

בגיטי נשים אבל לא בשחרורי עבדים –

By writs of divorce but not by the emancipation of slaves

OVERVIEW

The חכמים rule that if one gives a גט אשה to a third party and tells him to give it to his wife; the husband may retract the גט before the woman receives it. However if he gave a גט שחרור to a third party to deliver it to his כנעני, then the master cannot retract. The חכמים explain this rule saying because one may benefit another not in his presence (therefore the עבד is freed immediately upon the third party's receipt of the שטר שחרור, since it is beneficial for the עבד to be freed),¹ however one may not harm someone not in his presence (therefore the woman is not divorced [before she actually receives the גט], since it is to her detriment to be divorced).² תוספות discusses why being freed is beneficial and being divorced is detrimental.

בירושלמי³ בעי הגע עצמך היה עבדו של קצין הרי חובה הוא לעבד⁴ –

In they ask (rhetorically); ‘think honestly; if he were the slave of a nobleman it is indeed detrimental for the slave to be freed; on the other hand -

הרי שהיתה אשתו של מוכה שחין הרי זכות הוא לה⁵ –

If she were the wife if a leper it is indeed beneficial to her’ to be divorced. Why do we assume that universally it is a זכות for the עבד and a חוב for the אשה?⁶

The ירושלמי offers a different perspective to the law of our משנה:

לית לך אלא כהדא אילו המוכר עבדו שלא מדעתו שמא אינו מכור –

You have no other choice (how to explain the difference between an עבד and an אשה) except as follows (the ירושלמי now presents two rhetorical questions); if one were to sell his slave without his consent is he perhaps

¹ This would seem to be obvious.

² It is detrimental for a woman to be divorced because as long as she is married her husband is obligated to sustain and support her.

³ (דף זב, in our ירושלמי it is on פ"א ה"ה)

⁴ The honor and comforts he has in the house of the קצין should outweigh any advantage he may receive if he is freed.

⁵ The relief she has by not having to live with a מוכה שחין should outweigh the benefit of the material support he provides her

⁶ In both cases there is a זכות and a חוב (see footnotes # 4 & 5). Why by an עבד do we consider it a זכות and by אשה חוב (see נח"מ).

not sold?! However -

– אילו המגרש אשה שלא מדעתה שמא מגורשת היא –

If one were to divorce a woman without her consent, is she perhaps divorced?! This concludes the citation from the ירושלמי.

ירושלמי explains the תוספות:

פירוש על ידי אחר העבד נמכר על כרחו⁷ –

The explanation of this distinction is in a case where the transaction (the sale or the divorce) is done **through an outsider**; whereby **the slave is sold against his will** -

ואין האשה מתגרשת על ידי אחר⁸ בעל כרחה⁹:

However, the woman cannot be divorced by an outsider against her will.

SUMMARY

A master can always sell his slave without his consent. A man cannot appoint an outsider to receive the גט on behalf of his wife.

THINKING IT OVER

It appears that (according to some¹⁰) the ירושלמי gives a different explanation than our משנה. How is this that the אמוראים in the ירושלמי do not follow the משנה?¹¹

⁷ The קצין can always sell the עבד (even without his consent) to an outsider, therefore (now that we see that the קצין wants to free the עבד) it is a זכות for the עבד to be freed rather than be sold to an unsatisfactory master (תוה"ר). Therefore, even if he is an עבד of the קצין, it is still a זכות for him to be freed, for it is possible for him to be sold to an undesirable master which would be even worse. [Alternately (see מהרש"א) the ירושלמי is not discussing whether it is a זכות or a חוב, but rather since there is no way how the עבד can remain by his master (against his master's will), since his master can always sell him, therefore as soon as the שליח receives the שחרור, the עבד is free, since he does not have the capability of remaining by the master (see בשליחות יא, ד"ה בשליחות). See 'Thinking it over'.]

⁸ This (seemingly) means that if the woman (or her designated שליח) does not receive the גט (and she conceals herself), the husband cannot appoint anyone to receive the גט on her behalf (against her will). Therefore we cannot say that she can be taken away from her husband regardless of her consent. However, by an עבד even if he runs away and (conceals himself and) does not receive the שטר שחרור, his master can always sell him to someone else and he will be separated from his master.

⁹ Therefore it is considered a חוב (even though she leaves the שחיין), since she loses the monetary support from her husband. However by an עבד it is only a זכות, since the master can always sell him. [In addition, it is considered a חוב for the woman based on the dictum (see קידושין זא, see) that for a woman it is טוב למיבת תן דו מליתב ארמלו (it is better to live with company than to live alone). See תוה"ר.]

¹⁰ See footnote # 7 (in the brackets).

¹¹ See מהרש"א הארוך and רש"ש.