

And the law is when he is bound

והילכתא בכפות –

OVERVIEW

רבא ruled that if the husband placed the גט in his slave's hand and granted her the slave she is divorced.¹ The גמרא asked but the slave is a חצר מהלכת (even if he is standing still). The גמרא answered בהלכתא בכפות. Our תוספות discusses what this means.

כפות וישן בעינן כדמשמע לקמן בהזורק (דף עח,א) דאמר² כתב לה גט ונתנו ביד עבדה –

We require that the עבד should be **tied up and sleeping** in order that he should be considered a proper חצר, **as is indicated later in פרק הזורק**, where רבא states, ‘**he wrote a גט for her and gave it into the hand of her slave**, if the slave was –

ישן ומשמרתו הרי זה גט³ ניעור אינו גט דהויא⁴ חצר המשתמרת שלא לדעתה⁵ –

Sleeping and she was guarding him, it is a גט, however if the slave was awake it is not a גט, for the slave is a נצר which is not guarded under her control' -

ופריך בישן אמאי הוי גט חצר מהלכת היא⁶ –

And the גמרא there asks, why is it a גט (even) if he is sleeping, it is a moving חצר.

וכי תימא ישן שאני והאמר רבא כל שאילו מהלך לא קנה עומד ויושב לא קנה –

And if you will say that sleeping is different (because the עבד is not moving), **but רבא** said, ‘anything that if it would walk it would not be קונה (for it is a חצר מהלכת), then even if it **stands or sits it is also not קונה**’, so how is the woman מגורשת by placing the גט in the hand of her slave?! The גמרא concludes -

והילכתא בכפות ופירש בקונטרס⁷ בההיא קאמר רבא דנייעור אינו גט –

And this ruling is when the עבד is tied up. This concludes the גמרא. **And רש"י explains that והלכתא בכפות means that it is in that case of כפות that רבא rules that גמט is not a גט** (even if he is כפות) **and ישן is a גט** [if he is כפות] -

¹ The עבד (which she acquired) is considered as her חצר, and if the גט is placed in her חצר she is מגורשת.

² The ה"ה amends this to read **דאמר רבא כתב**.

³ The עבד is considered her חצר. Therefore if the גט is placed in her חצר (in the hand of her עבד), she is מגורשת since it is a חצר המשתמרת לדעתה.

⁴ The הגהות הב"ח amends this to read דהויא ליה חצר.

⁵ The עבד is a conscious person (when he is awake) so he guards himself and the object (the גט) which he is holding (the woman does not guard him). A 'regular' חצר is guarded by its owner. Therefore since the עבד is not guarded by his owner (the אשה) he cannot be considered a (המשתמרת לדעתה) חצר.

⁶ A חצר can only be קונה if it does not move; a חצר מהלכת is not קונה.

⁷ In our רש"י we can infer from this that it is a גט only if it is כפות and obviously ישן (for רבא stated גט רש"י), indicating that if he is ניעור it is not a גט even if he is כפות. We derive from this that there are two requirements which are ישן וכפות.

וכן פסקו הלכות גדולות⁸ דכפות וישן בעינן –

And the ג"ה also ruled that we require כפות and ישן.

תוספות cites and rejects an alternate interpretation:

ולכא למימר דהכי פירוש⁹ והילכתא בכפות לא חשיב חצר מהלכת דלא דמי לעומד ויושב –
And we cannot say that this is the interpretation of the גמרא; and the הילכתא is
that by עומד the עבד is not considered a חצר מהלכת for it is not similar to
עומד, since a כפות cannot move at will, as opposed to an עומד ויושב who can move should they
so desire –

וכיון דכפות מועיל ישן לחוד נמי מועיל ולעולם רבא לא איירי בכפות –
And since כפות is effective that it is not considered a חצר מהלכת, so too ישן alone
(without כפות) is also effective –

תוספות rejects this view of the 'ולכא למימר':

דאם כן אמאי קאמר רבא ניעור אינו גט דהוי חצר המשתמרת שלא מדעתה –
For if indeed it is so (that כפות or ישן alone is a גט [and כפות is not discussing רבא]),
why did רבא state that ניעור is not a גט for it is a לדעתה שלא –
אפילו הוי משתמר לדעתה כגון שידי כפות בחבל ואוחזתו בידה¹⁰ לא הוי גט –
Even if the עבד was משתמר לדעתה, for instance his hands (only) were tied up
with a rope and she was holding the rope in her hands,¹¹ it is still not a גט –
דחצר מהלכת היא דומיא דקלתה¹² –

- חצר מהלכת a חצר מהלכת just like her basket is considered a חצר מהלכת –
דאי לאו דקאמר התם בפרק קמא דבבא מציעא (דף טז, ב) דמינח נייח ואיהי דקא מסגי תותא –
For were it not for that which the גמרא states there in the first פרק of ב"מ
regarding קלתה, that the קלתה is at rest, however she is walking underneath it,
קלתה מינח נייח, therefore the קלתה is not a חצר מהלכת, however were it not for this reasoning of
- קלתה גט in her basket the rule would be that if the husband placed the גט in her קלתה ואיהי דקא מסגי תותא
לא הוי גט אף על גב דמשתמרת לדעתה –

⁸ The ספר הלכות גדולות is generally attributed to ר' יהודה גאון, others attribute it to ר' שמעון קיירא (מתקופת הגאונים).

⁹ According to the explanation of the 'ולכא למימר', the phrase והילכתא בכפות is not referring back to the הלכתא of רבא (that גט is a גט and ניעור is not a גט), but rather it is referring to the statement of רבא that עומד לא קנה עומד (who cannot move) is not considered a חצר מהלכת, nevertheless עומד ויושב is not considered a חצר מהלכת, and the הלכתא states that even though עומד ויושב is not considered a חצר מהלכת, nevertheless עומד ויושב is not considered a חצר מהלכת, even if he is not יושב. It could then follow that ישן alone is also קונה since the ישן (like the כפות) cannot move.

¹⁰ 'ולכא למימר' is making this statement (that if [only] ידי כפות it is considered משתמר) only according to the 'ולכא למימר' who maintains that חצר מהלכת is not considered a חצר מהלכת (a חצר מהלכת or משתמר שלא לדעתה). Therefore כפות בידיו וברגליו is considered משתמר but it is מהלכת. However according to שיטת התוספות, even a כפות בידיו (and certainly a כפות בידיו alone) is not considered משתמר. See תפא"ם. Others (נח"מ and בל"י) disagree.

¹¹ See 'Thinking it over'.

¹² The גמרא in ב"מ asks that if the husband threw the גט into her basket (which is on her head), she should not be considered a חצר מהלכת, for since the basket is moving (when she walks) it should be considered a חצר מהלכת.

It would not be a גט even though the קלטה is משתמרת לדעתה; the reason being because it is a חצר מהלכת, similarly by the hand-tied עבד, it is also not a גט for he is a חצר מהלכת (even if he is משתמר לדעתה), so why did רבא say גט נייעור אינו גט because he is not משתמרת לדעתה, when רבא could have said that it is not גט (even if he is משתמר לדעתה) because of חצר מהלכת!
אלא ודאי רבא בכפות איירי¹³ –

Rather we must conclude that **רבא is certainly discussing a case of כפות** –

תוספות discusses an anticipated difficulty:

וכי לא ידע אכתי דאיירי בכפות הוה מצי למיפרך –

And when the גמרא was not yet aware that רבא was discussing a case of כפות, the גמרא **could have asked** (as תוספות just asked on the 'ולכא למימר' –

מאי איריא דנייעור אינו גט משום דמשתמרת שלא לדעתה –

Why does רבא mention that גט is not a נייעור because it is משתמרת שלא לדעתה –

אפילו משתמרת לדעתה נמי דחצר מהלכת היא –

Even if it is משתמרת לדעתה it is also not a גט for it is a חצר מהלכת –

אלא דעדיפא מינה פריך¹⁴:

But the reason the גמרא did not ask this question, because the גמרא **asked a better** question.

SUMMARY

For an עבד to be a חצר he must be ישן.

THINKING IT OVER

asked (on the למימר) that רבא could have discussed a case where it was תוספות if for instance his hands were tied and she was holding the rope.¹⁵
Why is it necessary that she should be holding the rope, as long as she is alongside him and his hands are tied it is seemingly משתמרת לדעתה?!¹⁶

¹³ Therefore the only reason why נייעור is not a גט is because it is not משתמרת לדעתה (as opposed to ישן, which is משתמרת לדעתה). There is no point in רבא teaching us that if only his hand are tied it is not a גט (because he is a חצר מהלכת), for רבא has a greater חידוש that even if the entire עבד is tied so that he is not a חצר מהלכת, nevertheless it is not a גט, since he is not משתמרת לדעתה. It would seem that by כפות alone there is the issue of משתמרת לדעתה, and by ישן alone there is the issue of חצר מהלכת, for even though he cannot walk now, presumably as soon as he awakens he will be able to walk, therefore ישן is no different from עומד or יושב.

¹⁴ The גמרא actually asked that the statement of רבא (that ישן הרי"ז גט) is incorrect, since it is (still) a חצר מהלכת; however the קשיא that the גמרא could have asked, which is that רבא could have said a greater חידוש, that is not as strong of a question.

¹⁵ See footnote # 11.

¹⁶ See רש"י