

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

### Overview

The גיטין נשים questioned why the ברייתא limited the similarities between גמרא, 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 only these similarities that exist by ג"נ וש"ע, 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.

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**All these** (three [or four<sup>1</sup>] items) that were mentioned in the ברייתא as applying equally to עבדים ושחרורי נשים **do not apply by** קידושין.

- בפ"נ The requirement to say enumerates: תוספות

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

**however here** by קידושין there is no concern to validate the שטר קידושין. **אבל כאן**

anticipates the following question. Seemingly by קידושין there may also be a problem of 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 rejects this concern 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 אשה ועבד have no choice, they must accept the שחרור גט. In their situation they may find themselves עגונות if the שטרות are not validated.

ג"נ וש"ע permitting an **עד כותי** to sign by **ועד כותי** and

**is not applicable by קידושין**; that we should permit an עד כותי to sign on a שטר קידושין. תוספות explains the difference between גיטין and קידושין.

**כשר is עד כותי** that an **עד כותי** do we say that an **עד כותי** **דבגט הוא דמכשרינן**

**as the גמרא states later on<sup>2</sup>** that 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 –

<sup>1</sup> The גמרא subsequently discusses how the fourth item does not apply by קידושין.

**because the witnesses of a גט cannot sign one without the other.** The גט must sign in the presence of each other<sup>3</sup>. Therefore when the כותי signs first, we have a certain proof that the כותי is a reliable עד - **for if the כותי were not a 'חבר'**<sup>4</sup>, the ישראל would not have allowed the כותי to sign before himself. The ישראל and the כותי were both present simultaneously at the signing of the גט. The fact that the 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 כותי is an עד כשר. All this is predicated on the rule that גט must sign in each others presence.

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

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

**because by קידושין it is not relevant to decree that the עדים must sign in each others presence out of concern that the בעל may say 'כולכם' – 'all of you' sign the שטר.**

גיטין will explain the גזירה of כולכם by תוספות

זה בפני זה **גוזר are we גט for only by גט – דגבי גט גזרינן**

**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.

**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 **לאחר שחתמו בו שנים**

**and they will give the גט to the woman;** thinking that since two עדים signed the גט it is a כשר, regardless that the בעל explicitly said כולכם

**and the woman will assume that she is divorced.** She received a גט signed by two עדים

**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.

<sup>2</sup> See end of this עמוד and י,ב.

<sup>3</sup> This will be shortly explained.

<sup>4</sup> A 'חבר' was a status conferred upon individuals who were very scrupulous in their observance of מצות including and especially in the זיהירות from טומאה.

**however by there is no concern** of כולכם. Even if the (future) husband said כולכם, and not all signed, and therefore it is not a valid קידושין; nevertheless no harm will follow -

**if she assumes that she is מקודשת**. 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 others presence. Subsequently even if the כותי signed first, there is no proof that he is a חבר.

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

**and this is not frequent** – והא לא שכיחא

**that she will accept קידושין from another man.** After she received the שטר קידושין, 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 as well. The עדי קידושין should have to sign זה בפני זה in order to avoid this consequence.

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

**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.

**and similarly** the ערכאות of פסול which is found by ג"נ וש"ע will not apply to קידושין.

**since there are present at the giving of the שטר עדי מסירה** Jewish קידושין

**it is כשר by כשר** – קידושין

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

**for there is no concern** that דליכא למיחש

**perhaps we will come to depend on them**<sup>5</sup>

**for it will not come to any harm**, even if we will rely on the testimony of the ערכאות -

**in that it is assumed that she is מקודשת** as we just explained<sup>6</sup>. 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 ערכאות.

<sup>5</sup> See מודה ד,א 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.

<sup>6</sup> A woman who mistakenly assumes that she is married does not (generally) carry any risks of איסורים.

poses a question:

**You may ask there is the requirement to date the document** – ואם תאמר והאיכא זמן

**in which they are similar** – ששוו גיטי נשים לשחרורי עבדים that they both require dating their documents as opposed to a שטר קידושין that does not require זמן.<sup>7</sup> זמן requires שטר שחרור a source that will now quote

**as the Gemara says in אחין ד' פרק** – כדאמרין בפרק ד' אחין (יבמות דף לא,ב) in response to a previous statement there that זמן is not required for those transactions (i.e. קידושין) that may be carried out either by שטר or money

**but by an עבד where the acquisition may be either through a שטר or through money** and nevertheless

**The instituted the requirement to date the שטר of the עבד.** ותקון רבנן זמן. This concludes the quote from the גמרא.

**And 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 the גמרא there referring to שטר שחרור.

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

**and not the way רש"י there interprets the phrase of ואיכא דקני בשטרא** – ולא כמו שפירש שם בקונטרס to mean -

**the שטר of buying a slave;** only a שטר מכירת עבד requires זמן according to שטר שחרור<sup>10</sup> not a רש"י according to

- תוספות maintains This is not so

**for if this is so** that the גמרא when it states: דאיכא דקני בכספא ואיכא דקני בשטרא is referring to a שטר מכירת עבד, why then does the גמרא limit its argument to a שטר מכירת עבד only, which may be something infrequent, when the גמרא

**could have argued from the שטרות used in the sale of properties** – הוה מצי למפרך מקרקעות

**and indeed from all documents** in general. In all these transactions the rule of 'איכא דקני בכספא ואיכא דקני בשטרא' apply, just as they apply to שטר מכירת עבד.

**and furthermore indeed that שטר מכירת עבד** – ועוד דאיתו אינו נפסל בשאין בו זמן **if it is not dated**<sup>11</sup>.

<sup>7</sup> The שטר קידושין by זמן immediately explains why there is no זמן in גמרא.

<sup>8</sup> requires זמן as the גמרא states clearly on דף יז,א the two reasons for בגיטין זמן either because of דף ג,ב, quoted earlier on פ,א, משנה ש. See also יחפה על בת אחותו or פירי.

<sup>9</sup> This will be referring to the עבד acquiring himself, i.e. becoming free. רש"י will obviously disagree.

<sup>10</sup> According to רש"י's interpretation there is no proof from this גמרא that a שטר שחרור requires זמן.

<sup>11</sup> The same is with the other שטרות they are not פסול if there is no זמן.

**Therefore we must say that the גמרא is discussing a שטר שחרור איירי**

**which is פסול if there is no זמן, just as גיטי נשים** - שנפסל בלא זמן כמו גיטי נשים  
are פסול if there is no זמן.

replies: תוספות

**We can answer that since it is customary to include the date in all documents<sup>12</sup> -**

**The תנא of the ברייתא did not teach this similarity here.** The שטרות lists the similarities that are unique to ג"נ וש"ע; dating a שטר is common to all שטרות, even though it may not be required.

### Summary

קידושין by עיגונא of חשש by קידושין, since 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 שטר קידושין even if he would say כולכם, and all did not sign, no dire consequences would result.

בעדי מסירה ישראל if it was given שטר קידושין by כשר are ערכאות. 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

שטרות concludes<sup>13</sup> that זמן is not mentioned since it applies by all שטרות. Seemingly we are not interested in all שטרות, but rather only what applies by שטר קידושין and by קידושין<sup>14</sup> there seemingly is no זמן?<sup>15</sup>

<sup>12</sup> See 'Thinking it over'.

<sup>13</sup> See footnote # 12.

<sup>14</sup> See previous תוספות ט"ב ד"ה מילתא.

<sup>15</sup> See מהרש"א.