#### - בעדי מסירה ורבי אלעזר היא

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

### **Overview**

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

אבל לרבי מאיר בעינן שיהא מוכח מתוך החתימה שנכתב<sup>1</sup> לשם זה האיש ואשה זו - However according to ר"מ (who maintains עדי חתימה כרתי) he cannot divorce either wife, because we require that it should be evident from the signature that this was written for the sake of this man and this woman, and it is not evident from the signed  $\alpha$  for which wife it was written -

ולא מהני עדי מסירה<sup>2</sup>

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"ה.

תוספות anticipates a difficulty:

ההיא דהמגרש (לקמן פו,ב) שנים ששלחו ב' גיטין ושמותיהן שוין - 3 And regarding that פרק המגרש in פרק המגרש where two people sent two , 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 לזו $^4$ וקאמר רבי ירמיה בגמרא הא דלא כרבי אלעזר ושניהם לזו ושניהם לזו נותן שניהם לזו to the other woman, and ר"י to the other woman, and גמרא there, 'this משנה is not according to ר"א -

משמע<sup>6</sup> דכרבי מאיר ניחא -

<sup>&</sup>lt;sup>1</sup> It should be pointed out that 'תוס' presumably means that it needs to be signed לשם זה האיש (but not נכתב) since according to "ר"מ we only require חתימה לשמה (but not כתיבה לשמה). See

 $<sup>^2</sup>$  Even if there were מכירה by the transfer of the עג, the עג will not be valid according to "ר", since ע"ה, and the ת"ש cannot make the עט effective since their testimony in the עט does not indicate who is being divorced. See ע"ה מוסח שאס writes that according to פרש"י בד"ה בעדי it appears that רט"י is not עדי מסירה וt will be עדי מכירה מתוכו but rather if there מרב מער שוני שמא נמלך זה נעלך זה וכנ"ש. עשמא נמלך זה וכנ"ש. ע"ש שמא נמלך און מייש.

 $<sup>^3</sup>$  The שוין ונתערבו (instead of שוין ונתערבו).

<sup>&</sup>lt;sup>4</sup> Each woman ultimately received her proper α from her husband for one α was intended for her.

<sup>&</sup>lt;sup>5</sup> Each time a גע is delivered to a woman, the ע"מ do not know that this is the proper גע, they cannot say for certain at each נחינה that this is the proper גירושין effected the נחינה that this is the proper אביי's.

 $<sup>^6</sup>$  א said that the משנה is not in accordance with "ר", implying that it is in accordance with ר"י. Otherwise ר"י

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

responds תוספות

- התם מיירי כדפרישית לעיל כשכתבו דורות או סימן 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 vx who the parties are -

ועדי מסירה אין מכירין באבותיהן או בסימן הכתוב<sup>10</sup>

However the ע"ם did not recognize their forefathers or the sign indicated in the ש. מ

מוספות asks:

ואם תאמר למאן<sup>11</sup> דחייש לקמן בפרקין<sup>12</sup> (דף כז,א) לשני שוירי ולשני יוסף בן שמעון -And if you will say; according to the one who, later in this 375, is concerned for two cities 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 שירי; 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 מתוכו<sup>13</sup>

Since you can no longer find any גע that it should be מוכה 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!

מוספות answers:

- ואומר רבינו יצחק דדוקא בגט הנמצא הוא דחייש שמא מאחר נפל And the ייי says that only by a גע which was lost an found are we concerned that perhaps it fell from another יב"ש (even though לא הוחזקו ) -

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

<sup>&</sup>lt;sup>7</sup> ד,א תוד"ה דקיימא.

<sup>&</sup>lt;sup>8</sup> The names and the fathers names of the parties (ראובן בן יעקב) were the same but their grandfathers names (יעקב בן יצחק and יעקב בן אברהם) were different.

<sup>&</sup>lt;sup>9</sup> One had an identifying mark which the other did not have, or some other feature which distinguished between them.

<sup>&</sup>lt;sup>10</sup> Therefore according to אוֹ ד'א it is not a good גו, since the ע"מ do not know which גע belongs to which couple, while according to ר"מ when the right גע is given, the גע 'knows' the truth; it is מוכח מתוכו.

<sup>&</sup>lt;sup>11</sup> This is (seemingly) רב הונא (regarding שני שוירי) and אירי (regarding שני יב"ש).

<sup>&</sup>lt;sup>12</sup> The גמרא there is discussing if a גע was found can it be returned to the person named in the גע 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 גע

<sup>&</sup>lt;sup>13</sup> The גני is not telling us which יב"ש is divorcing his wife.

<sup>&</sup>lt;sup>14</sup> There is a concern only by a גט הנמצא, because since it was lost, this indicates that something may not be right with this טג, otherwise a טג is watched carefully and is not lost.

- אבל חשיב שפיר מוכח מתוכו $^{15}$  כיון דלא הוחזקו אלא שוירי אחד ויוסף בן שמעון אחד since we know of only one יב''ש and one שוירי –

asks: תוספות

- ואם תאמר דתנן בפרק גט פשוט (בבא בתרא דף קסז,א) כותבין גט לאיש אף על פי שאין אשתו עמו לבא בתרא דף קסז,א) teaches, 'we write a גט for a man even though his wife is not with him' -

יברץ בגמרא<sup>16</sup> וליחוש לשני יוסף בן שמעון הדרים בעיר אחת אחת there asks, 'but let us be concerned for two יב"ש who live in the same city, and their wives also have the same names -

- דלמא ממטי לה גיטא לאיתתיה דהאיך

Perhaps he will bring the גע to the other s'ע"ב" wife', and she will be divorced illegally -

רב אמר רב שני יוסף בן שמעון הדרים בעיר אחת אין מגרשין אלא זה בפני זה <sup>17</sup>ה. And the ממרא there answered, 'this is what דב taught; two יב"ש who live in one city, cannot divorce their wives only in the presence of each other'. This concludes the citation of the משנה and תוספות .גמרא continues with his question -

רהשתא היכי מיירי אי בלא הוחזקו הא מסקינן לקמן  $^{18}$  (כז,א) דלא חיישינן - But now, what case are we discussing; if it not established that there are two there is no concern, since the ממרא concluded later that we are not concerned for two לא הוחזקו, if it is לא הוחזקו, so there is no need for any תקנה מחלבה מחלבה הוחזקו אלא הוחזקו.

ואי בהוחזקו אם כן לרבי מאיר אפילו זה בפני זה אין מגרשין - And if it is הוחזקו, so according to ר"מ, they cannot divorce even in the presence of each other, for we require מוכה מתוכו (which it is not), so the חקנה is useless -

עד שיכתבו כהן או דורות או שום סימן ואז ליכא למיחש למידי - Unless they write כהן or previous generations or some sign, and in that case there is no concern at all, since we will notice the distinction in the במ

ואי לרבי אלעזר הא עדי מסירה ידעי שפיר אם זו היא אשתו או לאו כדאמר הכא<sup>19</sup>

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<sup>&</sup>lt;sup>15</sup> See נחלת משה.

<sup>&</sup>lt;sup>16</sup> בי"ד. The question seems to be that if we require the wife to be there when the בי"ד will verify that this is indeed his wife, they will write the מ and have him give it to his wife, then and there. However if we write the us for the husband without the wife, he may give the alter to his namesake's wife (perhaps he wants to marry her) and she will assume that she is divorced when in reality she is still married.

<sup>&</sup>lt;sup>17</sup> Therefore there is presumably no concern for since we know that there are two נ"ש, we will not allow him to divorce his wife unless the other couple is present.

<sup>&</sup>lt;sup>18</sup> This may be referring to the proof of רבה there that אי הוחזקו ב' יב"ש אין ואי לא לא Additionally even according to the there (on כז,ב) that יורא there (on לשון even if לא הוחזקו even if לא that is only if it was lost (see footnote # 14), but not otherwise. See 'Thinking it over'.

 $<sup>^{19}</sup>$  See תש"י here גדי הבעדי. This is how the גמרא explains how he can be מגרש the מגרש, etc. since the ע"מ know the couple.

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

מוספות answers:

רבינו יצחק $^{20}$  דאין עדי מסירה מדקדקים לראות אם זו אשתו $^{12}$  - And the י"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 גע, so they assume that the woman receiving the גע is his wife -

ולא חיישינן שמא יתננו לאשת חבירו ששמו כשמו ושמה כשמה  $^{22}$  שמא יתננו לאשת חבירו ששמו כשמו ושמה כשמה מי"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 -  $^{23}$ וגם לא מסקי אדעתייהו להבחין אם יש יוסף בן שמעון אחר בעיר לא מסקי אדעתייהו להבחין אם יש יוסף בן שמעון אחר בעיר

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

רכשבאה לבית דין להתירה להנשא מעידים עדי מסירה בפני בית דין -So when the woman comes to גט with her גט, so that בי"ד should permit her to remarry, the צ"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 -

ולהכי $^{24}$  פריך ניחוש דלמא ממטי לה גיטא לאיתתיה דהאי - איתתיה ממטי לה גיטא לה גיטא לה ניחוש דלמא ממטי לה גיטא לאיתתיה אינו מגרא for the husband without the wife), 'let us always be concerned that perhaps he will bring this גע to his friend's wife -

 $-^{25}$ דאפילו אין יודעין הכותבין אם הוחזקו אין להם לכתוב דזימנין דהוחזקו ולא ידעי 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 ע"מ (without the wife present) for occasionally it may be הוחזקו and the scribes and the ע"מ are unaware -

<sup>&</sup>lt;sup>20</sup> The ר"י answers that it is in a case of הוחזקו and according to ר"א.

<sup>&</sup>lt;sup>21</sup> See מהר"ם who explains that our משנה, from which we infer that the person may give the מהר"ם to his wife (even though there is another couple with the same names) is in a case where the u" testify that both couples were present.

<sup>&</sup>lt;sup>22</sup> A marginal note amends this to אמא (instead of ולא היישינן שמא).

<sup>&</sup>lt;sup>23</sup> Had the ע"מ been meticulous they would have verified that indeed there is another "נב"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.

<sup>&</sup>lt;sup>24</sup> Since it may be that ע"מ and the מ"מ are sometimes lax, therefore there is a concern,

<sup>&</sup>lt;sup>25</sup> There are those who are aware of the two נב"ש and others are not aware.

ומשני שני יוסף כולי אין מגרשין אלא זה בפני זה -

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

וכשבאה לבית דין להתירה 26 שיילי בית דין לעדי מסירה אם היו שם שני יוסף בן שמעון 27 -So when she comes to בי"ד to be permitted to remarry, ב"ל ask the בי"ד, (in a case where it was הוחזקו whether there were there two מסירת הגט, by the מסירת הגט

תוספות responds to an anticipated difficulty:

ולא רצה לתרץ דאין מגרשין אלא אם כן מכירין עדים שזו היא אשתו 28 And the גמרא did not want to answer that (if there are two ב"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 מ"ב; most people are not that familiar with knowing who are the respective wives of the husbands.

#### **Summary**

If there are two ש"ב", according to ר"מ they cannot divorce their wives unless there is a clear distinction between them mentioned in the גע, for we require מוכה מתוכו. The concern of ב' יב"ש is only by ב' מוס and only if הוחזקו. The requirement that by "ב" 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 ב' יב"ש (even if הוחזקו).

## Thinking it over

תוספות writes regarding the גמרא סf בעיר אחר ב' יב"ש הדרים בעיר that אין מגרשין אלא זה בפני זה, that it cannot be in a case where לא הוחזקו, because 'הא מסקינו לקמן דלא חיישינו'. בא מסקינו לקמן דלא חיישינו'. Seemingly there is a much simpler proof, for if that גמרא is in a case where לא אין מגרשין אלא זב"ז answer that אין מגרשין אלא but we do not know even that there are two יב"ש, so when will we institute this תקנה?! Obviously we are חושש only if הוחזקו, for then we can implement that הוחזקו, for then we can implement that אין מגרשין אלא זב"ז $^{30}$ 

<sup>&</sup>lt;sup>26</sup> The בי"ד will certainly know (if it was הוחזקו) that there are two בי"ד (even if others are unaware).

<sup>&</sup>lt;sup>27</sup> And if they were not there, בי"ד will invalidate this גט.

<sup>&</sup>lt;sup>28</sup> Seemingly this is a better solution than having the other "ב"ש and his wife (who have no interest in this whole matter) to appear for this divorce. Additionally in the current מִּ"מ 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 צ"מ need to know.

<sup>&</sup>lt;sup>29</sup> See footnote # 18.

<sup>&</sup>lt;sup>30</sup> See תוס' ב"ב קסז.ב ד"ה וליחוש.