

But if he said, 'Give'; we give

הא אמר תנו נותנין –

OVERVIEW¹

The גמרא inferred from the משנה of 'וכו' that if the husband said 'תנו', we give the גט to the woman. תוספות explains why the concerns, which are expressed elsewhere, regarding returning the גט to the woman, do not apply here.

תוספות asks:

ואם תאמר ואמאי לא פריך אהך מתניתין ליחוש שמא כתב ליתן בניסן כולי² -

And if you will say, why does not the גמרא ask on this משנה of 'וכו', how can we return it to the woman, let us be concerned perhaps he wrote the גט to give it to her in ניסן, etc. and he actually gave it to her the following תשרי -

כדפריך אברייא דלקמן בפרק קמא דבבא מציעא (דף יט,א) -

As the גמרא in the first פרק of מ"ב asks of the following ברייתא of 'וכו'. מצא גט וכו' מסכת asks of the following פרק מ"ב. Why did the גמרא in מ"ב ask only on the ברייתא, but not on the משנה?

תוספות answers:

ואומר רבינו יצחק דהא אמר תנו³ נותנין משמע שבא עכשיו לגרשה בגט זה -

And the ר"י explains that this inference, 'if he said תנו we give' her the גט, means that he is coming to divorce her now with this גט -

לפיכך ליכא למיחש מידי כדפירשתי לעיל⁴ -

Therefore (since he is divorcing her now with a predated גט), there is nothing to be concerned about, as I explained previously -

דבכל גיטין שאין נותנין ביום הכתיבה קלא אית להו⁵ -

For every גט which is not given to the woman in the day of its writing there is

¹ See 'Overview' to the previous ואפילו וכו' ד"ה הא וכו'.

² He wrote the גט in ניסן (with the intention of giving it to her then). The גט was then lost and found (לזמן מרובה). The husband says give it to her (whether it means I want to divorce her now, or she was already divorced with this גט [see footnote # 3]), but how can we do this perhaps the גט was given to her the תשרי after the ניסן date (or will be given to her now after the ניסן date), so really the woman became divorced in תשרי and until then the husband owned the פירות נכסי מלוג which he may have sold to customers. If we will return to her this גט dated ניסן, she will claim from the לקוחות all the פירות from ניסן to תשרי; saying that they purchased it illegally since she was already divorced in ניסן (as stated in the גט). In fact it was a legal sale, since she was not divorced in ניסן, but in the following תשרי. [The term ליחוש here, does not mean perhaps the גט is predated, for it is obviously predated (it was found מרובה); rather it means we should be concerned (ליחוש) that perhaps the גט was sold in the interim and she will swindle the לקוחות from their rightful purchase.]

³ By saying תנו the implication is that he is giving her the גט now; if the משנה meant that we return the גט to her (for the husband admits that divorced her already) the term יחזיר should have been used instead of תנו.

⁴ יחזיר תוד"ה הנהו.

⁵ A גט is given in the presence of עדים who read the גט; when they see that it is predated they publicize it, so everyone should be aware.

publicity that a predated גט was given -

ומסקי לקוחות אדעתייהו שפיר לומר לאשה אייתי ראיה אימת מטא גיטא לידך -

And the customers (who bought the מלוג (פירי נכסי מלוג) have the proper presence of mind to tell the woman, 'bring us proof when the גט came into your possession'. This explains why the גמרא does not ask regarding the משנה -

אבל בברייתא דקתני בזמן שהבעל מודה⁶ פירוש שממנה נפל סבורים לקוחות -

However in the ברייתא where it states, 'in the case where the husband admits', meaning that he admits that his wife lost the גט (she was already divorced), the לקוחות assume that since we return it to her -

דבית דין מאמינים לו שמשנכתב בא לידה⁷ וטעו טפי ולא יאמרו אייתי ראיה -

That the ב"ד believes the husband, that it came into her possession when he wrote it, so there is more chance that they will err, and will not say to the woman, bring proof when you actually received the גט. Therefore the גמרא rightfully asks, how can we return it to the wife ולא נתן עד תשרי וכו' -

תוספות asks:

ואם תאמר והיכי רמי רבי זירא מברייתא אפילו לזמן מרובה לפירוש קמא⁸ -

And if you will say how did ר"ז ask from the ברייתא on our משנה, assuming that the ברייתא means יחזיר, even לזמן מרובה, according to the first explanation (for פשיטא is לאלתר -

הא לאלתר נמי איצטריך לאשמועינן דיחזיר למאן דאמר דיש לבעל פירות עד שעת נתינה -

But it is also necessary for the ברייתא to teach us לאלתר according to the one who maintains that the husband has a right to the מלוג נכסי מלוג, until the time of giving the גט, and the novelty is -

דלא חיישינן לשמא כתב בניסן כולי⁹ -

That we are not concerned for שמא כתב בניסן, etc. so how do we know that the ברייתא means יחזיר even לזמן מרובה?!

תוספות answers:

ויש לומר דבנמצא לאלתר לא שייך לאקשווי הכי דדלמא ביום שנכתב איירי -

And one can say; when it was found לאלתר we cannot ask this (שמא כתב בניסן)

⁶ He is admitting to the woman who claims she lost the גט after she was divorced in the past.

⁷ See תוס' ד"ה בזמן that actually we do not necessarily believe the husband that he divorced her already (see תוס' ד"ה בזמן on the 'עמוד ב', rather we have him divorce her now, but the לקוחות may assume that we do believe him.

⁸ See previous ואפילו תוס' ד"ה הא וכו' [TIE footnote # 9]. זירא (רבה) maintain that it is פשיטא that we return a גט which was found לאלתר, therefore when the ברייתא states, בזמן שהבעל מודה יחזיר לאשה, it must mean מרובה. See 'Thinking it over'.

⁹ We are not concerned, for the לקוחות will always say לידך מטא גיטא (not as we assumed in the ה"א).

(וכו'), because לאלתר can perhaps mean that it was found on the day it was written, so there is no concern of a predated גט -

אבל אי איירי לזמן מרובה אף על גב דכשתעבור שיירא ותשרה קרוי זמן מרובה -

However if it is לזמן מרובה, so even though a זמן מרובה can be the time it takes for a caravan to pass through and stop, which may also be ביום שנכתב -

מכל מקום זמן מרובה משמע בכל ענין לא שנה באותו יום לא שנה אחר כמה ימים -

Nevertheless כשתעבור שיירא (means in any event, whether it is that day (וכו'), or whether after many days, therefore there is the question of שמה כתב בניסן וכו', which does not apply to לאלתר) -

תוספות responds to an anticipated difficulty:

וכי פריך לקמן¹⁰ ארבי ירמיה מאי למימרא -

And when the גמרא later asks on ר"י, 'what is this teaching us' -

הוה מצי לשנויי דלא חיישינן לשמא כתב בניסן כולי -

The גמרא could have answered, that the חידוש is that we are not concerned for שמה כתב בניסן וכו' -

אלא דעדיפא משני¹¹ אפילו למאן דאמר אין לבעל פירות¹² משעת חתימה:

However the גמרא gave a better answer, which explains the חידוש even according to the one who maintains that the husband has no פירות from the time the גט was signed.

SUMMARY

אם אמר תנו that משנה in the inference of שמה כתב בניסן, since it means that she is being divorced now, so there is a קול (since the date precedes the divorce), and the לקוחות will claim לידך גיטך אייתי ראייה אימת מטא גיטך לידך.

THINKING IT OVER

asks on ר"ז according to the קמא (פשיטא is לאלתר), that perhaps there is a חידוש even by לאלתר that we are not concerned for שמה כתב בניסן.¹³ Why is not the same question on רבה?¹⁴

¹⁰ answered the contradiction between the משניות that were it says יחזיר is in a case where the עדים said we only signed on one שטר with these names, therefore there can be no concern. The גמרא asked, in that case it is obvious!

¹¹ The answer given was that we are not concerned that there might have been two גיטין written to two different families (with the same names) and signed by two different sets of עדים (with the same names).

¹² According to this מ"ד there is never a חשש of חשש בניסן וכו', since as soon as the גט is signed the בעל has no longer rights to the מלוג נכסי מלוג. So we could not say the חידוש is we are not חושש for שמה כתב בניסן וכו'.

¹³ See footnote # 8.

¹⁴ See נחלת משה.