מפני מה תיקנו זמן בגיטין – Why did they institute a date by גיטין

Overview

The גמרא introduces us to the two different reasons why the חכמים instituted that a גט needs to be dated. תוספות negates other reasons for זמן בגיטין, and explains why a גט שחרור requires זמן.

לא מצי למימר דתקינו זמן –

The גמרא **could not have said that** the חכמים **instituted זמן** by גיטין -

כדי שתוכל להוציא האשה מן הבעל מזונות שלוותה ואכלה קודם זמן הכתוב בגט[1] –

In order that a woman should be able to collect from her **husband** the payment for her **food,** for **which she borrowed and ate for the time which precedes the date written in the גט,** in order -

שלא יוכל לומר לה גירשתיך מקודם לכן –

That the husband **should not be able to say to her; 'I divorced you prior to that** time'.[2] This seemingly explains the need for זמן in גיטין.

תוספות explains why this is not a valid reason to be מתקן זמן בגיטין:

דבלאו הכי נאמנת אשה על כך[3] –

For even without the זמן on the גט, **the woman is believed** as to the date of her גט, and that he owes her for her prior מזונות. The reason she is believed because she has a -

מיגו[4] דאי בעי תטמין את גיטה ולא ידעו שהיא גרושה[5] ולא תראנו עד שתרצה להנשא –

מיגו that she could have hidden her גט and no one will know that she is divorced, and she will not show it until she wants to remarry –

תוספות replies to an anticipated question:

ואם יביא הבעל עדי מסירה אז לא תפסיד האשה שידעו העדים מתי נמסר –

And even **if the husband will bring עדי מסירה** that she was divorced (thereby

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[1] Let us assume that the divorce took place on ר"ח ניסן תשע"ה. For one month prior (the month of אדר) the husband did not supply food (מזונות) for his wife (as he is obligated to do). The woman borrowed money to feed herself. The husband owes her this money. If there was no זמן on the גט, the husband can claim I divorced you in שבט תשע"ה and I was not obligated to feed you in אדר. However now that there is a זמן in the גט (of ר"ח ניסן), the woman will be able to collect from her husband for her food in אדר, for which she borrowed.

[2] In this case the woman may be considered the מוציא and she would have to prove when she was divorced (which she may not be able to, causing her a loss).

[3] See 'Thinking it over' # 1.

[4] See 'Thinking it over' # 2.

[5] If the woman conceals her גט she can claim she is still married and the husband is required to feed her; therefore even if she shows the גט, she is believed to claim that he owed her מזונות until whatever date she claims.

seemingly voiding her מיגו that she can conceal the גט), nevertheless, **in that** case, **the woman will** still **not lose** her legitimate claim, **for the** מסירה **עדי will know when** the גט **was transferred,**[6] and until that time she is entitled to מזונות.

תוספות anticipates another difficulty:

אף על גב דבעל שאומר גירשתי את אשתי נאמן –

Even though the ruling is that **when a husband states, 'I divorced my wife', he is believed,** so this seemingly destroys her מיגו of concealing the גט, because the husband will claim I divorced you (a while ago) –

תוספות responds:

היינו דווקא מכאן ולהבא[7] כדאמרינן ביש נוחלין (בבא בתרא דף קלד,ב) **–**

This trusting **is only for the future as** the גמרא **states in יש נוחלין** - פרק

ואפילו מכאן ולהבא לא מצינו שיהא נאמן כשאשתו מכחישתו –

And even regarding the future we do not find that the husband **should be believed if his wife contradicts him.** Therefore she has a מיגו of concealing her גט (and denying that she is divorced) and receiving the מזונות (she is entitled to).

תוספות offers another explanation why it is not necessary to be מתקן זמן by גיטין because of מזונות:

ועוד דמשום מזונות לא היו צריכין לתקן זמן כמו שאפרש על רבי יוחנן בסמוך[8] –

And in addition, as I will shortly explain regarding ר"י, it was not necessary to be מתקן זמן by גיטין **because of מזונות -**

דאפילו אין בו זמן יכולה האשה לבקש עדי מסירה שיעידו בפני בית דין או עדים[9] –

For even if there is no זמן in the גט, **the woman can ask the עדי מסירה that they should testify before בי"ד or** other **witnesses -**

שהיום נתגרשה ויכתבו לה שטר אחר –

That she was divorced today, and they (בי"ד or the עדים) **will write for her a separate note** when the divorce took place; it is not necessary that it should be in the גט.

תוספות reconsiders this last explanation:

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[6] The concern is that the woman should not lose out on the מזונות which she is entitled to. תוספות explains that she will never lose out; if the husband does not bring ע"מ that she was divorced, then she can conceal the גט and receive מזונות for as long as she wants (even illegally), and if he brings ע"מ, she will receive the מזונות she is entitled to.

[7] The reason he is believed מכאן ולהבא and not למפרע because it is בידו to divorce her as of now, but he cannot divorce her retroactively.

[8] See עמוד ב' תוס' ד"ה עד.

[9] See רש"ש that תוספות does not mean that the ע"מ should testify before other עדים and they should write the שטר, for then it is עד מפי עד which is פסול, but rather תוספות means the woman should approach other עדים who saw the מסירת הגט even though they were not the designated ע"מ.

(ומיהו[10] שמא לא יתרצו עדי מסירה לבא עמה לבית דין –

However this explanation may not be sufficient, for **perhaps the ע"מ will not be willing to come with her to - בי"ד**

או לומר לעדים[11] ויכתבו לה שטר אחר שמאותו יום נתגרשה –

Or to tell other **witnesses, so that they can write for her a שטר that she was divorced from this day** (therefore it may be necessary to have זמן in the גט so she should not lose her מזונות) **–**

תוספות offers a third reason why we do not say that they were מתקן זמן because of מזונות:

ואדרבה על ידי הזמן פעמים היא תפסיד מזונות שלא כדין כשלא גרשה בשעת הכתיבה) –

And it may be just the opposite that through writing **the date** on the גט she may **occasionally lose out on the מזונות unfairly,** in a case **where he did not divorce her at the time of writing** the גט.[12]

תוספות asks:

ואם תאמר וגט שיחרור למה תיקנו בו זמן –

And if you will say; and why did they institute זמן by an emancipation note of an עבד כנעני –

תוספות anticipates a possible reason and rejects it:

דאי משום מעשה ידיו בלא זמן נמי יוכל לבא לבית דין ויכתבו לו שמאותו יום נשתחרר –

For if it is because of his handiwork (that his previous master should not claim his מעשה ידיו after he was freed); this cannot be the reason, for **even without the זמן** written in the גט שיחרור, the עבד **can come to בי"ד** with his גט שחרור **and** בי"ד **will write on his behalf that he was freed from this day** onward, so there is no need for זמן in the גט שחרור –

תוספות rejects another suggestion why there should be זמן in a גט שחרור:

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[10] The מהרש"ל omits this entire parenthesis [from ומיהו until הכתיבה] and claims it is a gloss. The מהרש"ל deletes this because later (see footnote # 8) תוספות uses this סברא to explain ר"י and does not mention this ומיהו וכו'. However the מהרש"א sustains this גירסא of ומיהו וכו' הכתיבה and differentiates between our case and ר"י later. Regarding ר"י who maintains יש לבעל פירות עד שעת נתינה it is understood that she cannot lose the פירות, for as soon as she receives the גט, she will ask two people to write her a שטר that they saw the גט by her on this date. However here (where we are discussing her מזונות) even if two עדים testify that the saw the גט on her possession on this date, nevertheless the husband can still claim that he divorced her previously. Her only option is to find the עדי מסירה who will testify when she actually received the גט; regarding the עדי מסירה it is possible that they will not want to go to בי"ד, etc.

[11] See footnote # 9 and נח"מ.

[12] He wrote the גט and dated it on ר"ח ניסן and did not divorce her until ר"ח אייר; she will lose out on the פירות of the entire חודש ניסן (if she had to borrow for that month).

ואפילו למאן דאמר עדיו בחתומיו זכין לו[13] אינו זוכה במעשה ידיו מיום הכתיבה –

And even according to the one who maintains that עדיו בחתומיו זכין לו, nevertheless in this case, the עבד **will not own his מעשה ידיו from the day** the גט שחרור **was written** and signed by the עדים -

כיון שאין בו זמן[14] ואין מוכיח מתוכו מתי נכתב –

Since there is no זמן in the document **and it is not evident from this** document **when it was written** and signed **–**

תוספות proves his point that the עבד is not זוכה במעשה ידיו משעת כתיבה if there is no זמן:

כמו בשני שטרות היוצאין ביום אחד[15] –

Just like a case **of two notes that have the same date,** where the ruling is **-**

דאפילו לאביי דאמר עדיו בחתומיו זכין לו זה שמסר לו תחילה קנה[16] –

Even according to אביי who maintains עדיו בחתומיו זכין לו, that the one who received the שטר **first acquires it -**

דבפרק זה בורר (סנהדרין דף כח,ב) **משמע דאביי סבר כרבי אלעזר דאמר עדי מסירה כרתי[17] –**

For in פרק זה בורר it seems that אביי agrees with ר"א who maintains[18] ע"מ כרתי -

ולרבי אלעזר על כרחך זה שמסר לו תחילה קנה כדמוכח בפרק מי שהיה נשוי[19] (כתובות צד,ב) **–**

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[13] אביי maintains (ב"מ יג,א) that עדיו בחתומיו זכין לו, which means that when עדים sign a שטר הלואה (for instance), even though the loan did not take place as of yet (it took place sometime later), nevertheless since the עדים already signed the שטר, they grant to the מלוה (for whom the שטר is being written), the שעבוד on the קרקע of the לוה. If the לוה sells his קרקע after the שטר was signed (even before the loan took place), the מלוה can collect this קרקע for his debt. Similarly here we may assume that as soon as the עדים signed on the גט שחרור, the עבד is זוכה במעשה ידיו, even though he did not receive the גט שחרור yet (as the case is by a שטר הלואה). Therefore it is necessary that there be זמן on the שטר שחרור so the עבד can reclaim his מעשה ידיו from that date onwards, for if he relies solely on the בי"ד (without זמן), then he will only be able to retrieve his מעשה ידיו from the date he received the שטר שחרור, but not from the day it was written, which would cause a loss for the עבד.

[14] תוספות rejects this reasoning, for if there is no זמן on the גט שחרור, the עבד is not זוכה במעשה ידיו from the time of the כתיבה on account of עדיו בחתומיו זכין לו, for since there is no זמן, we do not know from the שטר when it was signed. The עבד is not losing anything by not having זמן, because if there is no זמן, he is not entitled to מעשה ידיו until he receives the שטר, and then he can go to בי"ד and have them verify the date of his שחרור.

[15] ראובן sold the same field to שמעון ולוי (individually) and the date was the same on both שטרות, the question is who acquires the field.

[16] Seemingly one would assume that if we maintain עדיו בחתומיו כו', then we should verify which שטר was signed first and that person should acquire the field (or if it cannot be verified it should belong to both of them). תוספות rejects this notion.

[17] The גמרא there discusses a שטר מתנה that was signed by two brothers-in-law; רב יוסף ruled that if there are עדי מסירה כשרים (besides the עדי חתימה) it is a valid מתנה. However אביי challenged him that מודה ר"א במזויף מתוכו, that it is פסול. It would seem from his question that אביי agrees that ע"מ כרתי. See 'Thinking it over' # 3.

[18] There is a מחלוקת by גיטין (and all other שטרי קנין) between ר"מ ור"א as to what makes the שטר effective (which עדים make the קנין or גירושין effective). ר"מ maintains ע"ח כרתי, while ר"א maintains ע"מ כרתי.

[19] The גמרא there cites a מחלוקת between רב regarding שטרות היוצאין ביום אחד ושמואל (see footnote # 15); רב maintains שודא דדיינא (the דיין decides whom to give it to) and שמואל maintains יחלוקו. The גמרא concludes that רב agrees with ר"מ that ע"ח כרתי and therefore they both have an equal right to it. However שמואל agrees with ר"א that

And according to ר"א perforce you must say, **that the one who received** the שטר **first acquires it, as is evident in פרק מי שהי' נשוי -**

והיינו משום דלא אמרינן עדיו בחתומיו זכין לו אלא היכא דמוכח מתוכו –

And the reason **for this**[20] **is because we do not say עדיו בחתומיו זכין לו unless it is evident from the שטר;** however by the ב' שטרות it is not evident מתוך השטר which שטר was signed first and therefore עדיו בחתמיו does not apply -

והוא הדין הכא באין בו זמן כלל –

And the same rule applies **here where there is no זמן at all,** that there is no rule of עדיו בחתומיו. Therefore the עבד is not suffering any loss if there is no זמן. The question remains why were the חכמים מתקן זמן by a גט שחרור.

תוספות answers:

ואומר רבינו יצחק דתקנו זמן דאי לא הוי ביה זמן פעמים שהיה אדם מוכר עבדו –

And the ר"י answers; that the חכמים **were מתקן זמן** by גט שחרור, **for if there would not be זמן** by a גט שחרור, it may come to pass **that occasionally a person will sell his עבד -**

ואחר כך כותב לו גט שיחרור בלא זמן –

And later this same owner **would write a גט שיחרור for this** עבד **without זמן -**

והיה אומר העבד לרבו שני אייתי ראיה ששטר מכר שלך קדם לשחרור –

And this עבד would say to his second master, 'bring proof that you bill of sale was written **before** my **שחרור** שטר' **–**

תוספות explains why the new buyer would have to prove that his שטר מכר precedes the שטר שחרור:

שהעבד הוא מוחזק בעצמו והלוקח בא להוציא ממנו השעבוד –

For the עבד is in possession of himself, and the buyer is coming to extract from him this lien on the עבד, so we would say to the buyer, the עבד is the מוחזק and you are the מוציא, therefore המוציא מחבירו עליו הראי'. That is why זמן is required for a גט שחרור –

תוספות responds to an anticipated question:[21]

אבל הכא הבעל מוחזק ולא האשה[22]:

However, here the husband is the מוחזק, but not the wife.

ע"מ כרתי (we just do not know who received the שטר first) so we rely on שודא דדיינא.

[20] How can we give it to the one who received it first, if we maintain as אביי does that עדיו בחתומיו זכין לו, so it should belong to either both of them, or the one whose שטר was signed first!

[21] Let us say the same reason by גט, that if there would be no זמן by גט, the woman would be מוציא the פירות from the בעל or the לקוחות by claiming she was divorced earlier. תוספות rejects this question.

[22] When the woman marries, the פירות are in the possession of the husband; there she must prove when she was divorced in order to be מוציא פירות from the בעל or לקוחות.

Summary

A woman is believed as to when she was divorced, regarding מזונות (for she has a מיגו to conceal her גט). A husband is believed that he divorced his wife, only regarding the future, provided his wife does not deny it. עדיו בחתומיו זכין לו only if there is זמן in the שטר. They were מתקן זמן by גט שחרור so the עבד should not challenge his new owner (that his שטר שחרור preceded the שטר מכר).

Thinking it over

1. תוספות states that even with a גט without זמן the woman will be believed to collect her מזונות from her husband.[23] Why do we not say, that this is the reason we need זמן בגיטין for otherwise the woman will illegally collect מזונות for the time after her divorce, because as תוספות states she is always believed with a מיגו?[24]

2. תוספות states that even with a גט without זמן the woman will be believed to collect her מזונות from her husband because she has a מיגו of concealing her גט.[25] However, there is a rule (according to תוספות) that מיגו להוציא לא אמרינן![26]

3. How can we reconcile what אביי maintains עדיו בחתומיו זכין לו indicating (seemingly) that ע"ח כרתי with that which תוספות assumes that אביי maintains[27] ע"מ כרתי?[28]

[23] See footnote # 3.
[24] See מהרש"א (הארוך) and נח"מ.
[25] See footnote # 4.
[26] See חי' הרי"ם.
[27] See footnote # 17.
[28] See נח"מ.