

בשליחות בעל כורחה כולי – By a שליחות against one's will, etc.

OVERVIEW

The גמרא explains that the fourth similarity (ר"מ according to) between גיטי and שליחות בע"כ, which is not found by קידושין, is by גמרא ושחרורי עבדים. There is a dispute between רש"י and תוספות as to what the גמרא is referring to.

פירש בקונטרס והכי קתני בזו שווי גיטי נשים ושחרורי עבדים -

explained: and this is what the ברייתא taught, there is this similarity between גיטי נשים ושחרורי עבדים exclusively that does not apply to קידושין. The ברייתא is discussing a case -

ששליח זה נעשה שליח אצלו בעל כרחו ואם רצה הבעל חוזר -

where the שליח was appointed against the will of both the אשה and the עבד.¹ In such a situation **if the master desired he may reconsider** and retract the גט and the שטר שחרור. This according to ר"מ who maintains that it is a חוב for the עבד to be free (and obviously by the אשה it is a חוב for her to be מגורשת), therefore the שליח could not be שטר שחרור for the עבד -

מה שאין כן בקדושין דאף על גב דחוזר לאו דומיא דהני הוא -

This is not the case by קידושין which is (also) בע"כ of the אשה; **even though** that here too by קידושין the prospective בעל **may retract** the שליח before it reaches the woman, nevertheless **it is not similar to these** (ג"נ וש"ע). In the case of ג"נ וש"ע the reason the בעל may be חוזר is because it is a חוב for them² and the שליח cannot be שטר for them until it comes into their possession literally. Once however it does come to their possession the שטר takes effect; to divorce the אשה and to be משחרר the עבד. By קידושין however since it is בעל כורחה, against her will, the שטר never takes effect even after it reaches the woman's 'hand'. A person cannot be מקדש a woman בע"כ (as opposed to גירושין ושחרור which may take place בע"כ of the אשה ועבד). Therefore the reason the בעל can be חוזר from the קידושין has nothing in common with ג"נ וש"ע. By קידושין the בעל can be חוזר because since it is בע"כ, there is no meaningful שטר קידושין.

רש"י disagrees with תוספות.

ואין נראה דאי מיירי בשליחות בעל כורחיהו רבנן נמי מודו דחוזר בעבד -

and it does not appear that this is the interpretation of the גמרא, **for if we are discussing a שליחות** which is known to be **against their wills** (of the

¹ It is assumed that the אשה and the עבד do not wish to be divorced or freed respectively. (From תוספות subsequent question on רש"י, it appears that this is how תוספות understood רש"י.)

² In general it is a חוב for them, and particularly in this case where it is known that they oppose it.

women and the **עבד**), **the רבנן will also admit** to **ר"מ** that the **אדון may retract** the **שטר שחרור** from the **עבד** (if it did not reach him as of yet) -

ואין זכין לו בעל כורחו -

And one may not acquire the **שטר שחרור** **on behalf** of the **עבד** **against his will**. The argument between **ר"מ** and **רבנן**, is only when we do not know the wishes of the **עבד**. Then the **רבנן** maintain that generally it is a **זכות** for the **עבד** to be freed. Therefore one may be **זוכה** the **שטר שחרור** for the **עבד**, since **לאדם שלא בפניו** **עבד**, since **זכין לאדם שלא בפניו**. However when we specifically know that the **עבד** does not want the **שחרור**, the **רבנן** will agree that **חוזר בעבד** since it is a **חוב** for him in this specific case.

תוספות offers an alternate explanation

ונראה כפירוש רבינו חננאל דכיון דבעבד ואשה איכא שליחות בעל כורחיהו -

And the explanation of the ר"ה is more **appropriate**, that since by **עבד** and the **אשה** (who is being divorced), **the שליחות** there is **against their will**; the **עבד** and **אשה** need not be consulted by the **בעל** to send them their respective **שטרות** -

הוה אמינא דאין יכול לחזור דכיון דבא ליד השליח כאילו בא לידה דמי -

I might have thought that the **בעל** **cannot retract** for since it came into the **'hand'** of the **שליח**, it is as if it came to the woman's **hand** who is being divorced (similarly it is as if came into the hand of the **עבד**) -

כיון שאין יכולים לעכב -

Since the **אשה** **עבד** **cannot prevent** the **שליח** from giving them the **שטר**. The **שטר** is effective without their consent. Therefore as soon as the **בעל** gave the **שליח** the **שטר**, it seems inevitable that the **שטר** will ultimately become effective, for the **אשה** and **עבד** cannot prevent it. There seems no reason why the **בעל** should be able to be **חוזר**. All that is required on his behalf was done; there is no stopping this process.

אבל קידושין דאין בעל כורחה פשיטא דחוזר -

However by **קידושין** where the transaction **cannot** take place **against her will**; **קידושין** must be with the woman's consent, **it is obvious that he may retract** his offer of **קידושין**. When the **שטר** **קידושין** left the master, it was in no way inevitable that the **קידושין** process will be culminated. It depends on the consent of the woman. Therefore since the sending of the **שטר** **קידושין** is only the beginning of a process, the prospective **בעל** may retract, as long as the woman did not willingly accept the **שטר** **קידושין**. Therefore the **חזרה** by **ג"נ וש"ע** is different than the **חזרה** by **קידושין**.

תוספות anticipates a certain difficulty with this interpretation. According to the **ר"ה** by **קידושין** the **בעל** can also be **חוזר**. The reason why it is not similar to **ג"נ וש"ע** is because by **קידושין** it is obvious that he may be **חוזר**. Why did not the **גמרא** say so? Why does the **גמרא** say that it is **ליתא בקידושין**, meaning that it does not exist by **קידושין** when in fact by **קידושין**

the בעל may also be חוזר? תוספות responds:

ומילתא דליתא בקדושין היינו דליתא חידוש בקדושין -

And the expression 'an item that does not apply by קידושין', means that there is no novelty that by קידושין he may retract. In the case of קידושין it is obvious that the בעל may retract, since it depends on her consent as well, as previously explained.

תוספות asks a question:

וקשה ליתני דשוו לבעל כורחיה והוה ארבע אפילו לרבנן -

And there is a difficulty; let the תנא teach us that there is an additional similarity between ג"נ וש"ע in a case of בע"כ; where it is permitted to send them a גט אשה and a שטר שחרור even **against their will, and there will be four similarities between ג"נ וש"ע even according to the רבנן**³. It will also be a since an אשה can be מקודשת only with her consent. תוספות does not answer this question.

SUMMARY

According to רש"י the term שליחות בע"כ refers to the fact that it was known that the שליחות was against their wills. In all three cases the בעל can be חוזר. There is a difference however. By ג"נ וש"ע he can be חוזר because it is a חוב for them. By קידושין he is חוזר because there was no real קידושין שטר.

תוספות argues that if it was known that the שטר שחרור was בע"כ of the עבד the רבנן would agree that בעבד חוזר.

תוספות follows the explanation of the ר"ה. By ג"נ וש"ע there is a חידוש that the בעל can be חוזר, since they cannot be מעכב. By קידושין however where it must be מדעתה, so obviously the בעל can be חוזר. There is no חידוש that he can be חוזר. A question remains, however, why did not the חכמים also say that there is a fourth similarity, namely that by ג"נ וש"ע it is בע"כ; however by קידושין it must be מדעתה.

THINKING IT OVER

Is תוספות last question connected to the פירוש ר"ה or is the same question applicable to פירש"י⁴

³ The difference between תוספות question on רש"י and his question on the ר"ה is: According to רש"י the fourth similarity is equally valid for the רבנן as it is for ר"ה. The question on the ר"ה is; why indeed did not the ר"ה list a fourth similarity according to the רבנן as well? See מהר"ם שי"ף.

⁴ See מהר"ם שי"ף.