

בזמן שהבעל מודה יחזיר לאשה ואפילו לזמן מרובה –

In a time where the husband admits, it should be returned to the woman; and even after an extended period

OVERVIEW

inferred from the ברייתא (which stated that it can be returned even if it was lost לזמן מרובה). This seemingly contradicts our משנה (of תוספות) which stated that we only return it לאלתר, but not לזמן מרובה. Our clarifies this question.

asks: תוספות

ואם תאמר כיון דבעל שאמר גרשתי את אשתי נאמן והוא מודה שגרשה -

And if you will say; since the rule is that a husband who said, ‘I divorced my wife’ is believed, and in the ברייתא he admits that he divorced her, therefore -

אפילו אין הגט שלה ניתן לה לראיה בעלמא ומאי פריך¹ -

Even if the גט is not hers (it belongs to another יב"ש), nevertheless we should give it to her just for proof, so what is the question?!

answers: תוספות

ויש לומר דלא מהימן אלא מכאן ולהבא מיגו שיכול עכשיו לגרשה -

And one can say that a husband is not completely believed that he divorced his wife, rather he is only believed that she is divorced regarding her status from now on, since he can divorce her now if he chooses, therefore we believe him as of now -

ולא תטרוף פירות² אלא מכאן ואילך -

So therefore she cannot reclaim the פירות, only from now onwards -

אבל למפרע לא כשאומר גירשתיה מזמן הכתוב בגט³ כדאמרין ביש נוחלין (בבא בתרא קלד, ב) -

¹ The גמרא cites a contradiction from our משנה which indicates that if a גט was found after an extended period of time (לזמן מרובה) it cannot be returned, with a ברייתא which states that if the husband admits that he divorced his wife it can be returned even if it was lost לזמן מרובה. תוספות is asking that there is no contradiction; for in our משנה (where the שליח lost the גט) there is no husband who is saying anything, therefore לזמן מרובה we cannot return it to the שליח; however in the ברייתא, the husband admits that he divorced her (and since נאמן את אשתי נאמן), therefore we return the גט to her (even if it is not her גט) to use as proof that she is divorced.

² The husband has the rights to consume the פירות of the נכסי מלוג (the assets the wife brought into the marriage) as long as they are married. In case the husband sold the פירות after the date in the גט but before he claimed גירשתיה, the wife cannot collect these פירות from the לקוחות, since he is only believed ולהבא מכאן, but not למפרע.

³ The reason the husband is believed to claim גרשתי את אשתי (and so she can remarry [or be exempt from יבום]) is because of the מגו that he can divorce her now. Therefore his נאמנות is only for the future where the מגו is applicable, but not for the past. Therefore in a case where there is no גט, we believe him for the future. However in our case where there is a גט, we take a different approach as תוספות continues to explain. See ‘Thinking it over’.

However he is not believed retroactively when he claims, 'I divorced her from the date which is written in the גט', as the גמרא states in נוהלין -

והכא שידוע לנו שלא בא לידה עכשיו זה הגט בתורת גירושין -

And here where it is known to us that the גט did not come into her possession now, in a divorce process, therefore -

אינו נאמן מכאן ולהבא יותר מלמפרע⁴ -

He is not believed for the future any more than for the past -

ויחזיר לאשה דקתני היינו בעדים ותתגרש בחזרה זו אפילו לא נתגרשה עדיין -

So when the ברייתא states 'it should be returned to the wife', it means with witnesses and she becomes divorced through this returning of the גט to her now, even though she was not divorced as of yet -

ולא חיישינן שמא מאחר נפל⁵ אפילו לזמן מרובה:

And we are not concerned perhaps this גט was lost from another יב"ש, even if it was found מרובה; לזמן מרובה; this contradicts our משנה which states that we only return לאלתר, but not לזמן מרובה.

SUMMARY

The rule of בעל שאמר גרשתי את אשתי נאמן is only for the future but not for the past.

THINKING IT OVER

In נוהלין there is a dispute in the case where the husband claims he divorced her in the past, whether he is believed מכאן ולהבא even though he is not believed for the past.⁶ According to the opinion that he is believed for the future, the question of תוספות seemingly remains; how can we compare the two cases, since in our case the husband is believed מכאן ולהבא?!⁷

⁴ The גט is dated ר"ח ניסן, it was found אייר ר"ח; the husband admits that he divorced her ר"ח ניסן. We do not believe him that she was divorced ר"ח ניסן since there is no מגו of לגרשה (for now it is אייר ר"ח), we know that he is not divorcing her now (if we merely return the גט to her, for that is not considered a proper divorce), therefore we do not accept his claim at all. The gist of תוספות answer is that in our case the rule of נאמן את אשתי גרשתי, is not applicable at all and therefore the case of the ברייתא is the equivalent of the case in our משנה. Therefore there is a proper contradiction.

⁵ In which case she cannot be divorced with this גט, but nevertheless we do divorce her with this גט. This shows that we are not concerned for another יב"ש even מרובה לזמן.

⁶ The argument there is whether we say פלגינן דיבורא (and he is believed) or not, עיי"ש. See footnote # 3.

⁷ See זיו הים and מהר"ם שי"ף ורש"ש.