

ר"ל said because of fruits

ריש לקיש אמר משום פירות –

OVERVIEW

ר"ל said the reason the חכמים were מתקן זמן by גיטין is in order that the woman should not lose any פירות which is rightfully hers. תוספות discusses when the בעל has the right to the פירות and when not.

כדי שתדע האשה מתי נכתב ונחתם¹ ולא תפסיד פירות עד שעת נתינה² –

In order that the woman should know when the גט was written and signed, and so she will not lose the פירות from the date the גט was signed until the time it was given to her.

תוספות asks:

ואם תאמר גט מאוחר יפסל מהאי טעמא³ ובפרק גט פשוט (בבא בתרא קס,א) מוכח דכשר –
פסול גט should be מאוחר גט for this same reason, a post-dated גט is כשר – however, in פשוט גט it is evident that a מאוחר גט is כשר –

דאמר גט⁴ מקושר⁵ שכתבו עדיו מתוכו כשר מפני שיכול לעשותו פשוט⁶ –
there states that if the גט is signed on the inside it is כשר because he can make it into a פשוט גט –

ואז יהיה מאוחר דמקושר אמרינן התם (קסד,ב) מלך שנה מונין לו שנים –
there states if it is in the first year of the king's reign we count two years, however by a פשוט גט we write the actual year (מלך שנה מונין לו שנה) –

ועכשיו ימנו מזמן הכתוב בו כדין פשוט שלא ידעו דתחילתו מקושר היה –
they will count from the actual time which is written in it as the rule is by a פשוט, for they will not know that

¹ ר"ל maintains that as soon as the גט is signed the husband has no longer the rights to the פירות (even if he did not give her the גט yet). If there would be no זמן, the husband would sell the פירות after the גט was signed before she received it, and the woman will have no recourse for those פירות.

² We are not concerned however regarding the פירות after the שעת נתינה (not as it seems from פירות משום פירות); for as soon as she receives the גט, the woman has the option of having ב"ד (or any two עדים) write her a note that she had the גט in her possession as of this date.

³ If the גט is post-dated, then the woman loses the פירות from the time the גט was actually signed until the false post dated זמן on the גט (or until the שעת נתינה if he gave her the גט before the post-dated זמן).

⁴ In this context גט refers to any שטר (not only a אשה גט).

⁵ A מקושר גט is a שטר written in a particular manner; after one line is written, the שטר is folded over on the writing and the following blank line and is then sewn together, and the עדים sign on the outside (the back) of the writing. And this continues until the שטר is completed (see ד"ה מקושר there רש"י).

⁶ The stiches can be torn and the שטר will be a regular פשוט גט.

initially it was a מקושר. The woman will lose the פירות from the time of the חתימה.⁷

answers: תוספות

– ואומר רבינו יצחק דבמאחר אין הבעל מפסיד פירות משעת חתימה –

And the ר"י says that by a מאחר the husband does not lose the פירות from the time of the signing of the גט -

– אלא משעת הזמן דאין ראוי לגרש בו אפילו נתנו לה לאלתר ואין הגירושין חלים עד הזמן⁸ –

But rather he loses the פירות from the time of the date on the גט, for until that date the גט is not fit to divorce with it even if he gave it to her immediately (right after it was signed), **and the גירושין will not be in effect until the date on the גט.**

responds to an anticipated question: תוספות⁹

– אבל נכתב ביום לרבי שמעון ראוי לגרש בו מיד¹⁰ אף על פי שלא נחתם על ידי עדי מסירה –

However, a גט which was written by day is fit to be used for a divorce immediately according to ר"ש, through the ע"מ even though it was not signed-

– דרבי שמעון סבר כרבי אלעזר דעדי מסירה כרתי כדאמרין בפרק קמא (לעיל ט, ב) –

For ר"א agrees with ר"ש that ע"מ כרתי as the גמרא states in the first פרק -

– ולרבנן אף על גב דראוי לגרש בו כיון דליכא נמי קול¹¹ אין הבעל מפסיד פירות¹² –

And the רבנן (even if they maintain כרתי ע"מ), even though this גט is fit for divorcing, nevertheless since there is not even any publicity, the husband does not lose the פירות until it is delivered to her -

אבל כשעסוקים באותו ענין דיש קול וראוי לגרש בו –

⁷ She was actually divorced on ר"ה ניסן of the first year of the king. However in the גט it will be written that she is divorced as of the second year (ר"ה ניסן). If the husband will give her the גט after the second year (even on ניסן), she will still lose a whole year of פירות (or a partial year if he give her the גט before the מאחר (זמן מאחר)).

⁸ It is considered (since it is post-dated) as if he made a stipulation that the גט should not be effective until the date written in the גט. See 'Thinking it over' # 2. The woman, therefore, is not losing פירות, since legally the פירות still belong to her husband (and she is not divorced yet).

⁹ ר"ש just concluded that the husband does not lose the פירות until the גט is בו לגרש; how is it that ר"ש maintains בלילה ביום ונחתם בלילה (by נשים), seemingly the woman will receive the פירות from the day while she should only receive the פירות from at night since that is when the גט is effective (with the חתימת העדים).

¹⁰ Therefore, since it is בו לגרש, the בעל loses the פירות and it belongs to the woman.

¹¹ It is the חתימה that cause there should be a קול. In this case of ביום ונחתם בלילה there were no חתימה by day. Therefore the לקוחות were not aware that a divorce is pending (so they should refrain from buying these פירות). The חכמים therefore extended the rights of the בעל to the פירות (for the day) so the לקוחות should not incur any loss. However if there would be a קול before the חתימה (as תוספות will shortly discuss), then indeed the בעל loses the פירות, since there is a קול and there will be no unfair loss to the לקוחות. According to the רבנן there are two requirements for the בעל to lose the פירות; it must be בו לגרש and ראוי לגרש בו.

¹² Therefore it is פסול because the woman will collect the פירות from the date of the כתיבה, even though the בעל still has the rights to the פירות (as תוספות just explained).

However in a case of בלילה ביום ונחתם בלילה) **where they are still involved** in the גט (from the time of the כתיבה until the חתימה), **where there is a קול¹³** and therefore this גט **is fit for divorcing**, in this case -

מפסיד הבעל פירות משעת כתיבה כדאמר לקמן¹⁴ -

The husband loses the פירות from the time of the writing of the גט as the גמרא states later (therefore the גט will be כשר).

תוספות asks:

וקשה לרבינו יצחק דאמרין לקמן (דף יח, ב) אמר לעשרה כתבו גט לאשתי -

And the ר"י has a difficulty; for the גמרא states later; 'he said to ten people 'write a גט for my wife' -

וחתים בו בי תרי מינייהו ביומיה ואינך מכאן עד עשרה יומי -

And two of them signed on that day and the remainder signed up to ten days later', in which case -

דריש לקיש אמר כולם משום עדים ופסול¹⁵ -

ר"ל maintains that all of them were intended to sign as witnesses and therefore the גט is פסול. This concludes the תוספות. גמרא asks -

ואמאי והרי יש לו קול והרי ראוי לגרש בו -

But why is it פסול, for this גט has a קול (since two עדים signed) and it is fit to divorce with it -

דאם היה רוצה הבעל לא היה מקפיד על העשרה¹⁶ -

For if the husband would have wanted he could not have been particular regarding the ten people signing -

ויפסיד פירות משחתמו ב' הראשונים ויהא כשר לגרש בו -

And the husband should lose the פירות, once the first two witnesses signed and it should be כשר to divorce with this גט!

תוספות answers:

ויש לומר כל זמן שהבעל מקפיד ולא חתמו כולם אין קול עד שיחתמו כולם¹⁷ -

And one can say; as long as the husband is particular that all ten should sign,

¹³ The עדים are ready to sign (during the day); however they are held up by the details involved in the גט. In this case these עדים cause a קול even before they sign. See תוספות יח, א ד"ה אבל.

¹⁴ (עמוד דף יח, א (towards the bottom of the).

¹⁵ The עדים signed after the זמן on the גט; it is a מוקדם (see ד"ה ומ"ד there רש"י).

¹⁶ After the first two signed the husband could have changed his mind and released the other eight from signing. Therefore once two signed it should be considered בו ראוי לגרש (see נח"מ).

¹⁷ The husband told all ten to sign, so even after the first two sign they are not מוציא a קול; for they presume that nothing is happening until all ten will sign.

and they did not all sign, there is no קול until all ten sign -

או שיהו עסוקין לחתום:

Or at least they are involved and preparing to sign.

SUMMARY

By a גט מאוחר the woman becomes divorced at the date written in the שטר and the בעל has the פירות until then. ר"ש maintains that ראוי לגרש is sufficient to render the גט כשר and the בעל loses the פירות from שעת כתיבה, while the רבנן maintain that it also requires a קול otherwise the בעל can still eat the פירות.

THINKING IT OVER

1. תוספות asks that a גט מאוחר should be פסול but we know that it is כשר from the case of גט מקושר וכו'. Seemingly by a גט מקושר there is no problem with פירות for as soon as she receives the גט she can go to בי"ד, etc. to verify the הנתינה. However by a גט מאוחר (where he gave her the גט on the המאוחר), there the woman loses the פירות from זמן התחימה until the זמן הנתינה and indeed it would be פסול!¹⁸

2. תוספות states that by a גט מאוחר she is not divorced until the זמן written in the גט, and the בעל has the פירות until then.¹⁹ What is the situation regarding a גט מקושר שיכול לעשותו פשוט כשר because it is כשר. Is the woman divorced as of now (since if it would be a גט מקושר she would be divorced currently) and then she would seemingly lose the פירות until the נתינה; or is she divorced the following year (as it would be if it is a גט פשוט), and we need to understand why is she not divorced currently, for since it was a גט מקושר the intent of the husband was to divorce her now (even though the זמן is a year later)!²⁰

3. Why does not תוספות ask the same question on ר"י that a גט מאוחר should be פסול, because he can be מחפה? When he gives her a גט מאוחר before the date written on the שטר, it is obvious that the date is invalid; therefore the woman can claim that she was divorced before the זנות took place!²¹

¹⁸ See מהרש"א.

¹⁹ See footnote # 8. That it is as if the husband stipulated that the גירושין should be חל on the post-dated זמן.

²⁰ See נח"מ.

²¹ See בל"י אות שצה בד"ה אבל.