

The teaches us only - כי קתני מילתא דליתא בקידושין כולי - something that does not apply to laws of betrothal etc.

OVERVIEW

The גמרא questioned why the ברייתא limited the similarities between גיטי נשים, only to those stated in the ברייתא, when in fact there are more similarities. The final answer the גמרא gives is that the תנא mentions these similarities that exist by ג"נ וש"ע only, but do not exist by a שטר קידושין. This will explain how the three similarities namely, saying בפ"נ, the היתר of an עד כותי and the פסול of ערכאות are not found by שטרי קידושין.

כל הני ליתנהו בקידושין -

All these (three [or four¹] items) that were mentioned in the ברייתא as applying equally to גיטי נשים ושחרורי עבדים **do not apply by** קידושין.

- בפ"נ say The requirement to say enumerates: תוספות

דמוליק ומביא בגט משום עיגונא -

when one sends or brings a גט is limited to גיטין only, **because** of our concern that the woman will become an **עיגונא** if the גט is not validated, therefore we require and believe the שליה to say בפ"נ to enable the woman and the עבד to marry –

אבל כאן אם תרצה לא תקבל הנך קידושין -

However, here by קידושין there is no concern² to validate the שטר קידושין, **for if she so desires she need not accept these קידושין**. She can choose to be מקבל a שטר קידושין only if she knows it can be validated (immediately). If she chose to receive the שטר קידושין regardless, and a problem arose she only has herself to blame. By ג"נ וש"ע however, the גט ושטר שחרור have no choice, they must accept the שחרור ועבד. In their situation they may find themselves עגונות if the שטרות are not validated.

עד כותי the law of תוספות discusses now

ועד כותי לא שייך בקידושין -

And the דין permitting an עד כותי to sign by ג"נ וש"ע is not applicable by

¹ The גמרא subsequently discusses how the fourth item does not apply by קידושין.

² עגונה. Once the woman accepts the שטר קידושין, she is deemed married to the person who sent her this שטר. However if he does not appear after a while and she cannot validate the שטר, she will find herself in a dilemma whether she is מקודשת to this person or not. She will not be able to marry anyone else, in case she is indeed married to the בעל השטר. Our תוספות rejects this concern.

קידושין; that we should permit an עד כותי to sign on a שטר קידושין. Tosfos explains the difference between גיטין and קידושין.

דבגט הוא דמכשרינן כדלקמן משום דעדי הגט אין חותמין זה בלא זה -

For only by a גט do we say that an עד כותי is כשר, as the גמרא states later on³ because the witnesses of a גט cannot sign one without the other. An עד כותי is כשר provided the עד כותי signed on the שטר before the ישראל. The reason a גט is כשר if the עד כותי signed first, is because the עד הגט must sign in the presence of each other⁴. Therefore when the עד כותי signs first, we have a certain proof that the עד כותי is a reliable עד -

דאי לאו דכותי חבר⁵ הוה לא הוה מיחתם ליה מקמיה -

For if the עד כותי were not a 'חבר', the ישראל would not have allowed the עד כותי to sign before himself. The עד כותי and the ישראל were both present simultaneously at the signing of the גט. The fact that the עד כותי signed first indicates his status as a חבר, otherwise the ישראל would have insisted that the ישראל sign first. We know then for sure that this עד כותי is an עד כשר. All this is predicated on the rule that עד הגט must sign in each other's presence.

אבל בקידושין חותמין זה בלא זה -

However by a שטר קידושין the עדים may sign one without the other. They need not sign in each other's presence. Therefore even if the עד כותי signed before the ישראל there is no indication that he is a חבר. The reason the עד כותי signed first was because he came first and the other עד ישראל was not there yet. We cannot rely on this עד כותי.

Tosfos will now explain why by גיטין there is a requirement that the עדים must sign in each other's presence, but not by קידושין

דלא שייך למיגזר משום כולכם -

Because by קידושין the decree, that the עדים must sign in each other's presence (by a גט), out of concern that the בעל may say 'כולכם' – 'all of you' sign the שטר; is not applicable.

גיטין by כולכם of גזירה will explain the Tosfos.

דגבי גט גזרינן שמא יאמר כולכם חתומו -

For only by גט are we גזיר to sign זה בפני זה for perhaps the בעל will say 'all of you sign'. The בעל may say this to many people (more than two) that his wishes are that they should all sign this גט. He will have said it to them perhaps even before the גט was written.

³ See end of this עמוד and י,ב.

⁴ This will be shortly explained.

⁵ A 'חבר' was a status conferred upon individuals who were very scrupulous in their observance of מצוות including and especially in the זירות from טומאה.

ואם יחתמו זה בלא זה לאחר שחתמו בו שנים ויתנוהו לאשה ותסבור שהיא מגורשת -
And if they will sign one without another; all the עדים will not be there simultaneously, then **after two עדים will have signed the גט and they will give the גט to the woman;** thinking that since two עדים signed the גט it is a גט כשר, regardless that the בעל explicitly said **and the woman will assume that she is divorced.** She received a גט signed by two עדים -

- ותלך ותנשא ובעל קפיד -

and she will go and marry another man; the husband, however, is particular that all the עדים sign. The fact that they did not all sign, invalidates the גט. The woman is still an איש, when she remarries the new husband. This is the reason that **אין עדי הגט חותמין זה שלא בפני זה**. When they are all present each one realizes that all must sign the גט.

אבל בקידושין אין לחוש אם תסבור שהיא מקודשת⁶ -

However by קידושין there is no concern if she assumes that she is מקודשת.

and anticipates a possible problem if a woman mistakenly assumes she is מקודשת and ignores it -

והא לא שכיחא שתקבל קידושין מאחר⁷ -

And this is not common that she will accept קידושין from another man -

replies that this is of no real concern to us. It is highly unlikely that she will accept קידושין from another person -

כיון שסבורה להיות מקודשת -

since she is under the assumption that she is מקודשת. A woman who is מקודשת does not seriously accept offers of קידושין from other men.

concludes with the פסול of ערכאות:

וכן ערכאות כיון דאיכא עדי מסירה ישראל כשר בקידושין -

And similarly the פסול of ערכאות which is found by ג"נ וש"ע will not apply

⁶ Even if the (future) husband said כולכם, and not all signed, and therefore it is not a valid קידושין; nevertheless no harm will follow. Generally no איסור will be transgressed if a woman mistakenly assumes that she is מקודשת, when in fact she is not. Therefore there is no rule by עדי קידושין that they must sign in each other's presence. Subsequently even if the חתן signed first, there is no proof that he is a חבר.

⁷ After she received the קידושין, שטר, another person will be מקדש her, and for whatever reason she will accept this קידושין. The woman since she is under the mistaken impression that she is מקודשת to the first man will ignore these later קידושין; when in fact she is מקודשת to the second person. Therefore perhaps we should enact the משום כולכם by גזירה משום כולכם as well. The עדי קידושין should have to sign זה בפני זה in order to avoid this consequence.

עדי Jewish שטר קידושין since there are present at the giving of the קידושין; **it is מסירה** by כשר -

אף על פי שחותמין עובדי כוכבים -

Even though that gentiles signed on the שטר קידושין. There is no פסול of מזויף as there is by ג"נ וש"ע -

דליכא למיחש דילמא אתי למיסמך עליהו -

for there is no concern that perhaps we will come to depend on them⁸

דלא אתי לידי תקלה במה שסבורה להיות מקודשת כדפירשנו -

for it will not come to any harm, even if we will rely on the testimony of the ערכאות **in assuming that she is מקודשת**, as we just **explained⁹**. Even if we validate her שטר קידושין based on the testimony of the ערכאות it will raise no problems. No relevant illegal action is being taken here based on their testimony. By ג"נ וש"ע, however, we are allowing them to marry based on the testimony of the ערכאות.

תוספות poses a question:

ואם תאמר והאיכא זמן ששוו גיטי נשים לשחרורי עבדים -

And if you will say; but there is the requirement to date the document in which ג"נ וש"ע are similar that they both require dating their documents as opposed to a שטר קידושין that does not require זמן¹⁰.

¹¹ זמן שטר שחרור will now quote a source that a

כדאמרינן בפרק ד' אחין (יבמות דף לא, ב) -

As the גמרא says in פרק ד' אחין in response to a previous statement there that זמן is not required for those transactions (i.e. קדושין) that may be carried out either by שטר or money, the גמרא asks -

והא עבדא איכא דקני בכסף ואיכא דקני בשטרא ותקון רבנן זמן -

‘But by an עבד where the acquisition¹² may be either through a שטר or through money and nevertheless the רבנן **instituted the requirement to date** the שטר of the עבד’. This concludes the quote from the גמרא.

ובשחרורי עבדים איירי -

And the גמרא there is discussing the שטר of freeing the slaves; a שטר שחרור. This concludes the proof that a שטר שחרור requires זמן, providing we interpret that the

⁸ See תוספות ד"ה מודה that the פסול of מזויף מתוכו is because we are concerned that we will rely on the testimony of the invalid עדי חתימה. See ‘Thinking it over’ # 1.

⁹ A woman who mistakenly assumes that she is married does not (generally) carry any risks of איסורים.

¹⁰ The גמרא in יבמות quoted immediately explains why there is no זמן by שטר קידושין.

¹¹ דף ג, ב, quoted earlier on פו, א, משנה על בת אחרת or פירי. See also יחפה על בת אחרת.

¹² This will be referring to the עבד acquiring himself as a free man. רש"י (see further) will disagree.

שטר שחרור there is referring to גמרא.

is יבמות in גמרא the שטר of what type of will now present a differing opinion as to discussing and refute it.

ולא כמו שפירש שם בקונטרס שטר מכירת עבד -

And not the way רש"י **there interprets** the phrase of בשטרא to mean **the שטר of buying a slave**; only a שטר מכירת עבד requires זמן according to שטר שחרור¹³; not a רש"י.

- תוספות maintains This is not so

דאם כן הוה מצי למפרך מקרקעות וכל שטרות -

For if this is so that the גמרא when it states: דאיכא דקני בכספא ואיכא דקני בשטרא is referring to a שטר מכירת עבד, the גמרא **could have argued from the שטרות used in the sale of properties and indeed from all documents** in general. Why then does the גמרא limit its argument to a שטר מכירת עבד only, which may be something infrequent? In all these transactions the rule of איכא דקני בכספא ואיכא דקני בשטרא apply, just as they apply to שטר מכירת עבד.

ועוד דאותו אינו נפסל בשאין בו זמן -

And furthermore, that שטר מכירת עבד **in not פסול if it is not dated**¹⁴.

אלא בשטר שחרור איירי שנפסל בלא זמן כמו גיטי נשים -

Therefore we must say that the גמרא is discussing a שטר שחרור which is זמן, just as גיטי נשים are פסול if there is no זמן, just as

replies: תוספות

ויש לומר דכיון שרגילין לעשות זמן בכל שטרות לא תניא הכא:

We can answer that since it is customary to include the date in all documents,¹⁵ **the תנא of the ברייתא did not teach this similarity here.** The תנא lists the similarities that are unique to ש"ע; dating a שטר is common to all שטרות, even though it may not be required.

SUMMARY

There is no דין of כפ"נ by קידושין, since there is no חשש of עיגונא by קידושין. The woman has the option of not accepting the שטר קידושין. An עד כותי is פסול in a שטר קידושין, even if the כותי signed first. There is no requirement that the שטר קידושין sign in the presence of each other. By

¹³ According to s"l interpretation there is no proof from this גמרא that a שטר שחרור requires זמן.

¹⁴ The same is with the other שטרות they are not פסול if there is no זמן.

¹⁵ See 'Thinking it over' # 2.

even if he would say כולכם, and all did not sign, no dire consequences would result.

There is no problem of מזויף מתוכו, since we are not really acting on the testimony of the ערכאות.

The ברייתא does not mention the similarity of זמן, since it is common to write the זמן in all שטרות.

THINKING IT OVER

1. דלא since קידושין by ערכאות explains that we are not concerned for תוספות. However תוספות previously taught that אמת אע"פ שהדבר אמת, ¹⁶ אתי לידי תקלה, nevertheless כשר בעדות אלא לעשות אלא בעדות כשר, ¹⁷?! ערכאות so why here do we rely on ערכאות?

2. ¹⁸ concludes תוספות that זמן is not mentioned since it is commonly inserted by all שטרות. Seemingly we are not interested in all שטרות, but rather only what applies by קידושין ¹⁹ and by שטר קידושין there seemingly is no זמן? ²⁰

3. Is there a difference between רש"י's ²¹ explanation why מוליד ומביא is ליתא and תוספות's ²² explanation בקידושין?

¹⁶ See footnote # 8.

¹⁷ נח"מ.

¹⁸ See footnote # 15.

¹⁹ תוספות ט,ב ד"ה מילתא.

²⁰ See מהרש"א.

²¹ See רש"י ד"ה הכי גרסינן.

²² See מהר"ם שי"ף.