

נכתב ביום ונחתם בלילה פסול –

It was written by day and signed by night; it is פסול

OVERVIEW

The גמרא will shortly cite a dispute between ר"י ור"ל why the חכמים instituted that a גט should be properly dated. ר"י says because ר"ל אחותו¹ while ר"ל maintains that it is because of פירות². Our תוספות explains that similar concerns apply to a גט which was נכתב ביום and נחתם בלילה.

לרבי יוחנן משום שמא יחפה על בת אחותו³ –

According to ר"י it is פסול because he may cover up for his sister's daughter -

ולריש לקיש משום פירי דסבורין הדיינים שביום הכתיבה נחתם –

And according to ר"ל this גט is פסול because of 'fruits'; for the judges will assume that it was signed on the day it was written -

ותטרוף האשה מלקוחות שלא כדין פירות שמשעת כתיבה עד שעת חתימה:⁴

And so the woman will collect from the buyers illegally the fruits from the time of the writing of the גט till the time of the signing of the גט.

SUMMARY

פירי (ר"י) or שמה יחפה because of פסול is נכתב ביום ונחתם בלילה (ר"ל).

THINKING IT OVER

¹ If a man married his niece (בת אחותו) or anyone whom he really cares for and she was מזונה תחתיו, so in order to spare her from the death penalty he will write her a גט without a date, and when she will be accused of adultery she will show her undated גט and claim that she was already divorced when she was מזונה. However if there is זמן on the גט, then she cannot claim she was already divorced before the date on the גט.

² The husband has the right to 'eat' (or sell) the fruits of the מלוג נכסי which the wife brought into the marriage, until he divorces her. If there will be no זמן on the גט, the husband may continue to eat/sell the פירות נכסי, and by the time the divorcee realizes it and takes him to בית דין he will claim that they were sold/eaten before the divorce. However now that there is a date on the גט she will be able to claim her פירות from that day onwards.

³ Let us assume the גט was written [and dated] Sunday ניסן ר"ח, however it was signed Sunday night which is ניסן ב'. The woman was still married on Sunday (for the גט was not (signed and) delivered to her until Sunday night. If she was מזונה on Sunday she will show the גט which is dated ניסן ר"ח and she will claim that she received the גט before she was מזונה. See 'Thinking it over # 2.

⁴ The woman will reclaim from the לקוחות any פירות which they bought on Sunday ניסן ר"ח, even though in reality she was still married on ניסן ר"ח and the husband had the right to sell the פירות to these לקוחות. This is the reverse of the concern of a גט שאין בו זמן, for there we are concerned for the wife's loss (see footnote # 2), however here we are concerned for the illegal loss of the לקוחות perpetrated by the wife. See 'Thinking it over' # 1.

1. Seemingly תוספות is teaching us what the גמרא will shortly state, namely that ר"י argue why זמן is necessary (either because of שמא יחפה or פירות); why is it necessary for תוספות to mention this?!⁵

2. In the case of שמא יחפה (an illegal) נכתב ביום ונחתם בלילה⁶; even if we assume that the husband is aware that she may be מזונה today (and he wants to be מחפה for her), let him have the גט signed today as well!⁷

3. The גמרא will shortly state⁸ that ר"י maintains that the בעל has פירות until the גט is delivered to the woman. Why did not תוספות say that according to ר"י if it is נכתב שעת כתיבה פירות, because the בעל may lose the פירות between שעת כתיבה and כדן?!⁹

⁵ See מהרש"א הארוך.

⁶ See footnote # 3.

⁷ See תפא"י and מהר"ם שי"ק.

⁸ ריש עמוד ב'.

⁹ See בל"י אות שפג and # 87 אמ"ה.