שקול מינה חפץ והדר הב לה גיטא –

Take the object from her and give her the *Get* afterwards

Overview

The גמרא cited a dispute between ר"י ור"ל in a case where the husband told the שליח הגט, take an object from my wife and afterwards give her the גט. Our תוספות reconciles our גמרא with a seemingly contradictory גמרא.

משמע דוקא שהקפיד על לקיחת החפץ תחלה פליגי -

It seems that ר"י ור"ל **argue only** in this case **where** the husband **was insistent that he first take the object,** therefore ר"י maintains that it is פסול -

אבל הב לה גיטא ושקול מינה חפץ לא[1] -

However if the husband would have said, '**give her the גט and take an object from her',** there would be **no** dispute, even ר"י would agree that the גט is כשר.

תוספות asks:

ותימה דבפרק הכותב (כתובות דף פה,א) אמרינן[2] דלא שנא אמר ליה שקול שטרא והב ליה זוזי -

And it is astounding! For in פרק הכותב the גמרא **states; 'it makes no difference, whether he told** the שליח**, 'take** back **the** חוב **שטר and give him the money' -**

ולא שנא אמר ליה הב ליה זוזי ושקול שטרא משלם דאמר ליה לתקוני שדרתיך ולא לעוותי -

Or whether he said, 'give him the money and take back **the שטר',** in either case the שליח **must pay, for** the sender **can say to** the שליח, '**I sent you for my benefit, but not for my ruin'';** the reason the שליח is always liable is -

כיון שהזכיר לקיחת השטר אף על פי שהזכיר לבסוף[3] -

Since the sender **mentioned taking the שטר, even though he mentioned** taking the שטר back **last** (he said הב ליה זוזי ושקול שטרא), for the שליח should have understood on his own that before he pays, he should take back the שטר. Similarly the same ruling should be here, since the owner wants the object, the שליח should not have given her the גט, until he retrieved the object.

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[1] Seemingly תוספות proof that in the case of הב לה גיטה ושקול וכו' it would be כשר, is because if they argue in that case as well, why did the גמרא state a case where he said הב ליה גיטא **והדר** (שקול מינה חפץ), which emphasizes that the husband is מקפיד, when the גמרא could have used a more neutral language [either שקול מינה חפץ והב לא הגיטא (without the 'והדר'), or]; הב לה גיטא ושקול מינה חפץ.

[2] The case there is where אבימי owed money to חוזאי; he sent the money with חמא. When חמא came, he first gave them the money, and when he asked them to return the שטר, they told him this payment is for another debt, for which we did not write a שטר, and אבימי still owes us the money for the מלוה בשטר. The גמרא ruled that חמא was negligent for not taking the שטר, before paying. חמא was required to pay back אבימי this money.

[3] We see from that גמרא that it makes no difference in which order the משלח indicated that he wants the שטר back; it is self-understood that nothing should be given unless the שטר is returned; why here do we differentiate whether he first said take the item or he said it last, in both cases the גט should be פסול.

תוספות answers by distinguishing between the two cases:

ויש לומר דשאני התם שפרעון המעות תלוין בשטר[4] -

And one can say; that there it is different, for the payment of money is dependent on the שטר -

ובהזכרת לקיחת השטר גלי דעתיה שירא[5] שלא יאמרו סיטראי נינהו:

So when he mentioned taking back the שטר, he let it be known that he was concerned that they should not claim these monies are for **another** debt.

Summary

Paying a חוב and retrieving a שטר are intertwined, therefore no matter what he said first, the שליח should have retrieved the שטר first. The same cannot be said regarding a גט and קבלת חפץ.

Thinking it over

The inference of תוספות answer (as explained in footnote # 5) is that it is self-understood that the שליח should request the שטר even if the לוה did not tell him. However one may ask that if the לוה would not tell him, the שליח may think that it was a מלוה ע"פ without a שטר. Therefore there is seemingly no indication from the fact that the לוה asked him to retrieve the שטר, that he was concerned for סטראי נינהו, it could merely be that he was informing him that it is a מלוה בשטר![6]

[4] The payment and the שטר are intertwined. The שטר forces you to repay the loan (without a שטר the lender has no claim and by leaving the שטר by the מלוה it is as if there was no payment, for he can always claim סיטראי נינהו), therefore once the שליח saw that אבימי mentioned taking the שטר, this indicated that he did not trust the חוזאי, in that case the שליח was negligent. However here the גט is not at all connected to the object the husband wants; therefore if he did not specify to take the object before the גט, the שליח did not do anything against the wishes of the husband.

[5] Normally when a debt is paid, the payer request that the שטר be returned, therefore even if the לוה would not have told the שליח to take back the שטר, the שליח should have taken it back on his own. However since the לוה told him specifically to take back the שטר, (which seemingly there is no need for the לוה to tell him) this indicates that he was telling the שליח, 'I do not trust them, so make sure to take back the שטר first'. See (however) 'Thinking it over'.

[6] See זיו הים.