

בעדי מסירה ורבי אלעזר היא –

With the transferring witnesses and it is according to *Rabi Elozor*

Overview

The גמרא concluded, based on the inference from our משנה that if a man has two wives with the same name, he may be מגרש one of them (even though that from the גט, it is not evident which wife he is מגרש), that our משנה follows the view of ר"א that גט, and therefore since the ע"מ see which wife he is divorcing, it is a proper גט.

אבל לרבי מאיר בעינן שיהא מוכח מתוך החתימה שנכתב¹ לשם זה האיש ואשה זו -
However according to ר"מ (who maintains חתימה כרתי) he cannot divorce either wife, because **we require that it should be evident from the signature that this גט was written for the sake of this man and this woman**, and it is not evident from the signed גט for which wife it was written -

ולא מהני עדי מסירה² -

And the ע"מ will not help to establish the לשמה, because we need it to be מוכח מתוך הגט, which was signed by the ע"ח.

תוספות anticipates a difficulty:

וההיא דהמגרש (לקמן פ"ב) שנים ששלחו ב' גיטין ושמותיהן שוין³ -

And regarding that משנה in פרק המגרש where **two people sent two גיטין**, each to his respective wife, **where all the names were the same [and the גיטין became mixed up]**, the משנה rules -

נותן שניהם לזו ושניהם לזו⁴ וקאמר רבי ירמיה בגמרא הא דלא כרבי אלעזר⁵ -

He gives both גיטין to this woman and both גיטין to the other woman, and ר"י stated in the גמרא there, 'ר"א is not according to משנה this' -

משמע⁶ דכרבי מאיר ניחא -

¹ It should be pointed out that 'תוס' presumably means that it needs to be signed והאשה (but not נכתב) לשם זה האיש והאשה since according to ר"מ we only require לשמה (but not כתיבה לשמה). See גרש ירחים.

² Even if there were עדי מסירה by the transfer of the גט, the גט will not be valid according to ר"מ, since ע"ח כרתי, and the ע"ח cannot make the גט effective since their testimony in the גט does not indicate who is being divorced. See who writes that according to בעדי הר"א ש"ש גורס 'ור"א היא' רש"י it appears that פרש"י בד"ה בעדי רש"י is not because of חשש the רש"י for according to ר"מ even according to כשר עדי מסירה but rather שמא נמלך זה וכו' עיי"ש.

³ The שוין ונותן (instead of שוין ונתערבו נותן) amends this to read הגהות הב"ח.

⁴ Each woman ultimately received her proper גט from her husband for one גט was intended for her.

⁵ Each time a גט is delivered to a woman, the ע"מ do not know that this is the proper גט, they cannot say for certain at each נתינה that this נתינה effected the גירושין. See the גמרא there for אביי's response to ר' ירמיה.

⁶ ר"י said that the משנה is not in accordance with ר"א, implying that it is in accordance with ר"מ. Otherwise ר"י

implying that according to ר"מ the משנה is understood; however תוס' just said that we require that it be מוכח מתוכו, and here since the names are the same it is not מוכח מתוכו!?

תוספות responds

התם מיירי כדפרישית לעיל⁷ כשכתבו דורות⁸ או סימן⁹ או כהן שניכר מתוך החתימה -

There we are discussing a case, as I previously explained, where they wrote the previous generations, or some identifying sign, or one of them was a כהן, so it is evident from the signed גט who the parties are -

ועדי מסירה אין מכירין באבותיהן או בסימן הכתוב¹⁰ -

However the ר"מ did not recognize their forefathers or the sign indicated in the גט.

תוספות asks:

ואם תאמר למאן¹¹ דחייש לקמן בפרקין¹² (דף כז, א) לשני שוירי ולשני יוסף בן שמעון -

And if you will say; according to the one who, later in this פרק, is concerned for two cities called שוירי and for two people called יוסף בן שמעון; this concern is -

אף על גב דלא הוחזקו אם כן לרבי מאיר יפסלו כל הגיטין -

Even if it was not established that there are two שוירי or two יב"ש; according to this מ"ד **all גיטין should be פסול according to ר"מ** who requires מוכח מתוכו -

דלא משכחת תו שום גט שיהא מוכח מתוכו¹³ -

Since you can no longer find any גט that it should be מוכח מתוכו that this man from this city is divorcing his wife because perhaps there is another man with the same name from the same city (or another city with the same name) who is divorcing his own wife!

תוספות answers:

ואומר רבינו יצחק דדוקא בגט הנמצא הוא דחייש שמא מאחר נפל¹⁴ -

And the ר"י says that only by a גט which was lost and found are we concerned that perhaps it fell from another יב"ש (לא הוחזקו) (even though) -

should have said this משנה is not in accordance either with ר"א or ר"מ!

⁷ ד, א תוד"ה דקיימא.

⁸ The names and the fathers names of the parties (ראובן בן יעקב) were the same but their grandfathers names (יעקב בן אברהם) were different.

⁹ One had an identifying mark which the other did not have, or some other feature which distinguished between them.

¹⁰ Therefore according to ר"א it is not a good גט, since the ר"מ do not know which גט belongs to which couple, while according to ר"מ when the right גט is given, the גט 'knows' the truth; it is מוכח מתוכו.

¹¹ This is (seemingly) רב הונא (regarding שני שוירי) and ר' זירא (regarding יב"ש).

¹² The גמרא there is discussing if a גט was found can it be returned to the person named in the גט or are we concerned that perhaps there is another person with the same name (or another city with the same name) so it is not her גט.

¹³ The גט is not telling us which יב"ש is divorcing his wife.

¹⁴ There is a concern only by a הנמצא גט, because since it was lost, this indicates that something may not be right with this גט, otherwise a גט is watched carefully and is not lost.

And if it is according to ר"א, so the ע"מ properly know if this is his wife or not as the גמרא states here?! How can we understand that גמרא in ב"ב?!

answers: תוספות

ואומר רבינו יצחק²⁰ דאין עדי מסירה מדקדקים לראות אם זו אשתו²¹ -

And the ר"י says that the עדי מסירה are not that careful to see if this is his wife -

כיון שמכירים שמו ושמה וכתוב בגט שמו ושמה -

Since they recognize his name and her name and his and her names are written in the גט, so they assume that the woman receiving the גט is his wife -

ולא חיישינן²² שמא יתננו לאשת חבירו ששמו כשמו ושמה כשמה -

And the ע"מ are not concerned that perhaps the husband will give the גט to his friend's wife whose name is like his name and her name is like his wife's name -

וגם לא מסקי אדעתיהו להבחין אם יש יוסף בן שמעון אחר בעיר²³ -

And also it does not enter in the minds of the ע"מ to verify whether there is another יב"ש in the city -

וכשבאה לבית דין להתירה להנשא מעידים עדי מסירה בפני בית דין -

So when the woman comes to בי"ד with her גט, so that בי"ד should permit her to remarry, the ע"מ will testify before the בי"ד -

שראו שבעלה נתן לה גט אף על פי שלא דקדקו אם היא היתה אשתו -

That they saw that her husband gave her a גט, even though they were not meticulous to verify whether she was actually his wife -

ולהכי²⁴ פריך ניוחש דלמא ממטי לה גיטא לאיתתיה דהאי -

So therefore the גמרא asked (how can you לכתחלה write a גט for the husband without the wife), 'let us always be concerned that perhaps he will bring this גט to his friend's wife -

דאפילו אין יודעין הכותבין אם הוחזקו אין להם לכתוב דזימנין דהוחזקו ולא ידעי²⁵ -

For even if those who are writing the גט are unaware whether הוחזקו or not (so seemingly there is no concern), nevertheless they should not write a גט (without the wife present) for occasionally it may be הוחזקו and the scribes and the ע"מ are unaware -

²⁰ The ר"י answers that it is in a case of הוחזקו and according to ר"א.

²¹ See מהר"ם who explains that our משנה, from which we infer that the person may give the גט to his wife (even though there is another couple with the same names) is in a case where the ע"מ testify that both couples were present.

²² A marginal note amends this to ולא חיישינן שמא (instead of אלא חיישינן שמא).

²³ Had the ע"מ been meticulous they would have verified that indeed there is another יב"ש in the city and would have made sure that he is divorcing his own wife. However the ע"מ were lax in this respect.

²⁴ Since it may be that יב"ש and the ע"מ are sometimes lax, therefore there is a concern,

²⁵ There are those who are aware of the two יב"ש and others are not aware.

ומשני שני יוסף כולי אין מגרשין אלא זה בפני זה -

And the גמרא answers two יב"ש, etc. do not divorce except in the presence of each other -

וכשבאה לבית דין להתירה²⁶ שיילי בית דין לעדי מסירה אם היו שם שני יוסף בן שמעון²⁷ -
So when she comes to בי"ד to be permitted to remarry, בי"ד ask the ע"מ, (in a case where it was הוחזקו) whether there were there two יב"ש, by the מסירת הגט -

responds to an anticipated difficulty:

ולא רצה לתרץ דאין מגרשין אלא אם כן מכירין עדים שזו היא אשתו²⁸ -

And the גמרא did not want to answer that (if there are two יב"ש in a city) they can't divorce unless the ע"מ recognize that this is his wife, so there will no longer be the concern perhaps he is divorcing is friend's wife -

דאין זו תקנה טובה דאם כן בטורח ימצאו עדי מסירה :

For this is not a good enactment, for if indeed this will be the resolution, it will be difficult to find ע"מ; most people are not that familiar with knowing who are the respective wives of the husbands.

Summary

If there are two יב"ש, according to ר"מ they cannot divorce their wives unless there is a clear distinction between them mentioned in the גט, for we require מתוכו. The concern of יב"ש ב' is only by נפל and only if הוחזקו. The requirement that by ב' יב"ש they need to divorce in each other's presence is because the ע"מ may not (recognize the wives and not) be aware that there are יב"ש ב' (even if הוחזקו).

Thinking it over

אין מגרשין אלא זה בפני זה that יב"ש הדורים בעיר אחר of גמרא writes regarding the תוספות²⁹. 'הא מסקינן לקמן דלא חיישינן' because, לא הוחזקו, זה, that it cannot be in a case where גמרא is in a case where לא³⁰. Seemingly there is a much simpler proof, for if that גמרא is in a case where הוחזקו, what does the גמרא answer that זב"ז, אין מגרשין אלא זב"ז, but we do not know even that there are two יב"ש, so when will we institute this תקנה?! Obviously we are only if הוחזקו, for then we can implement that זב"ז³⁰ אין מגרשין אלא זב"ז!

²⁶ The בי"ד will certainly know (if it was הוחזקו) that there are two יב"ש (even if others are unaware).

²⁷ And if they were not there, בי"ד will invalidate this גט.

²⁸ Seemingly this is a better solution than having the other יב"ש and his wife (who have no interest in this whole matter) to appear for this divorce. Additionally in the current תקנה if the ע"מ were not aware and both couples were not there the גט would be פסול, however according to the proposed תקנה, there would never be a problem, for the ע"מ need to know.

²⁹ See footnote # 18.

³⁰ See תוס' ב"ב קסז, ב ד"ה וליחוש