But if he said, 'give', we give - הא אמר תנו נותנין

Overview

The משנה stated if one found גיטי נשים (and other documents) he should not return them (to the recipient), for perhaps those who wrote them reconsidered and decided not to give them to the intended recipient. The גמרא infers from the expression, 'ונמלך עליהן שלא לתנן', that if the maker of the שטר said 'give it to the recipient', we give it to them,[1] even if a long time had passed since it was lost (and we are not concerned maybe this שטר belongs to another party with similar names). תוספות discusses the validity of this inference.

תוספות asks:

ואם תאמר מנלן דלמא אפילו אמר תנו אין נותנין -

And if you will say; how do we know that if אמר תנו נותנין; **perhaps even if he said תנו,** nevertheless **אין נותנין** (because it may not be their גט) -

והא דקתני נמלך הכי קאמר ונמלך שלא ליתנן ומחמת כן לא חשש לשמור ונאבד[2] -

And from **this which the משנה stated 'נמלך',** there is no proof that אם אמר תנו נותנין, for **this is what** the משנה **means** when it states**; 'and he reconsidered' not to give** the גט to his wife, to explain that **on account of** his decision not to give it, **he was not careful to watch it and** the גט **was lost -**

ועכשיו רוצה לחזור ולגרשה דסבר שזהו הגט שאבד ממנו ואמר תנו -

And now when the גט was found **he again wants to divorce her** with this גט, **for he assumes that this is the גט, which he lost, so he says, 'give it** to my wife -

ואפילו הכי אין נותנין[3] דשמא אין זה גיטו אלא נפל מאחר ששמו כשמו -

But nevertheless (even though he says תנו) **we do not give** her this גט, **for perhaps this is not his גט** which he wrote, **but rather it was lost from someone else who name is like his name** and the wives names are also the same -

אבל לא נמלך[4] לכתחילה מלגרשה וגרשה מחזירין לה הגט לראיה אפילו אינו שלה -

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[1] Presumably the inference is that נמלך means that he reconsidered and did not divorce her (with this גט), so therefore we cannot give it to her since she may not be divorced, but if he says תנו (meaning that I do want to divorce her with this גט, so there is no concern of נמלך) we give it to her (despite the concern that it may not be their גט). תוספות will challenge this assumption.

[2] 'נמלך' is not meant to used as an inference (הא אמר תנו נותנין), but merely as an explanation why the גט was lost.

[3] תוספות is (now) saying that when the משנה states לא יחזיר it means even if he said 'תנו' (and 'ונמלך' is merely an explanations how it was lost).

[4] תוספות is explaining why the משנה states נמלך (that it may not be as was presumed in footnote # 1, but rather the משנה states נמלך for the following reason); for if not for the concern of נמלך, meaning if a person writes a גט, there is no reason to think that he may reconsider, but rather we assume that he (watches it carefully and he) gave it to his wife,

But if he would not initially have retracted from divorcing her, but he divorced her, we would return the גט to her for proof that she is divorced (if the husband says תנו), **even if it is not her גט.**

In summation; תוספות question is that perhaps the משנה is stating that we do not return the גט to the woman (even if the husband says תנו) if there is a concern that he never divorced her (נמלך), however if there is no such concern (there is no נמלך) then we return the גט to her for proof (regardless whether this is her גט).

תוספות answers:

ויש לומר דדייק מדלא קתני כתובים היו ולא נתנן[5] -

And one can say; that the גמרא infers (that אם אמר תנו נותנין) **from** the fact **that** the משנה **does not state,** 'we are concerned perhaps **they were written and he did not give them' -**

ומדקתני ונמלך משמע שחושש שמא אינו רוצה עתה לגרשה[6] -

But since it stated ונמלך, this **indicates that the concern is perhaps he does not want to divorce her now,** implying -

אבל אם אמר תנו לה נותנים ואין לחוש שמא מאחר נפל -

However if he says תנו (where the concern of אינו רוצה עתה לגרשה does not exist), **we give her** the גט, **and there is no concern perhaps another** person **lost** this גט.

In summation; according to תוספות question since there is a חשש of נמלך, we do not return it to her (even if he says תנו), because perhaps he never divorced her (and this may not be her גט); however if there would be no חשש of נמלך we return the גט, since she is (presumably) divorced already (for there is no חשש of נמלך). However in תוספות answer, if there is a חשש of נמלך (even as of now) we cannot return the גט, however when there is no חשש of נמלך (currently), for he says תנו (I want to divorce her now) we give her the גט and are not concerned שמא מאחר נפל.

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then if a גט is found and the husband says תנו we should return it to the wife, for it is possible that this is her גט, and even if it is not her גט, since the husband says תנו that means that he divorced her already, so why should it be our concern if she holds someone else's גט as proof. However since there is the concern of נמלך, meaning that a person may write a גט and then reconsider, therefore there is the concern here that he reconsidered and never gave her the גט, therefore he lost it, and now when it was found he assumes that this is his original גט,, and he wants to divorce her with it now, which we cannot allow, for perhaps it is not his original גט, but rather someone else's with the same names.

[5] If the concern (of ונמלך) is as stated in footnote # 4 (that he reconsidered initially), why mention ונמלך, state simply that there is the possibility that he wrote the גט and did not give it to his wife. The explanation (see footnote # 2) that 'ונמלך' is written to explain why it was lost, is not satisfactory, since it is not relevant to the ruling of the משנה.

[6] The word ונמלך indicates that the reason we cannot give the גט to the woman is because perhaps he reconsidered and he never divorced her, and does not want to divorce her now, so how can we give her the גט; implying the if he says תנו, give her the גט now (I want to divorce her now), we give her the גט and she becomes divorced as of now.

תוספות asks:

ואם תאמר ומנלן ואפילו לזמן מרובה דלמא לאלתר דוקא כדפריך רבי זירא לקמן[7] -

And if you will say; and how do we know that if he said תנו we give her the גט **even after a long time** elapsed since it was lost, **perhaps** we give it to the woman (when he says תנו), **only** if it was found **immediately, as ר"ז asks later -**

ורבי זירא גופיה מנלן דיחזיר לאשה אפילו לזמן מרובה -

And how does ר"ז himself know that we return it to the woman even after a זמן מרובה -

וממה פשוט לו דברייתא קאמר לזמן מרובה יותר ממתניתין[8] -

And why does ר"ז find the **ברייתא to be** more **obvious that it means לזמן מרובה, more than our משנה?!**

תוספות answers:

ויש לומר דמברייתא משמע דבזמן שהבעל מודה יחזיר לאשה אפילו לזמן מרובה -

And one can say; that from the ברייתא it seems that when the husband admits (that he divorced her) **we return it to the woman even after a זמן מרובה -**

דאי לאלתר דוקא פשיטא[9] -

For if the משנה meant that we return it to the woman only if it was found **immediately, that is obvious -**

אבל במתניתין מצי למימר לאלתר דוקא דאם אמר תנו נותנין אינו מפורש במתניתין[10] -

However regarding **our משנה, it is possible to assume that** we return it **only** if it was found **לאלתר** after it was lost, **since it does not say explicitly in the משנה that אם אמר תנו נותנין** (it is only an inference) -

והיא גופה אתא לאשמועינן דלא יחזיר דחיישינן לשמא נמלך -

And the משנה **intends to inform us the explicit** rule of the משנה **namely that לא יחזיר** (where he did not say תנו) **for we are concerned שמא נמלך** (but not to infer that אם אמר תנו נותנין אפילו לזמן מרובה)[11].

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[7] יח,ב. See following footnote # 8.

[8] ר"ז cited a ברייתא which states מצא גט אשה בשוק בזמן שהבעל מודה יחזיר לאשה, and ר"ז interprets this ברייתא that יחזיר לאשה means אפילו לזמן מרובה. However regarding our משנה (of ונמלך כו'), ר"ז comments מי קתני הא אמר תנו נותנין ואפילו לזמן מרובה. The question here is why did ר"ז assume that the ברייתא means יחזיר ואפילו לזמן מרובה, however the inference of the משנה that הא אמר תנו נותנן is only לאלתר, but not לזמן מרובה.

[9] It was found immediately after it was lost (so there is no concern that it may be someone else's גט), and the husband admits that he divorced her with it, there is no reason why not to return it!

[10] Had the משנה stated explicitly אמר תנו נותנין, perhaps we could have interpreted it mean אפילו לזמן מרובה (for otherwise what is the חידוש). However since the משנה merely tells us the rule of לא יחזיר, so perhaps it only intended to teach us the rule of לא יחזיר, but not the inference that אם אמר תנו נותנין ואפילו לזמן מרובה!

[11] We certainly know that אם אמר תנו נותנין לאלתר (for this is פשיטא), see footnote # 9, but we cannot infer לזמן מרובה.

תוספות now explains the view of רבה that even from our משנה we can infer that אם אמר תנו נותנין ואפילו לזמן מרובה:

אבל רבה דייק מדקתני ונמלך[12] ולא קתני כתובין היו ולא נתן -

However רבה infers that **since our משנה states 'ונמלך', and it does** merely **state כתובין היו ולא נתן -**

אם כן[13] אתא לאשמועינן אם אמר תנו נותנין והיינו אפילו לזמן מרובה דאי לאלתר פשיטא -

Therefore the משנה **comes to teach that if אמר תנו נותנין, meaning even לזמן מרובה, for** if the משנה meant only **לאלתר,** that is **obvious** and there is no need for the משנה to write ונמלך in order to infer that.

תוספות challenges the previous assumption that by לאלתר there is no חידוש:

ואם תאמר[14] והלא אפילו אי הוי לאלתר הוי חידוש -

And if you will say. But even if the rule of אם אמר תנו נותנין **would be** only **לאלתר, it would still be a novelty** that we return it to the wife, the חידוש being -

דלא חיישינן דלמא כתב בניסן ולא נתן עד תשרי[15] כדפריך לקמן[16] (דף יט,א) -

That we are not concerned that perhaps he wrote the גט **in ניסן and did not give it until** the following **תשרי, as the גמרא asks later,** so there is a חידוש even in a case of לאלתר so how can we infer that the משנה means לזמן מרובה?!

תוספות asks a similar question:

וכן לקמן (עמוד ב) דפריך על רבי ירמיה דמוקי כגון דקאמרי עדים כולי מאי למימרא -

And similarly later where the גמרא **challenges ר' ירמיה, who established** the case of יחזיר (and we are not concerned perhaps this שטר was written for someone else), **where for instance the עדים testified, etc.** that we only signed on one שטר with this name, therefore there is no concern that this שטר may have been written for someone

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[12] See footnote # 6, that 'ונמלך' means he does not want to divorce her now.

[13] The fact that the משנה writes 'ונמלך' indicates that the משנה wants to teach us also the rule that אם אמר תנו נותנין, that rule is necessary to be taught only לזמן מרובה, but not if the גט was found immediately (for then there is no concern that it may belong to someone else).

[14] This question is both on ר' זירא and רבה (since the both infer [respectively] that we return the גט even לזמן מרובה, for if it is לאלתר, it is פשיטא)..

[15] In this case she will be able to collect the פירות illegally from the לקוחות who bought פירות from her field between ניסן and תשרי. The פירות of the נכסי מלוג (which a woman brought into the marriage) belong to the husband as long as they are married. She will show the גט which indicates they were divorced in ניסן, so therefore the husband had no rights to the פירות from ניסן; when in actuality the divorce did not take place until the following תשרי, so the husband had the rights to the פירות until תשרי; the woman will be collecting the פירות which were sold between ניסן and תשרי שלא כדין.

[16] Generally we are not concerned that שמא כתב בניסן ולא נתן עד תשרי; however when a שטר is lost, this indicates that it was not properly executed (therefore it was not watched appropriately), in these cases there may be the concern of שמא כתב בניסן ולא נתן עד תשרי.

else. Regarding this answer of ר"י the גמרא asks if that is the case '**what does this teach us',** it is obvious that where there is no concern, that we will return the שטר. תוספות asks on this challenge to ר"י -

לימא דקא משמע לן דלא חיישינן דלמא כתב בניסן כולי -

Let the גמרא **answer that** this ruling **is teaching us that we are not concerned דלמא כתב בניסן, etc.?!**

תוספות answers:

ויש לומר דסבירא ליה[17] כמאן דאמר אין לבעל פירות משעת חתימה -

And one can say that he agrees with the one who maintains that the husband loses his rights to **the פירות from the time** the גט **is signed**

ואז ליכא חידוש דכתב בניסן ולא נתן עד תשרי דאפילו הכי שפיר טרפה -

So therefore there is no novelty, for even if he wrote בניסן ולא נתן עד תשרי, nevertheless she can legally claim the פירות even from ניסן.

תוספות offers an alternate explanation why ר"ז derives אפילו לזמן מרובה only from the ברייתא, while רבה derives it even from our משנה:

ועוד יש לומר[18] דרבי זירא דייק אפילו לזמן מרובה מדקתני בזמן שהבעל מודה יחזיר לאשה -

And additionally one can say; that ר"ז infers that we return the גט **even לזמן מרובה, since** the ברייתא states, **'in a case where the husband admits, it is returned to the woman' -**

משמע שמודה שממנה נפל וכבר גירשה בו -

This implies that he admits that she must have **lost** the גט, **since he already divorced her with it -**

ואי לאלתר דוקא אם כן צריכים לומר שראינו הגט בידה -

And if the ruling of יחזיר לאשה in the ברייתא **is only לאלתר, therefore it will be necessary to assume that we** (i.e. witnesses) **saw the גט in her possession -**

דאי לא ראינו אם כן במה אנו יודעין שהוא לאלתר -

For if we did not see it by her; **how do we know that it was** found **לאלתר -**

ואחרי שראינו הגט בידה הרי כבר מגורשת פשיטא דיחזיר ומאי קא משמע לן *[19] -

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[17] This refers to ר' זירא ,רבה, and the one who was challenging ר' ירמיה. See 'Thinking it over'.

[18] The first explanation is valid only if we maintain אין לבעל פירות משעת חתימה. However if we maintain that יש לבעל פירות עד שעת נתינה, there is no proof that we return the גט even לזמן מרובה. This explanation will be valid even according to the מ"ד that יש לבעל פירות עד שעת נתינה. See footnote # 20.

[19] The marginal note here reads; **גליון. תימה דלמא קא משמע לן דלא חיישינן דשמא זה הגט זמנו קודם לגט זה שנתגרשה בו ותטרף בגט זה שניתן לראייה פירות שלא כדין אפילו למאן דאמר אין לבעל פירות משעת חתימה. ויש לומר דכיון שהבעל מודה וסובר שהוא שלו אם כן בודאי זמנו שוה לאותו שנאבד. עד כאן גליון.** The **גלון** asks; **It is astounding; perhaps** the ברייתא **it teaching us that we are not concerned that perhaps** that **the date on this** found **גט is prior** to the date **of the** actual **גט, with which she was divorced, so she will be able to collect פירות illegally with this** found **גט, which was given to her**

So after we have seen the גט in her possession, she was already divorced, so it is obvious that יחזיר,[20] then what is the ברייתא **teaching us -**

והלא אפילו לא גיטה הוא זה ניתן לה לראייה ואין הבעל מודה נמי אמאי לא יחזיר -

For even if this found גט **is not her גט, we will give it to her as proof** that she is divorced, **and additionally even if the husband does not admit** that he divorced her **why should we not return** the גט to her since we saw it in her possession -

אלא ודאי מיירי שלא ראינו הגט בידה וקא משמע לן דאף על פי דחיישינן שמא מבעל נפל -

Rather we are certainly discussing a case where we did not see the גט in her possession, and the ברייתא **teaches us that even though we are concerned perhaps the husband lost it,** meaning -

ועדיין לא גירשה תתגרש עתה בהחזרת הגט ולא חיישינן שמא מאחר נפל -

That he still did not divorce her, nevertheless we say יחזיר לאשה **that she should be divorced now by the returning of the גט, for we are not concerned perhaps someone else lost it -**

אם כן הוי אפילו לזמן מרובה כיון דלא ידעינן ממי נפל מן הבעל או מן האשה[21] -

Therefore since we do not know whether the man or the woman lost the גט, so it is obvious that the ruling of יחזיר is **even לזמן מרובה.** This explains ר"ז.

In summation; the proof of ר"ז that we return it even לזמן מרובה is from the assumption that בזמן שהבעל מודה means that he admits that he divorced her. Therefore if we assume that יחזיר means לאלתר, we have to assume that עדים saw her in possession of the גט; otherwise how can we know that it was found לאלתר (right after it was lost), unless we know where it was immediately before it was lost. In that case there is no novelty that we give her the גט, for it can do no harm; we know she is divorced, so we give her a גט (whether it is hers or not) to prove that she is divorced. There can only be a novelty if it was not לאלתר, but even לזמן מרובה, meaning that we do not know who had the גט before it was found (whether the husband or the wife) and nevertheless we return it.

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merely **as a proof** that she is divorced. This problem exists **even according to the מ"ד that אין לבעל פירות משעת חתימה** (because it is very possible that the חתימה on the original גט was much later than the date on this found גט). The גליון answers; **and one can say; since the husband admits** that he divorced her **and he assumes that** this found גט **is his** גט (with which he divorced her) **therefore certainly the date** on the found גט **is the same as** the date on **the lost** גט (otherwise why does he assume that this is his גט). **This concludes the גליון.**

[20] There is no question here that perhaps the חידוש is that we are not concerned for שמא כתב בניסן ולא נתן עד תשרי (see previous footnote – גליון and footnote # 18). See (בד"ה אך דכבר) מעין החכמה based on תוס' יב,ב ד"ה ולא that there is a חשש only when we are not sure that the שטר was given, however once the שטר (in this case the גט) was given (as verified by עדים) there is no חשש of כתב בניסן ולא נתן עד תשרי.

[21] The difference between the original proof (that יחזיר means לזמן מרובה) and this proof (of the ועוי"ל), is that originally the פשיטא (of לאלתר) was based (only) on the admission of the בעל (we do not know for sure that he divorced her), therefore the question of כתב בניסן ולא נתן עד תשרי arose. However in this answer תוספות is arguing that the only way to know that it is לאלתר is if we saw the גט in her possession, in which the פשיטא is stronger and there is no concern of כתב בניסן ולא נתן עד תשרי (see footnote # 20).

ורבה דייק דמתניתין נמי אפילו לזמן מרובה דומיא דשטרי חליצה ומיאונין[22] -

And רבה infers that our משנה also means that it is to be returned **even לזמן מרובה, similar to שטרי חליצה ומיאונין** in the סיפא of the משנה -

דיחזיר אפילו לזמן מרובה דלאלתר היינו שראינו בידה פשיטא -

Where the term **יחזיר** there means **אפילו לזמן מרובה, for** if יחזיר is only **לאלתר, meaning that we saw** the **בידה** שטר חליצה**, it is obvious** that we return it to her -

כיון דחלצה נחזיר לה לראיה אפילו אינו שלה -

For since we know that she performed **חליצה we will return it to her for proof** that she had חליצה, **even if** this found שטר חליצה is not hers -

אלא מיירי שלא ראינו בידה ואף לא ידעינן שחלצה והיינו לזמן מרובה -

Rather, that case of חליצה **is where we did not see** the **בידה** שטר חליצה**, and** in fact **we do not** even **know שחלצה, so that is a** case of **זמן מרובה,** and we still return it to her -

ודומיא דהכי משמע ליה דמיירי ברישא ורבי זירא לא מוקי לה דומיא דסיפא:

And so רבה **assumes that the רישא is similar to the סיפא,** meaning that the inferred ruling applies even לזמן מרובה; **however ר"ז does not wish to establish the רישא** (by גט) **similar to the סיפא** (of שטרי חליצה).

Summary

ר"ז infers from the ברייתא that יחזיר is לזמן מרובה, for לאלתר it is פשיטא; however the משנה does not state יחזיר, therefore there is no proof. However רבה infers from the word ונמלך that it specifically teaches us the inference that אמר תנו נותנין and לאלתר it is פשיטא. [However we need to assume that אין לבעל פירות משעת חתימה; otherwise it is not פשיטא.] Alternately ר"ז derives from the ברייתא that it cannot be לאלתר for since the עדים saw the גט by her (otherwise how can we know that it is לאלתר), therefore it is פשיטא. רבה derives that our משנה is like the סיפא, where it must be לזמן מרובה.

Thinking it over

תוספות writes that there is no חידוש in that we are not concerned שמא כתב בניסן ולא נתן עד תשרי, since they maintain like the מ"ד that אין לבעל פירות משעת חתימה.[23] However this itself is a חידוש that אין לבעל פירות משעת חתימה?![24]

[22] See the משנה on א,כ.

[23] See footnote # 17.

[24] See מהר"ם שי"ף.