

Until the time of giving

עד שעת נתינה –

OVERVIEW

does not agree that the reason the חכמים were by מתקן זמן is on account of the פירות, since ר"י maintains that the husband owns the פירות (even after the גט was written and signed) until the moment he gives the גט to her. There is a dispute between רש"י and תוספות how this explains that they were not because of מתקן זמן. פירות.

פירש בקונטרס¹ הלכך זמן כתיבת הגט לא מהני –

explained, therefore (since the בעל owns the פירות עד שעת נתינה) dating the writing of the גט does not accomplish anything -

דכי בעיא למיטרף בעיא לאיתויי סהדי אימת מטא גיטא לידה² –

For when the woman wants to collect her פירות, she is required to bring witnesses as to when the גט reached her hand.

- פירש"י anticipates a question on תוספות

אף על גב דבכל שטרות אין צריך להביא עדים אימת מטא השטר לידה –

Even though that by all other שטרות it is not necessary to bring witnesses when the שטר came into his possession; and this is true -

אפילו למאן דלית ליה עדיו בחתומיו זכין לו³ –

Even according to the one who does not maintain זכין לו –

responds: the reason the מלוה is not required to prove when the שטר came into his possession -

היינו משום דלדידיה אין כותבין שטר ללוה⁴ אלא אם כן מלוה עמו –

Is because according to the one who does not maintain זכין לו, we do

¹ בד"ה עד.

² There is no point in writing the זמן for it would not help her; she needs to bring proof when she received it, not when it was written, since פירות עד שעת נתינה.

³ See (TIE footnote # 13). If we maintain זכין לו, then it is understood why it is not necessary for the בעל השטר (for instance the מלוה) to prove when he received the שטר, because since זכין בחתומיו זכין (שטר). However, nevertheless the מלוה collects from the לקוחות from the date on the שטר, and the לקוחות cannot claim, that the מלוה should prove that the שטר was in his possession before the לקוחות purchased these fields. The question is why by a גט the לקוחות of the פירות can require the woman to prove when the גט was in her possession. תוספות will now explain the difference.

⁴ This means the עדים do not sign on a שטר מלוה unless the לווה and מלוה are both present (and they see the loan taking place).

not write a שטר for the ליה unless the מלוה is with him⁵ -

בר משטרי אקנייתא⁶ כדאמרינן בפרק קמא דבבא מציעא (דף יג, א) -

Except for מלוה as the ליה where we do write it for the שטרי אקנייתא
- מסכת ב"מ of פרק states in the first גמרא

הלכך כיון שהיה מלוה שם אמרינן שמיד מסר לו⁷ -

Therefore (by a 'regular' loan) since the מלוה was there (at the writing and signing of the שטר), we presume that the ליה immediately gave him the שטר -

אבל גט אשה כותבין לאיש אף על פי שאין אשתו עמו משום עיגונא⁸ -

However, by a גט אשה, which we write for the husband, even though his wife is not with him; we do this in order to prevent עיגון -

כמו כל גיטין הבאין ממדינת הים -

Like by all גיטין which come from overseas where they are written not in the presence of the woman, therefore the presumption is otherwise, that the woman did not receive the גט on the date it was written, therefore the לקוחות (of the פירות) have the right to demand proof when the woman actually received the גט.

This concludes תוספות 'defense' of פירש"י; however, תוספות asks:

אבל קשה לרבינו יצחק מהא דאמר בסוף פרק קמא דבבא מציעא (דף יט, א) -

However the ר"י has a difficulty with פירש"י, from that which is stated in the end of the first פרק of ב"מ; מסכת גמרא there cites a ברייתא -

מצא גט אשה בשוק בזמן שהבעל מודה יחזיר לאשה -

One who found a גט אשה in the market, if the husband admits that he already divorced her with it, he should return the גט to the woman, this concludes the ברייתא-

ופריך ניוחש דלמא כתב ליתן בניסן ולא נתן עד תשרי ואזל וזבן פירי מניסן עד תשרי -

And the גמרא there asks, let us be concerned that perhaps he wrote the גט (with the intention) to give it in ניסן, but he did not give it to his wife until the

⁵ The reason for this is that the עדים may sign the שטר מלוה in ניסן תשע"ה and the actual loan (the transfer of money) may take place a few months later (in תשע"ה), if the ליה sells property between ניסן and אב and he cannot repay the loan, the מלוה will collect illegally from those לקוחות because he will present the שטר which is dated in ניסן. There is obviously no such concern if we maintain לו זכין לו, because then the lien officially began in ניסן when the עדים signed the שטר (that is the meaning of לו זכין לו).

⁶ A שטר אקנייתא (or a קנין שטר) is where the ליה pledges (in the שטר with a קנין) a certain value amount of his assets to the מלוה (unless the ליה pays him a designated sum, by a certain date), regardless whether the מלוה will lend him money or not. In this case the concern mentioned previously (in footnote # 5) is not applicable, for the properties of the ליה become משעבד to the מלוה from the date the עדים signed the קנין שטר.

⁷ The מלוה will demand the שטר immediately from the ליה, to protect his loan. Therefore the לקוחות cannot claim prove when you received the שטר, because the presumption is that he received the שטר immediately.

⁸ עיגונא is referring to the status of a woman whose husband is not present and she cannot remarry, because her husband may still be alive. We must write a גט for a husband (who wishes to divorce his wife) whose wife is elsewhere; otherwise the wife may remain an עגונה.

following תשרי, and the husband will go and sell פירות from ניסן to תשרי (after he wrote the גט, but before he gave it to her) -

ומפקא ליה לגיטא דכתב בניסן ואתיא למטרף לקוחות שלא כדין -

And eventually she will show her גט, which was written in ניסן and she will collect from the לקוחות (who bought עד תשרי פירות) illegally (since לבעל פירות יש לבעל פירות) - (ניסן, תשרי, not ניסן, עד שעת נתינה

ומשני כי אתיא למטרף אמרינן לה אייתי ראייה אימת מטא גיטא לידך -

And the גמרא answers, 'when she comes to collect from the לקוחות, we will say to her, bring a proof when the גט came into your possession.' Therefore she will not be able to collect שלא כדין. This concludes the גמרא there. תוספות continues with his question -

ואמאי קשה ליה טפי אהיהא ברייתא מבכל גיטין שבעולם⁹ -

But why did the גמרא have more difficulty with that ברייתא in ב"מ, than all the other גיטין in the world -

אלא משמע דוקא בגט הנמצא דאיתרע בנפילה הוא דאמר אייתי ראייה אימת מטא גיטא לידך Rather this (the fact that the discussion was only regarding the ברייתא of מצא גיטי) indicates that only by a גט which was found, which became flawed by being lost,¹⁰ that is when we say, bring proof when the גט reached your possession -

אבל בכל גיטין אמרינן מסתמא ביום שנכתב ונחתם נמסר¹¹ -

However by all other גיטין we assume that on the day it was written and signed, it was delivered to the woman, so there is a valid reason to write the date on the גט, so that we will know when it was delivered (regarding פירות).

In summation: רש"י maintains that גיטין are different from שאר שטרות and the לקוחות have a right to require the woman to prove when she received the גט. Therefore there is no purpose in writing the גט because of the פירות (in order to protect the אשה), for the לקוחות will not accept this date and will demand that she prove when she received the גט. תוספות disagrees and proves that (even) by גיטין נשים the לקוחות have no right to have the woman prove when she received the גט, therefore there is a purpose in writing the date in order to protect the אשה, that as of the date in the גט (which is presumably also the date of the נתינה) she owns the פירות.

⁹ just concluded saying (according to רש"י) that by גיטין since we write a גט for the husband without the wife, there is the concern that he did not give it to her on the date of the גט, so the question becomes how can a woman use her גט to collect פירות. Presumably it is possible that she received the גט after the date. Why does the גמרא ask only on that ברייתא of נשים? (The answer will obviously be the same that she has to prove when she receives the גט; however, תוספות is asking why limit the question to the ברייתא, when it is a general question.)

¹⁰ The fact that the גט was lost indicates that there is something not proper about it; otherwise it would be kept safely. One of the concerns is that עד תשרי ולא נתן עד תשרי.

¹¹ The לקוחות will not say אייתי ראייה מתי מטא שטרא לידך (just as they do not make this claim this by other שטרות); therefore the זמן is necessary to ascertain when the גט was written (and presumably delivered).

offers his explanation why, if we maintain נתינה עד שעת פירות יש לבעל פירות, we cannot say that the חכמים were מתקן זמן because of פירות:

ואומר רבינו יצחק דהכי פירוש עד שעת נתינה –

- עד שעת נתינה says, this is the explanation of ר"י And the

דכיון דיש לבעל פירות עד שעת נתינה לא הוצרכו לתקן זמן בגט משום פירות –

For since the בעל owns the פירות until שעת נתינה, it was not necessary to institute זמן by גיטין on account of פירות -

דבאין בו זמן נמי תביא גיטה לבית דין או לעדים ויכתבו לה שמאותו יום נתגרשה¹² –

For even if there is no זמן in the גט, she can bring her גט to בי"ד or witnesses and they will write a document for her that she was divorced on that day (the day she shows them the גט), which could be the day she received it.

asks: תוספות

ואם תאמר ולרבי יוחנן היאך כותבין גט לאיש אף על פי שאין אשתו עמו –

And if you will say; and according to ר"י (who maintains יש לבעל פירות עד שעת נתינה),¹³ how can we write a גט for the husband even though his wife is not with him -

ניחוש שמא יכתוב בניסן ולא יתן עד תשרי¹⁴ –

Let us be concerned that perhaps he will write (and date) the גט in ניסן and he will not give it to his wife until תשרי and then his wife will show the גט dated in ניסן and take away illegally the פירות which the לקוחות bought legally from ניסן to תשרי -

כדפריך בפרק קמא דבבא מציעא (זף יב,ב) גבי כותבין שטר ללוה אף על פי שאין מלוה עמו¹⁵ –

As the גמרא asks in the first פרק of מ"ב regarding the practice that we may write a שטר for the לווה even though the מלוה is not with him.

answers: תוספות

ויש לומר דגבי כותבין שטר ללוה פריך משום דמאן דיזיף בצנעה יזיף –

And one can say; that the גמרא asks this question (of כתב וכו') only regarding ללוה, for whoever borrows, borrows quietly¹⁶ -

¹² There is no need for זמן generally; only for these woman that have an issue with פירות; these women will be sure to procure a document indicating when they received the גט.

¹³ There is no question according to ר"י for he maintains that the בעל loses the פירות after the גט was signed.

¹⁴ תוספות is asking this question based on what he previously taught (in this תוספות) that the לקוחות will accept the date on the גט, just as they accept the date on a שטר מלוה (and they will not claim לידך אימת מטי גיטך). (אייתי ראיה אימת מטי גיטך לידך).

¹⁵ The question there is the same that the actual loan may take place sometime after the writing of the שטר מלוה and the מלוה will collect from those כדן שלא כדין. לקוחות. The גמרא there answers either that לו זכין or that this rule applies only to שטר אקנייתא, both of which do not apply here by גיטין, since שעת נתינה, since גיטין, since שטר אקנייתא, both of which do not apply here by גיטין, since שעת נתינה.

¹⁶ No one wants it to be known that he is debtor, for then his credit rating will fall. He also informs the עדים (as they can see for themselves) that he is not borrowing the money now; he wants the שטר for later when he may decide to

ויש לחוש שאחר זמן ימסור לו בצנעה ויסברו לקוחות שנמסר לו משעת כתיבה –

And so there is the concern that after a while (of writing the שטר), the ליה will deliver the שטר to the מלוה quietly, so the לקוחות will assume that it was delivered to the מלוה from the time it was written (and they may lose כדין) –

אבל גט צריך עדי מסירה –

However, the delivery of a גט to the woman requires עדי מסירה to witness the transfer –

ואפילו לרבי מאיר [דאמר עדי חתימה כרתי] אומר רבינו תם דבעינן עדי מסירה –

And even according to ר"מ [who maintains ע"ה כרתי], nevertheless the ר"ת rules that ע"מ are also required –

דאין דבר שבערוה פחות משנים¹⁷ וגם מפרסמין להוציא קול שהיא פנויה –

Since a דבר שבערוה cannot be accomplished with less than two witnesses and so these witnesses also publicize the information that she is now a פנויה –

וידעו לקוחות שלא נתגרשה מיום הכתיבה ויאמרו לה אייתי ראיה אימת כולי¹⁸ –

And therefore (because the ע"מ will publicize the divorce) the לקוחות will know that she was not divorced from the date of writing the גט and they will say to her, bring proof when, etc. you received the גט.

distinguishes between writing a גט even though the wife is not present (where there is no חשש of פירות because of the ע"מ [but there can be a חשש of יחפה]¹⁹, to the following case where there is no חשש even of יחפה.

ומיהו במשליש²⁰ גט לאשתו דשמעתין²¹ –

However, regarding the case of one who is גט for his wife, which is discussed in our סוגיא –

ליכא למיחש לרבי יוחנן למידי לא משום פירות ולא משום שמא יחפה –

According to ר"י there is no concern for anything; not for פירות and not for שמא יחפה –

borrow. Therefore the עדים will not be מוציא a קול that a loan took place.

¹⁷ אין דבר, ממון from גז"ש דבר דבר (marital relations). We derive from a דבר שבערוה (marital relations). The act of divorcing (the גט), therefore requires two עדי מסירה. שבערוה פחות מב'.

¹⁸ Nonetheless (even though the עדי מסירה are מוציא a קול, regarding the לקוחות) there is still the concern of יחפה, אייתי לקוחות to claim (which allows the לקוחות) כתיבה was after the נתינה that the מוציא a קול that the נתינה was after the כתיבה (which allows the לקוחות to claim אייתי לקוחות), however the קול is not that precise (as תוספות states the הכתיבה מיום נתגרשה מיום הכתיבה, but not that the exact date of מסירה will be known), to prevent the woman to argue that she was מזנה after the נתינה (and since we are not sure we cannot execute her מספק). תוספות will deal with this concern later. See footnote # 22 & 28.

¹⁹ See footnote # 18 and 28.

²⁰ המשליש means if a husband deposited a written and signed גט by a third party (המשליש), and authorized him to give the גט to his wife at some later (specified) date. The זמן הנתינה is certainly before the זמן הכתיבה.

²¹ See יח,א. It is a גט כשר (there is no concern for פירות or יחפה).

דכיון שרואים זמן הכתיבה קודם המסירה קלא אית ליה²² –

For since we see that the date of the כתיבה is before the מסירה, therefore there is publicity that she was not divorced on the זמן הכתיבה –

כדאמר בסמוך אגיטין הבאין ממדינת הים²³ –

As states shortly regarding the גיטין that come from overseas.

asks: תוספות

ואם תאמר נכתב ביום ונחתם בלילה אמאי פסול הא אית ליה קלא –

And if you will say; why is a גט, which was written by day and signed by night, פסול; for there is a קול through the מסירה (as just mentioned), so there is no concern of either שמא יהפה or פירות –

answers: תוספות

ויש לומר דלא שייך למימר קלא אית ליה אלא כשמגרש על ידי שליח²⁴ –

And one can say that it is not applicable to say קלא אית ליה unless he is divorcing though a שליח, therefore by משליש or מדינת הים it is כשר, because there is a שליח – אבל נכתב ביום ונחתם בלילה יש לחוש שימסור לה בעצמו בצנעה²⁵ לחפות עליה –

However by בלילה ונחתם ביום, there is the concern that he will give it to her privately by himself in order to cover up for her –

ולהכי לא מצי לשנויי גבי²⁶ כתביה ואותביה בכיסתיה דקלא אית ליה –

And therefore the גמרא could not have answered regarding the case of 'he wrote the גט and placed it in his pocket', that the reason it is כשר is because קלא אית ליה –

כדמשני אגיטין הבאין ממדינת הים –

As the גמרא answered regarding the cases of גיטין that come from overseas, because קלא אית ליה applies only when it is done שליח, as by the גיטין הבאין ממדינת הים, but not by גמרא²⁷, where he is divorcing her directly.

asks: תוספות

ואם תאמר ואמאי כותבין גט לאיש ליחוש שמא תזנה ויתן לה בצנעה כדי לחפות עליה –

²² The term קלא אית ליה here means that we will know the precise date [see footnote # 18 (in the third parenthesis)].

²³ See the גמרא on (the top of) יח, א. The גמרא there states, הנהו קלא אית להו.

²⁴ The שליח has no interest in delivering the גט בצנעה. [It would seem that this distinction whether there is a שליח or not is only in regards to the חשש of שמא יהפה but not to the חשש of פירות.]

²⁵ According to the מהרש"א this means he will give it to her with ע"מ, but quietly, so there will not be a קול. However the מהר"ם ש"ף explains בצנעה to mean without ע"מ.

²⁶ See (very end of) this עמוד. The גמרא asks how is it כשר since the זמן הגט is before the הנתינה.

²⁷ The גמרא answers that it is unusual since איניש פורענותא לנפשיה. A person does not want to bring punishment upon himself earlier than necessary. The גט is considered פורענותא.

And if you will say; and why do we write a גט for the husband (without his wife present), let us be concerned perhaps she will be מזונה and he will give it to her quietly in order to cover up for her²⁸ –

answers: תוספות

– **ויש לומר דמסתמא מיד אחר הכתיבה יתן לה דלא מקדים פורענותא לנפשיה²⁹ –**

And one can say; that presumably he will give her the גט immediately after it is written and signed, for a person does not want to bring punishment upon himself earlier than necessary -

כדמשני בסמוך גבי כתביה ואותביה בכיסתיה:

Just as the גמרא shortly answers regarding כתביה ואותביה בכיסתיה.

SUMMARY

According to רש"י if we maintain נתינה עד שעת פירות יש לבעל פירות עד שעת נתינה there is no purpose to write זמן for פירות, since it will not be accepted (for the לקוחות will rightfully demand proof when she received the גט). However according to תוספות (the לקוחות cannot demand proof, and) if we maintain נתינה עד שעת פירות יש לבעל פירות עד שעת נתינה there is no need for זמן, for the woman can easily receive proof of הגט. There is no concern for פירות by גט of כול' בניסן וכו' since the issue עדי מסירה is a קול and also no concern of שמא יחפה since איניש פורענותא לנפשיה. There can be a concern of שמא יחפה if the גט is given by the husband and not by שליח.

THINKING IT OVER

גט says that a person is not פורענותא לנפשיה, therefore we may write a גט and are not concerned for חיפוי³⁰. Initially תוספות asked how can we write a גט there is the concern of לאיש אע"פ שאין אשתו עמו (קול ע"מ make a קול).³¹ Why did not תוספות answer there as well that איניש פורענותא לנפשיה?!³²

²⁸ just concluded that if there is no שליח there is no קול (regarding שמא יחפה [see footnote # 24]); so no one will know that she was divorced after the זנות. See footnote # 18.

²⁹ There is no concern that he will write a גט and hold it pending if she will be מזונה. See 'Thinking it over'.

³⁰ See footnote # 29.

³¹ See the text by footnotes # 14-18.

³² See בל"י אות ת.