

טעמא דאיכא כתב הא ליכא כתב לא –

The reason is because there is writing, but if there is no writing; no

OVERVIEW

ruled that if a husband gave his wife a blank paper and said to her, 'here is your גט', she is divorced, because there is the possibility that he wrote it במי מילין. תוספות. (שטר פסים ברייתא) challenges the ruling of שמואל from a גמרא. גמרא clarifies the question and also the ruling of שמואל including the meaning of גט.

asks: תוספות

ואם תאמר הא דבעינן דאיכא כתב משום דחזר ואמר שטר פסים הוא –

And if you will say; the reason we require that there is writing in order that it should be a גט, is because he later said it is a שטר פסים –

וכי האי גוונא הכא גבי נייר חלק אם חזר ואמר נייר חלק הוא היה נאמן –

And if it were in the same situation here regarding the blank paper, if he later said it is a blank paper, he would be believed –

אבל לעולם כל זמן שאמר גט הוא מגורשת ולא קשה מידי לשמואל¹ –

However, as long as he said it is a גט and did not retract, she is divorced, so there is no difficulty to reconcile שמואל with the ברייתא of שטר פסים.

answers: תוספות

ויש לומר [דכיון] דסלקא דעתין השתא דמגורשת ודאי קאמר שמואל² –

And one can say; that since we presently assume that שמואל meant that she is מגורשת (not just merely that we are concerned that perhaps she is מגורשת) –

אם כן לא חשיב ריעותא במאי שהוא נייר חלק³ –

If this is indeed so (that if he gave her a גט she is מגורשת ודאי) therefore the fact that it is a גט, נייר חלק, that is not considered a defect in the גט –

¹ distinguishes between the case of שטר פסים where a כתב is necessary in order for it to be deemed a גט and the case of שמואל where no writing is necessary in order for it to be a גט (because במי מילין כתבו). In the case of שטר פסים it is necessary that there is writing because later he contradicts himself and states that it is not a גט but rather a שטר פסים, in such a case it is a גט only if there is a כתב but not where there is no כתב, and similarly by the case of גט if he would later say it is only a גט, she would also not be מגורשת (just as by שטר פסים), however in the case of שמואל he never retracted his original statement that it is a גט, there שמואל maintains it is a גט even if there is no כתב, since במי מילין כתבו.

² The reason being, since he said גיטך זה, הרי זה גיטך, we assume that he is serious and it was certainly written במי מילין. See later in this תוספות.

³ Even though it appears to be a גט but we assume with certainty that it is not a גט (for she is מגורשת), but rather that it is written במי מילין (so there is a כתב here as well).

ואם כן כשחזר ואמר נמי נייר חלק הוא אית לן למימר דלאו כל הימנו לאוסרה –

So therefore even when he later states it is a נייר חלק we should rule that he is not believed to prohibit her from marrying someone else (not as תוספות assumed in the - (קושיא

כמו היכא דאיכא כתב⁴ –

Just as he is not נאמן לאוסרה when there is a כתב (in the case of פסים).

תוספות asks:

ואם תאמר והיכי סלקא דעתין דמגורשת ודאי קאמר כיון דנראה שהוא נייר חלק –

And if you will say; how could it even have entered our minds that שמואל meant she is ודאי מגורשת since visibly it is a נייר חלק?!

תוספות answers:

ויש לומר כיון דאמר הרי זה גיטך בדבר מועט מהימנינן לבעל –

And one can say; since the husband said; 'הנה גיטך', we believe the husband even with a minimal proof that there is a גט (במי מילין written)

תוספות supports this concept from elsewhere:

כי היכי דאמרין בעל שאמר גירשתי אשתי נאמן הואיל ובידו לגרשה⁵ –

Just as we rule that a husband who claims, 'I divorced my wife', he is believed, since it is in his power to divorce her –

תוספות offers another option why we assumed that she is ודאי מגורשת by a נייר חלק:

אי נמי דאיידי דקרייה בי תרי מעיקרא ועייליה לבי ידיה ואפקיה⁶ –

Or you may also say; that we are discussing a case where initially two עדים read the גט, and after they read it the husband took it in his hands and he brought it out and gave it to her. We initially assumed that she is ודאי מגורשת (even though she is now holding a נייר חלק) –

דלא חיישינן דלמא חלפיה –

For, we are not concerned that perhaps he exchanged the גט, which the עדים read, with a נייר חלק, but rather we assume that it is the same גט. Now תוספות addresses the issue, how come it is blank now?!

⁴ The s' question is how can שמואל maintain that even if he would say it is a נייר חלק, she would still be מגורשת, but from the פסים of ברייתא it is evident that we disregard his later statement only if there is a כתב, but not when there is no כתב. The גמרא is challenging the basic assumption of שמואל that even without a כתב it is a valid גט.

⁵ Therefore we say he has no reason to lie, for if he wants he can divorce her right now, similarly when he said זה הרי זה. [This was just the ה"א.] See 'Thinking it over' # 1. we know that he is serious and the גט was written במי מילין.

⁶ The גמרא shortly states that the case of פסים is in such a situation.

ונייר חלק דקאמר שמואל לא בשעת נתינה ראו שהוא נייר חלק⁷ –

And when שמואל said נייר חלק, it does not mean that when the גט was given people saw that it is a נייר חלק –

דאם כן אפילו היה ודאי כתוב במי מילין אינו גט⁸ כיון דבשעת נתינה כבר נבלעו האותיות –

For if indeed this is the meaning of נייר חלק, then even if it was certainly written with מי מילין, it would not be a valid גט, since at the time of נתינה the letters were already absorbed into the נייר and are not visible –

כדאמר בסמוך⁹ כי פליט מאי הוי¹⁰ השתא הוא דפליט¹¹ –

As the גמרא shortly states, ‘so what of it that the letters came forth; they only came forth now’, but not when the גט was handed to her –

אלא שעה אחת אחר נתינה כשיעור שהאותיות יכולות להבלע ראו שהיה נייר חלק¹² –

But rather the meaning of נייר חלק is that a certain amount of time after the giving of the גט, the amount of time required for the letters (of מי מילין) to be absorbed in the נייר, then the people saw that it is a נייר חלק.

נייר חלק offers a final resolution to תוספות

ועוד יש לומר דבשעת נתינה ראו מרחוק ודומה להם נייר חלק –

And one can also say; that at the time of נתינת הגט people saw from afar and it appeared to them as a נייר חלק –

ושמא אם היו מעיינין היו האותיות ניכרים¹³:

But perhaps if they would have looked closely the letters would have been apparent.

⁷ If שמואל meant that it was a נייר חלק when it was given to the woman, then we could not easily say that before the נתינה there were עדים who read the גט, for it is unlikely that in this short duration the גט would become a נייר חלק.

⁸ The difficulty in assuming that he actually gave her a נייר חלק is independent whether the עדים read it beforehand or not; in any event we cannot assume that שמואל meant it was a נתינה when it was given.

⁹ The גמרא there explains we assume that it was written במי מילין, since the letters appeared after we checked it with מיא דנרא. The גמרא continues to ask that even this is insufficient to render this a proper גט.

¹⁰ Therefore in any event we cannot say that when the גט was given to her it was a נייר חלק, for then it would be an invalid גט.

¹¹ This applies even according to תוספות previous answer (that it was actually a נייר חלק), for it will still be necessary to say that even though no one read the גט prior to the נתינה, however it was not noticed that it was a נייר חלק until a מהר"ם. See כי פליט מאי הוי השתא הוא דפליט. Otherwise we have the same difficulty.

¹² In the ה"א we assumed in such a case she is מגורשת, ודאי מגורשת, since the עדים read it immediately before it was given, and we are not חושש דלמא חלפי. However according to the מסקנא that we check it with מיא דנרא and it was פליט, it may not be necessary to assume that it was read before the נתינה (see נה"מ בד"ה והנה), but rather it was indeed a נייר חלק. In which case (according to the מסקנא) we check it with מיא דנרא and if the letters appear, only then are we בשעת נתינת הגט, because perhaps the letters were visible לגירושין.

¹³ See ‘Thinking it over’ # 2.

SUMMARY

The גמרא assumed that שמואל maintains that it is a גט even if later he said it was just a חלק (נייר חלק) (by מגורשת ודאי the גמרא assumed that she is either because the בעל is always נאמן (for הואיל ובידו לגרשה), or because it was actually read before they gave it to her, or because they viewed the גט from afar.

THINKING IT OVER

1. According to the first אוקימתא of תוספות (that the בעל is נאמן since it is בידו רב דימי, that צריכי למקרייה or not?¹⁵),¹⁴ does שמואל agree with the ruling of רב דימי, that צריכי למקרייה or not?¹⁵
2. According to the last אוקימתא of תוספות (that the people saw the גט from afar),¹⁶ why does שמואל say חיישינן במי מילין כתבו, when he should have said, 'if they were closer they would have seen the כתב'?!¹⁷
3. Of the three אוקימתא in תוספות (ראו מרחוק and נייר חלק, קרייהו בי תרי) which is the most lenient (in allowing the גט to be כשר) and which is the strictest?

¹⁴ See footnote # 4.

¹⁵ See נח"מ מהרש"א and נח"מ.

¹⁶ See footnote # 13.

¹⁷ See נח"מ בד"ה ועוד י"ל.