וליחוש דלמא כתב ליתן בניסן כולי –

And let us be concerned, perhaps he wrote to give it in ניסן, etc.

Overview

The גמרא cites the ruling of the ברייתא (that if the husband admits that the found גט was already given to the wife, we return it to the wife) and asks how can we return it to the wife perhaps the גט was written in ניסן, and he only gave it to her in the following תשרי, and in this duration the husband may have sold פירות from her נכסי מלוג (which belong to him), and once we return this גט (which is dated in ניסן) to the wife, she will illegally collect[1] from the לקוחות the פירות which they bought (between ניסן and תשרי). Our תוספות explains why this question is not asked elsewhere.

תוספות responds to an anticipated question:

ואפילו לאביי דאמר[2] עדיו בחתומיו זכין לו[3] הכא גבי אשה חוב הוא לה[4] -

And even according to אביי who maintains עדיו בחתומיו זכין לו, nevertheless **here, regarding a woman** receiving a גט **it is detrimental to her,** therefore the עדים cannot be זוכה on her behalf without her knowledge.

תוספות anticipates (and responds to) other difficulties:

ואמתניתין[5] דדייקינן הא אמר תנו נותנין וכן אמתניתין[6] דהמביא גט ממדינת הים -

And regarding our משנה (of מצא גיטי נשים וכו'), **from which we inferred, 'but if he said תנו we give it** to the wife', **and also regarding the משנה of (ממדה"י) המביא גט,**

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[1] She will (falsely) claim that her husband had no right to this פירות since it was already after their divorce in ניסן, which is patently false, since she was divorced only in the following תשרי.

[2] לעיל יג,א.

[3] אביי explains the ruling of the משנה which states that witnesses may sign a שטר חוב for the לוה (that he owes the מלוה money) even if the מלוה is not present. We are not concerned that the loan may take place a while later, so the מלוה may have a pre-dated שטר and will be able to collect illegally from the לקוחות which bought property from the לוה in the time between the date of the שטר and the actual loan (which the מלוה is not entitled to, since they bought this property before the loan, so there is no lien on it). The reason we are not concerned is because the עדים who sign on the שטר are זוכה (from the לוה) on behalf of the מלוה the lien rights to his property, therefore he collects legally since the properties are indentured to him from the date the עדים signed. תוספות question is that here too by the גט, let us say עדים בחתומיו זכין לה, that they conveyed her the rights to the פירות from the time the עדים signed the גט (in ניסן).

[4] In the case of a loan it is beneficial (a זכות) for the מלוה that the lien of the loan become effective as soon as possible, therefore since it is a זכות for him, the rule is זכין לאדם שלא בפניו, so the עדים can be זוכה for the מלוה, not in his presence. However by a divorce it is detrimental (a חוב) for a woman to receive a divorce (for she loses all her rights which marriage entitles her, such as her food and shelter, etc.), therefore the עדים cannot be זוכה for her, since אין חבין לאדם אלא בפניו, and she was nor present by the signing of the גט. [Even though it is a זכות for her regarding the פירות (if she can collect משעת חתימה), nevertheless the main substance of the גט (divorcing her from her husband) is a חוב for her.]

[5] יח,א.

[6] גיטין כז,א, mentioned previously on יח,א. Seemingly the words ממדינת הים are superfluous.

where it states that מצאו לאלתר כשר; regarding these two משניות the גמרא –

לא פריך ניחוש שמא כתב ליתן בניסן כולי -

Does not ask, 'let us be concerned that perhaps he wrote to give it in ניסן, etc.', so why do we return it; the same question we ask on בזמן שהבעל מודה יחזיר לאשה –

תוספות responds that in these two משניות -

כיון דעתה שבא לגרשה רואין שהזמן מוקדם ויש קול שלא נמסר ביום שנכתב -

Since the husband **is coming to divorce her now,** so all **can see that it is pre-dated, so there is publicity that it was not delivered** to the woman **on the day it was written,** but rather on a later date -

ויזכרו לקוחות לומר אייתי ראיה אימת מטא גיטא לידך -

So the buyers (of פירות מניסן עד תשרי) **will remember to say** to the woman who wishes to collect the פירות, which were sold מניסן עד תשרי, '**bring proof when the גט came into your possession;** so they will legally be responsible to return the פירות, only from that date -

אבל הכא שהבעל מודה שממנה נפל וגירשה ביום הכתיבה[7] פריך וניחוש שמא יסברו לקוחות -

However here (in the בריית of בזמן שהבעל מודה) **where the husband admits that she lost** the גט **and he divorced her on the written date,** the גמרא **asks, let us be concerned, perhaps the לקוחות will assume -**

שאמרה אמת ולא יאמרו בשעת טריפה אייתי ראייה אימת מטא גיטא לידך -

That she is saying the truth (when she is coming to collect the פירות מניסן ועד תשרי), **so** the לקוחות **will not say at the time of collection, 'bring proof when the גט came into your possession';** and the גמרא answers that the לקוחות will always claim, אייתי ראייה וכו'.

In summation: the concern of שמא כתב בניסן ולא נתן עד תשרי is only if we are assuming that she was already divorced (as in the case of בזמן שהבעל מודה) ; however if we will divorce her now (as in the cases of אמר תנו and מצאו לאלתר), there is no concern.

תוספות asks:

ואם תאמר ואמאי לא פריך אמתניתין[8] דכותבין גט לאיש אף על פי שאין אשתו עמו -

And if you will say; but why does not the גמרא **ask on the משנה [**in פרק **גט פשוט** which states **that 'we write a גט for the husband even though his wife is not** together **with him';** the גמרא should ask why do write this for him -

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[7] Granted that תוס' taught us previously יח,ב ד"ה ואפילו that we do not accept his claim that he divorced her previously, but rather the divorce will take place as of now, nevertheless the husband claims that he already divorced her, and everyone (including the לקוחות) see that we are returning the גט to her, so all will assume that the husband spoke the truth and she was already divorced מיום הכתיבה.

[8] ב"ב קסז,א. The הגהות הב"ח amends this to read אמתניתין דגט פשוט דכותבין (instead of אמתניתין דכותבין).

ליחוש שמא לא יתן עד שנה[9] -

Let us be concerned that **perhaps he will not give her the גט for another year,** and she will collect the פירות which the husband sold from the date on the גט until the actual giving of the גט –

תוספות anticipates a possible solution to his question:

וכי תימא כיון דליכא ריעותא דנפילה יש לומר יום שנכתב נמסר[10] -

And if you will say, since there does not exist the flaw of the גט being **lost, we** therefore **assume that it was delivered on the day it was written -**

ואפילו נמסר נמי אחר זמן יש קול שלא נמסר ביום שנכתב -

And furthermore **even if it was delivered later, there is publicity that it was not delivered on the written date -**

כי רואים בשעת קבלת הגט שהוא מוקדם ויזכרו לקוחות לומר כשתטרף אייתי ראיה -

For everyone **sees at the time** she **receives the גט that it is pre-dated, so the לקוחות will remember to say, when she comes to collect, 'אייתי ראייה'.** Seemingly this addresses תוספות concern (of שמא לא יתן עד שנה), for here presumably it was given on the date (since there is no ריעותא), and even if it was not, the לקוחות are nevertheless forewarned.

תוספות rejects this solution:

דהא לעיל (דף יב,ב) פריך גבי כותבין[11] שטר ללוה[12] -

For previously regarding the משנה of **כותבין שטר ללוה** the גמרא **does ask,** שמא כתב ללוות בניסן ולא לוה עד תשרי וכו'.

תוספות answers (distinguishing between the cases of כותבין שטר ללוה and כותבין גט לאיש):

ויש לומר דגבי כותבין שטר ללוה פריך שפיר משום דמאן דיזיף בצנעא יזיף[13] (בבא בתרא מב,א) -

And one can say; that regarding כותבין שטר ללוה the גמרא **asks properly** שמא כתב בניסן וכו', **since 'one who borrows, borrows in secrecy' -**

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[9] The concern here is perhaps the husband and wife (although they are divorcing) are perpetrating a swindle on the לקוחות who will buy פירות from זמן הכתיבה until זמן הנתינה. See footnote # 18.

[10] See the גמרא on ב,יב that the concern of 'שמא כתב וכו' ולא נתן וכו is only by a שטר which was lost for it has a ריעותא.

[11] ב"ב קסז,ב.

[12] What is the difference between the משנה of 'כותבין גט לאיש וכו where we do not ask שמא לא יתן עד שנה and the משנה of 'כותבין שטר ללוה וכו where we do ask 'שמא כתב ללוות וכו; we do not say there as well that since there is no ריעותא דנפילה, etc. there is no concern, as the 'וכי תימא' is attempting to say here; proving that the resolution of the 'וכי תימא' is invalid.. It should be noted that granted we are not חושש by a presented written שטר that 'שמא כתב בניסן וכו since there is no ריעותא of נפילה (see footnote # 10); however the question is why לכתחילה do we write a שטר for a לוה without seeing the loan (and similarly תוספות asks why לכתחילה write a גט לאיש אע"פ שאין אשתו עמו), when we can avoid this remote חשש by requiring the עדים to see the loan (or the man divorce his wife). [The גמרא there does not answer that בשעת טריפה אמרי אייתי ראיה וכו', for this is not answer why we should לכתחילה do something which can cause a loss to the לקוחות.]

[13] The לוה does not want people to know that he is in dire straits and needs to borrow money, for then his properties may be devalued, etc. See 'Thinking it over'.

ויש לחוש שמא לאחר זמן ימסור לו בצנעא ויסברו לקוחות שנמסר לו משעת כתיבה -

So therefore **there is the concern** that **perhaps after a while** the לוה **will deliver** the שטר **to** the מלוה, when he receives the loan, **however the לקוחות will assume that it was delivered** to the מלוה **from the time it was written.** Therefore the גמרא asks on כותבין שטר ללוה וכו', we should be concerned שמא כתב ללוות וכו'.

אבל גט דיהבי בפרהסיא דצריך עדי מסירה אפילו לרבי מאיר דאין דבר שבערוה פחות משנים -

However by **a גט which is given publicly, since a** גט **requires עדי מסירה even according to ר"מ,[14] since a דבר שבערוה cannot** be effected **with less than two** witnesses[15] -

כדפירש רבינו תם ורבינו שמואל בן מאיר בגיטין (ד,א דיבור המתחיל דקיימא לן) **-**

As the ר"ת and the רשב"ם explained in גיטין מסכת; so a גט cannot be delivered in secrecy, since we require עדים -

ועוד[16] דרגילות לגרש בפרהסיא לגלות שהיא פנויה -

And additionally it is customary to divorce publicly to inform everyone **that she is available** (for marriage), so therefore (on account of these two reasons) -

יש קול שנתגרשה אחר זמן כתיבה ולא יטעו הלקוחות -

There is publicity that she was divorced after the date written on the גט, **so the לקוחות will not be fooled** and will ask אייתי ראייה וכו'.

In summation; when an act is done in secrecy, such as a loan, we are concerned for שמא כתב בניסן וכו' (so therefore the גמרא asks why כותבין שטר ללוה וכו'); however when the act is done publicly (such as a גט) there is no concern of שמא כתב וכו' for everyone knows the date of the divorce (therefore the גמרא does not ask why כותבין גט לאיש וכו').

תוספות continues to ask:

אבל אכתי קשה אמאי כותבין גט לאיש כולי -

But there is still a difficulty; why do we write a גט for a man, etc. without his wife present to give her the גט immediately -

ניחוש שמא תזנה אחר הכתיבה ויתן לה בצנעא[17] כדי לחפות עליה -

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[14] ר"מ maintains עדי חתימה כרתי, that the גט must have two עדים signed on it in order for the גט to be a valid גט (as opposed to ר' אלעזר who maintains עדי מסירה כרתי and there is no need for עדים to sign on the גט as long as עדים witness the transfer of the גט from the husband to the wife). Nevertheless (according to the ר"ת ורשב"ם) even ר"מ agrees that we also need עדי מסירה; the עדי חתימה make the גט a valid instrument for divorce, while the עדי מסירה validate the divorce, otherwise, since אין דבר שבערוה פחות משנים, the divorce will be ineffective.

[15] A דבר שבערוה is anything which involves marital relations (whether permitted relations as גיטין וקידושין, or illicit as adultery and incest). In all cases we need two witnesses to validate גיטין וקידושין and two witnesses to punish for an illicit relationship.

[16] [Even if we disagree with the ר"ת ורשב"ם and maintain that עדי מסירה are not required (according to ר"מ), nevertheless there will be a קול.]

[17] This is certainly possible if we only accept the ועוד (in footnote # 16). However even if there will be עדי מסירה, he

Let us be concerned perhaps she will commit adultery after the writing of the גט (for which she is liable for the death penalty since she is not divorced) **and** the husband **will give her** the גט **secretly in order to 'cover up' for her** so she should not receive the death penalty

תוספות answers:

ויש לומר דמיד שנכתב הגט נותן לה[18] דלא מקדים איניש פורענות[19] לנפשיה:

And one can say; that immediately after **the גט is written, he gives it to her, for a person does not rush to bring punishment to himself**

Summary

The חשש of שמא כתב בניסן וכו' is only when it is not known that the שטר was given later (we assume that it was given on time, either because there is no evidence to the contrary or that it is done in secrecy); however when we know the שטר was given after the date, there is no חשש.

Thinking it over

תוספות writes that a שט"ח is different from a גט since there is no קול by a loan, for מאן דיזיף בצנעא יזיף.[20] How come the גמרא shortly asks, 'why is גיטין different from שט"ח'; when תוספות clearly makes a difference?![21]

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can arrange that they too should keep the date of the נתינה a secret.

[18] The חכמת מנוח maintains that this dictum (אין אדם מקדים פורענות לנפשו) is sufficient to answer תוספות previous question as to the difference between כותבין שטר ללוה (where it is not פורענות) and כותבין גט לאיש (where he is being מקדים פורענות). Others (see גליון בשם שטמ"ק) however disagree, for פורענות is an answer why he will not write it solely to be מחפה; however previously we were concerned that he is holding on to the גט for a swindle (see footnote # 9); that may not be considered מקדים פורענות since he hopes to gain a monetary advantage.

[19] A divorce is an unsavory situation – פורענות – a person does not want to start this unhappy process unless it will be completed immediately.

[20] See footnote # 13.

[21] See מהר"ם שי"ף.