the *get* by the wife would be burdensome to her – even as trivial a burden as temporarily interrupting her kneading. And even the Ran, who would not accept that as vitiating any בזיון דבעל (disrespect of the husband), would also accept that there is no humiliation where the husband does not care (כגון דבעל לא קפיד). In all other cases however, the Ran, rejecting the conclusion of the Rif, goes on to state the more stringent position:

> חיישינן לדרב ואין האשה עושה שליח לקבל את גיטה מיד שליח בעלה ואם עשאתו חולצת ולא מתייבמת.
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> We pay heed to the view of Rav and the wife may not appoint a שליח to accept her *get* from the hand of her husband's שליח and if she does so [in specific circumstances] she requires חליצה and there can be no levirate marriage.

In any event, the factor of בזיון הבעל (disrespect of the husband) as disallowing a שליח לקבלה was a consideration only where the שליח לקבלה was accepting the *get* from the hus-

band's שליח. Evidently, at some point that factor was transferred as a vitiating factor in the case of the husband's direct delivery.[5] It is perhaps understandable that, in earlier times, the wife's reluctance to accept the *get* directly from her husband was viewed as cavalier and disdainful behavior on her part and therefore, an appointment of a שליח לקבלה was a humiliation for the husband, having to deal through a third party. (Parenthetically, it should be noted that requiring the wife to accept the *get* through a third party – i.e., the husband's שליח – was not considered a בזיון דהאשה [humiliation of the wife], a factor which the Rashba evidently would take into consideration. See *supra*.)

But, דיו לבא מן הדין להיות כנידון – "A law deduced from another law cannot be more stringent than the one from which it is derived." Even if there is some legitimacy in transferring a reluctance to accept a שליח לקבלה from the case of שליח to שליח to the case of husband to שליח, it should not be dealt with more stringently than in its original setting. This would mean that:

A. According to the Rif and R. Hai Gaon, הלכה כר׳ חנינא: "The law is in accordance with view of R. Hanina," there is no consideration at all to be given to בזיון דבעל (husband's humiliation), and if that factor is not operative in the case of שליח to שליח, it cannot be transferred to the case of husband to שליח;

B. אליבא דאחרים דוחין: "According to the 'others' who reject the Rif's conclusion (that the law is according to R. Hanina)," that factor should not be invoked to forbid a לקבלה שליח, if the wife's personal acceptance would be burdensome to her; and,

C. Even אליבא דר״ן: "According to Rabbi Nissim," the factor is not operative where the husband does not consider her appointment of a שליח לקבלה as a humiliation, which, I submit, would be true in the overwhelming majority of cases today.

The other reason advanced for the withdrawal of the wife's prerogative of appointing a שליח לקבלה to accept the *get* on her behalf from the husband, is the difficulty of conclusive evidence of the authenticity of the agency appointment. However, it is difficult to understand why that should be a greater issue in the case of the woman's appointment of a שליח to accept the *get* than it is in the case of a man's appointment of a שליח to deliver the *get*.

In any event, we have already alluded to a difference between the Even HaEzer and the Kav Naki regarding the appointment procedure. It is clear that both are concerned with evidentiary issues. It must be remembered that they were both dealing with a situation in which the wife would appoint the שליח *verbally*. First of all, she may not have been able to write, or even read, the text of the מינוי שליחות (agency appointment). Consequently, you needed some evidence that she had made this appointment. Therefore, she made the appointment in the presence of two witnesses who signed the מינוי שליחות, attesting to her oral appointment. That the issue was evidentiary is implicit in the words of the Kav Naki who requires a bet din, by the added stipulation that the signatures of the members of the bet din should be recognized at the place where the husband is to deliver the *get* to the wife's שליח. That stipulation indicates why the Kav Naki requires a bet din. The signatures of two witnesses who are ordinary laymen might not be recognized and the מינוי שליחות might be suspect of being fraudulent. A bet din in one city, however, would probably have had previous correspondence with the bet din where the *get* is to be delivered and there is greater likelihood

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[5] See n. 4.

that the signature of the judges would be recognized and their authenticity confirmed. That's probably why the Kav Naki prefers a bet din over merely two witnesses.

The Shulhan Arukh, on the other hand, is content with two witnesses, possibly relying on the fact that in his day, just as there were professional scribes, there may have been professional witnesses who signed many documents and therefore their signatures could be authenticated by the recognizability of the signatures or by comparison with another previously authenticated bearing their signatures (כתב ידם יוצא ממקום אחר).

However, I would argue that if the issue is evidentiary, we now have a better way to evidence the wife's appointment of her שליח לקבלה – namely, by her own signature on a document that she reads and understands. The function of the witnesses, in that case, would not be to evidence that she had made the agency appointment; that is evidenced by her signature. The witnesses' function would be to authenticate that she is who she claims to be – namely, Mrs. X, the wife of Mr. X – essentially the function performed today by a notary.

Additionally, today, with the technology available of telephone, fax, e-mail, etc. it is relatively easy for a bet din in one place to communicate with the rabbinical authorities in the other place to ascertain the legitimacy of the procedure, the signatures, and the identity of all of the parties.

Incidentally, the same reasoning applies to the husband's appointment of a שליח. In Even HaEzer 100:11, where both parties admit to the agency appointment, there is no need for witnesses. If witnesses are required, as Rema (Rabbi Moses Isserles) does require, it is only to obviate any problems in case משלח כופר (the principal denies making the appointment).

Consequently, to reinstitute the שליח לקבלה, the wife's appointment of her שליח לקבלה should be evidenced by a form, signed by her, and her signature attested to by two witnesses.

The Alternatives – גט זיכוי *and* שילוש הגט

In those instances where the cooperation of the wife is not forthcoming, either through her unavailability or her intransigence, and she will not personally accept the *get*, it has become the practice to issue a גט זיכוי, in which the husband, in the presence of a bet din and/or witnesses, delivers the *get* to some individual with the formula: זכה בגט זה לאשתי פב"פ... – "Acquire this *get* on behalf of my wife. . . ." The halakhic legitimacy of this practice is supported by the principle that זכין לאדם שלא בפניו ואין חבין לאדם שלא בפניו – "One may act for another's advantage even without his or her presence [or knowledge] but one may not act to the disadvantage of others without their presence [or knowledge]." This can be invoked only if there is a presumption that the *get* is a זכות (an advantage) for the wife and not a disadvantage.

In law, presumptions upon which legal decisions are based are characterized either as absolute presumptions or as rebuttable presumptions. The presumption that the *get* is זכות (an advantage) was clearly considered a rebuttable presumption in the halakhah.

In Yebamot 108b the question is asked:

> המזכה גט לאשתו במקום יבם מהו? כיון דסניא ליה זכות הוא וזכין לאדם שלא בפניו או דילמא כיון דזימנין דרחמא ליה חוב הוא לה ואין חבין לאדם שלא בפניו.
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> What is the law regarding one [who is childless] who has another acquire the *get* on behalf of his wife [so that upon his death she is not bound to the levir]? Since she dislikes him [the brother-in-law] it

> is advantageous for her, and one may act for another's advantage without the other's knowledge; or perhaps, there are times when she loves her brother-in-law and this would be disadvantageous [since she could not marry him, coming under the prohibition of "brother's wife"], and one may not act to another's disadvantage without the other's knowledge.

The answer of R. Nachman was חוששין לדבריה וחלצת ולא מתייחמת: "We are concerned with her statement and she requires חליצה, and may not enter a levirate marriage" – which means that the presumption that a *get* is an advantage is rebuttable. When Ravina (ibid.) raises the question of whether the *get* is an advantage in the case of a couple who are constantly quarreling (במקום קטטה), the Gemara cites another presumption (evidently considered an absolute presumption at that time), טב למיתב טנדו מלמיתב ארמלו: "It is better to be married [under any circumstances] than to dwell in lonely widowhood." Clearly, the presumption that a *get* is זכות (an advantage) was a rebuttable presumption in Talmudic times. However, in today's world where a woman can be socially and economically independent, we would not presume that marriage under any circumstances would always be better than being single. Furthermore, since there has been a civil divorce, it is clearly an advantage that she also be divorced under Jewish law so that she may remarry in accordance with Jewish law. Therefore, today there can be no question of the legitimacy of a גט זיכוי.

However, a different problem is presented by a גט זיכוי. With a גט זיכוי, the husband is essentially appointing a שליח לקבלה for the wife. Quite correctly, the Tosafot on Ketubbot 11a (ד"ה מטבילין אותו על דעת ב"ד משום דזכות הוא) makes the point that זכייה שלא בפניו הוי מטעם שליחות, "Any act on behalf of another is contingent upon agency" – meaning that any זכיה שלא בפניו (act without the other's knowledge) presumes that were one able to communicate with the other party (the principal), since the proposed action is presumed to be totally advantageous to him (or her), the principal would certainly appoint the one proposing to do the act as his or her שליח. On the other hand, if there is even the slightest disadvantage to the principal (קצת חובה), one cannot make this presumption. The Tosafot cites the example, based on Bava Metzia 71b, of תרומה (Terumah – the portion of the produce that must be given to a kohen). The Torah does not define the amount that must be given as Terumah, although the Talmud designates the norms as either 1/60, 1/50, or 1/40, depending on the generosity of the farmer. Yet even if someone were to propose giving the lowest normal amount in order to make the grain consumable, to the advantage of the absent owner, he cannot presume to act on the owner's behalf since he (the owner) might have wanted to rely on the principle that מדאורייתא חטה אחת פוטרת את הכרי, "By the law of the Torah, one kernel exempts the entire bin," or, conversely, he may have wanted to give more.

What is even more egregiously anomalous is that in a גט זיכוי, we are actually allowing the husband to appoint a שליח for his wife, where the law might not allow a presumptive שליח. On the passage in Yebamot cited *supra*, Rashi defines the question המזכה גט לאשתו מהו – "What is the law [regarding] one who has another acquire the get on behalf of his wife?" – as שעשה שליח לקבלה וזיכה לה גט ע"י שליח שתתגרש מעבשיו, "He appointed a שליח לקבלה and had her acquire the *get* by this שליח in order that she may be divorced from that moment."

The conclusion of the Gemara that a שליח לקבלה cannot be appointed by the husband is codified by the poskim. In Even HaEzer 140:4:

> אבל האיש אינו יכול לעשות שליח קבלה שאינו יכול לעשות שליח לחובתה שלא מדעתה ואפי׳ היתה אשת מוכה שחין או שהיתה קטטה ביניהם ותובעת להתגרש ויש מי שאומר בזו שהיא ספק מגורשת.
>
> However, the husband cannot appoint a שליח לקבלה for he cannot appoint a שליח to act to her disadvantage without her consent, and even if she were married to one afflicted with loathsome sores or there was constant strife between them and she requests to be divorced; but there are those who say that in those circumstances she is a "questionable divorcee."

That this would prohibit a גט זיכוי, even in the case of the one married to the husband with the loathsome sores, is explained by the Turei Zahav *ad locum*: טב למיתב טנדו מלמיתב ארמלו, "It is better for her to be married [under any circumstances] than to dwell in spinsterhood." The Rema (Rabbi Moses Isserles) cites exceptions in the case where (A) the husband is a מומר (heretic); (B) the יבם (brother-in-law) is a מומר; (C) she is נאסרת על בעלה (forbidden to her husband); or, (D) she is a מומרת, but notes that even on this point there are more stringent authorities. The Taz (Turei Zahav) identifies the stringent authority as Rabbenu Nissim.

It seems to be abundantly clear that the practice of גט זיכוי was not as easily halakhically justifiable as the use of a שליח לקבלה. However, as I pointed out above, the change in societal conditions and the institution of civil divorce have changed the circumstances to the point that a גט זיכוי is certainly justifiable today. Therefore, there should be no aspersions cast on the use of the גט זיכוי. On the contrary, the גט זיכוי is a useful instrument. Just as הפקעת קידושין (annulment) is a remedy for the wife in the case of the recalcitrant or unlocatable husband, so the גט זיכוי provides a remedy in the case of the recalcitrant or unlocatable wife. However, it more than borders on the outrageous that we allow a גט זיכוי, wherein the husband designates a שליח לקבלה for the wife and do not permit her to appoint her own שליח לקבלה. Therefore, in the modern world, wherein women have rightfully attained independent and equal status, allowing the wife to appoint a שליח לקבלה is much preferable to the use of a גט זיכוי, reserving use of the גט זיכוי to the case of the unjustifiably recalcitrant wife.

The other alternative used by some is שילוש הגט, wherein the husband hands the גט to a שליש (a trustee) who is to keep it in trust for the wife, should she change her mind and decide to accept it. The husband is then given a document indicating that he is permitted to remarry. In this procedure, there has been no final severance of the marital relationship. Until the wife comes to accept the *get* from the שליש, they are still married under Jewish law. Allowing the husband to remarry is essentially a violation of the חרם דרבנו גרשום (the ban on polygamy).

To my mind, this alternative is egregiously inferior to the alternative of גט זיכוי, even with all of its problematics. Although Rabbenu Gershom's ban also included the impermissibility of divorcing a wife without her knowledge and consent, and the use of a שליש avoids that, between the two clauses of Rabbenu Gershom's ban, the ban on polygamy was the most compelling. The גט זיכוי, on the other hand, does sever the marital relationship and the couple is divorced. Although it does effect a divorce without the consent of the wife, it can be justified on the basis of זכין לאדם שלא בפניו, "One may act on behalf of others for their advantage, even without their consent and knowledge." And the *get* is advantageous for the wife, whether she believes it to be or not. It allows her to remarry in accordance with Jewish law. Furthermore, it prevents her subsequent marriage to another from being an adulterous union.

Summary

I would therefore argue that, in keeping with the halakhah, we should reinstitute the appointment of a שליח לקבלה by the wife, and that such is to be preferred to a גט זיכוי or שילוש הגט. It is not only more acceptable halakhically but is also more ethically acceptable. The fact that the practice has been suspended for some time is not a sufficient rationale, particularly from the standpoint of Conservative Judaism which seeks to give ethical, equitable and egalitarian considerations their due weight in the determination of halakhic practices. It should be pointed out that in the Conservative movement we have reinstituted הפקעת קידושין (annulment) which was certainly suspended for an even greater length of time – if, indeed, it was ever an actual procedure. Even the Rema, who indicates that in his day the practice was to disallow a שליח לקבלה, acknowledges that the use of a שליח לקבלה was entirely within the law. Whatever conditions at the time of the Rema may have justified the practice current in his day, our contemporary conditions motivate and militate for the reinstitution of the שליח לקבלה.

In today's societal and economic circumstances, women are in ever greater measure involved in the professions, or in entrepreneurial affairs, heading large business organizations, or otherwise gainfully employed in the corporate structure. The wife's personal appearance to accept the *get* may be as burdensome to her as the husband's personal appearance before the bet din may be to him. It is therefore ethically unacceptable to allow him to evade the personal appearance by appointment of a שליח and to deny her the same right. Additionally, considering the contemporary mind-set, one is hard pressed to imagine that her appearance by attorney (שליח) would be considered a בזיון דבעל (disrespectful of the husband) who is not likely to take umbrage. Furthermore, the evidentiary issues encountered in previous centuries, can now be rendered moot by the use of a form for the agency appointment that is understandable to the woman and signed by her personally, her signature attested to by witnesses, and by the availability of modern technology which renders any evidentiary problems easily soluble. There is therefore no valid rationale in our times for not allowing a שליח לקבלה.

The use of the גט זיכוי should be retained to provide a remedy for the husband in those cases where the wife's cooperation is unattainable because of her unjustified recalcitrance or her inaccessibility.

Conclusion

A proper form for the appointment of a שליח לקבלה should be created and all מסדרי גטין (rabbis certified to issue *gittin*) should be informed that they may now elect to have the wife appoint a שליח לקבלה in those cases where the wife will not appear personally for the delivery of the *get*. The גט זיכוי should be retained for use in the case of a recalcitrant or unavailable wife.