מהו דתימא איגלאי מילתא למפרע דבטולי בטליה קא משמע לן –

One may have thought that retroactively it is revealed that he indeed nullified the גט, the משנה **teaches us** that there is no ביטול.

Overview

The גמרא states that if not for the explicit דין in the משנה that once the אשה received the גט there can be no ביטול, we may have thought that ביטול may be valid retroactively, if we can interpret his previous action as an intention to be מבטל the גט. תוספות will explain where would there have been a possibility to perhaps assume that ביטול may function retroactively.

There is a דין that דברים שבלב אינם דברים; we do not consider what a person thought, only what he verbalized. תוספות will be discussing the ramifications of this דין; when it applies and when do we say that even דברים שבלב הויין דברים.

תוספות comments:

ורבא דאמר לקמן (דף לד,א) דגילוי דעתא בגיטא מילתא היא –

And concerning **רבא who states later** in the גמרא[1] **that a revelation of intent by a גט, is significant** and the ביטול is valid when there is a גילוי דעתא; why therefore in our case is the איגלאי מילתא למפרע not sufficient to render it a proper ביטול?

תוספות replies: When רבא said that גילוי דעתא בגיטא מילתא היא -

היינו דוקא קודם שהגיע גט לידה –

that is only when the גילוי דעת was made **before the גט came into her possession -**

אבל אם לא נודע אותו גילוי דעתא עד אחר שהגיע לידה לאו כלום היא –

However if the גילוי דעת was not known to either the שליח, the אשה, or בי"ד **until after** the גט **was in her possession; that** גילוי דעת **is worthless[2].** There is no ביטול retroactively after receiving the גט.

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[1] The גמרא relates a case of a person who sent a גט with a שליח. When the שליח came to the woman and informed her of his שליחות, she told him to return tomorrow. The שליח related this to the husband, who upon hearing this (that the שליח did not actually deliver the גט) said 'ברוך הטוב והמטיב'. There is a dispute between אביי ורבא if the גט is בטל. While אביי maintains the גט is not בטל since it only a גילוי דעתא, and not an explicit ביטול, רבא on the other hand maintains that גילוי דעתא בגיטא מילתא היא and that is sufficient to render it a proper ביטול.

[2] תוספות will explain later why it is not a valid ביטול if it becomes known to us after her receipt of the גט.

תוספות will now explain our case of גילוי מילתא למפרע (where the ביטול is not effective):

כגון דהוה רהיט בתר שליח לבטוליה –

For instance the בעל **was chasing after the שליח** with the intention of being **מבטל** the גט

וסבר שליח דהא דרהיט בתריה דבעי למימר אשור הב לה כדאמר לקמן (שם) **–**

And the שליח thought that perhaps the reason the בעל **is chasing him for** the בעל **wants to tell** and encourage the שליח '**indeed give her** the גט'[3] **as** the גמרא **states later on** that the husband's chasing after the שליח may be interpreted to mean that he is urging the שליח to give the גט -

וכי מבטל ליה אחר שבא לידה לפי שסבור שעדיין הוא ביד השליח –

And when he subsequently **is** actually **מבטל** the גט (in the presence of the שליח or the אשה) **after it is in her possession for he** mistakenly **assumed that it is still in the possession of the שליח** therefore he was מבטל the גט

איגלאי מילתא למפרע דלבטולי הוה רהיט -

it was retroactively revealed that he was chasing the שליח with the intention of **being מבטל** the גט. Seemingly it should be a proper ביטול (especially according to רבא who maintains גילוי דעתא בגיטא מילתא היא), nevertheless –

קא משמע לן מתניתין דלאו כלום הוא –

The תנא of the משנה teaches us that this ביטול **is worthless.** There is no ביטול and the גט she received is a proper גט.

תוספות goes on to explain why indeed do we not say איגלאי מילתא למפרע[4]

וטעמא –

And the reason for this distinction between the case of רבא where the גילוי דעת was known before the גט reached her, and the case of the משנה, where the גילוי דעת was known retroactively after the גט reached her; is –

משום דבאותה שעה שהוא רץ לא נודע דעתו לא לשליח ולא לאשה ולא לבית דין –

because at the time that the בעל **was running** after the שליח **the intention** of the בעל to be מבטל the גט **was not known neither to the שליח, nor to the wife, and nor to בי"ד.** At the time the ביטול can take effect (before it came into her possession) none of them were positively aware of his intention to be מבטל the גט. One

[3] The שליח obviously understands that it is equally possible that the בעל is chasing him to be מבטל the גט.

[4] We know now that the בעל intended to be מבטל the גט. The שליח certainly suspected it. What is lacking in the ביטול?! It would seem that the reason ביטול must be performed בפני השליח והאשה, is that she should not remarry if there was a ביטול. One would assume that the שליח in this case would certainly inform the woman that the בעל may have intended to be מבטל the גט. Why is there a problem that the definitive knowledge of the ביטול reached us retroactively?

may be מבטל a גט only בפני השליח והאשה (and בפני בי"ד according to רבי בדיעבד). Therefore since at the time of the ביטול no one was aware of the ביטול (we are only becoming aware after the fact retroactively) –

והוו ליה דברים שבלב דאינן דברים –

And that knowledge **is considered 'matters of the heart' which are not** considered valid **statements**[5]**,** since at the time of ביטול they were not verbalized -

אף על פי שנאמן לומר כך היה בלבי –

Even though he is believed to say this is what **was in my heart** when I was chasing after the שליח**;** to be מבטל the גט. We are not questioning the veracity of his claim that he intended to be מבטל the גט[6]; rather we do not accept his intended ביטול because at that time it was not known to us, and it is therefore considered דברים שבלב.

תוספות questions the חסרון of דברים שבלב in our case.

ואף על גב דבעלמא גבי ההוא דזבין אדעתא למיסק לארץ ישראל (קידושין מט,ב) -

and even though that elsewhere concerning the individual who sold land **with the intention to ascend to א"י** with the monies of the sale. If he were to remain in חו"ל he would not have sold his property. The seller did not emigrate to א"י and wanted to annul the sale. The law is that since he did not verbalize that he is selling with the stipulation that the sale is conditional if he travels to א"י, therefore it is דברים שבלב and the sale is valid. In that case

בדין הוא דלא הוו דברים כיון דלא חשש לפרש רוצה הוא שיתקיים הדבר בכל ענין –

it is justified that his intention **is irrelevant since he was not concerned to specify** this stipulation, we assume that **he wants the** sale **to be valid in any event**, even if he will remain in חו"ל; otherwise he would have been specific.

אבל כאן עושה כל מה שיכול לעשות[7] -

However here, why do we say that these דברים שבלב אינם דברים **he is doing whatever is possible** to be מבטל the גט. It should be a proper ביטול (especially according to רבא who maintains גילוי דעתא בגיטא מילתא היא).

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[5] It would seem that גילוי דעתא בגיטא מילתא היא is only when there was verbalization on part of the בעל before נתינת הגט; not when we infer it retroactively. Then it is considered דברים שבלב.

[6] תוספות seems to be saying that the חסרון of דברים שבלב is not because we are not sure what his intentions are, but rather because intrinsically we cannot depend on דברים שבלב.

[7] תוספות is arguing that the reason דברים שבלב אינם דברים is not simply because he did not say them; but rather from the fact that he did not verbalize the stipulation that proves that he really is not concerned about it sufficiently to void the contract, etc. That is why in the גמרא קידושין we consider it דברים שבלב. However here by the ביטול הגט we cannot infer from the lack of דיבור that he does not want to be מבטל the גט; on the contrary we know (retroactively) that he was pursuing every means possible to be מבטל the גט. In such a case the rule that דברים שבלב אינם דברים should not apply. Rather it should be a valid גילוי דעתא בגיטא (which according to רבא is מילתא היא).

תוספות replies that indeed in the case of ביטול הגט it should not be considered דברים שבלב and the ביטול should have been a proper ביטול –

מכל מקום עשאום כדברים שבלב –

Nevertheless the רבנן **considered this as** if it were **דברים שבלב.**[8] The ביטול is not valid.

תוספות questions this last statement:

ואין להקשות מי איכא מידי דמדאורייתא לא הוי גט ומדרבנן הוה גט –

and one cannot ask concerning what was said that really it is a ביטול but the רבנן nullified the ביטול and validated the גט; **can there be such a thing that מן התורה it is not a גט,** since it is a valid ביטול, the woman is an אשת איש מן התורה **and מדרבנן it is a גט!** How can the רבנן validate this גט when מדאורייתא it is not a גט and she is an אשת איש?

תוספות replies:

דכיון שקצת דומה לדברים שבלב לא חשיבא עקירת דבר מן התורה –

For since it is partially similar to דברים שבלב; he did not actually verbalize the ביטול **it is not considered** as if the רבנן **are uprooting a תורה ruling**[9]**.**

ועדיפא מינה אמרינן בבטול שלא בבית דין בלא ידיעת שליח ואשה –

We find an even greater novelty concerning the power of the רבנן **when a ביטול** is performed **outside of בי"ד without the knowledge of** either **the שליח** or **the אשה -**

דמשמע פשט ההלכה דלא הוי בטול –

The simple understanding **of the הלכה is** that in such a case **it is not** a valid **בטול**; even though מן התורה it would seem that it should be a valid ביטול regardless if no one knew of it. The reason there is a requirement that someone know of the ביטול is to prevent the woman from remarrying. It is a גזירה מדרבנן. In תורה law however ביטול will always be valid (if it is verbalized). Nevertheless we do not ask how is it that מן התורה there is no גט because the ביטול is valid, and the רבנן validate the גט and nullify the ביטול. This seems to be an even greater חידוש than our case of דברים שבלב.[10]

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[8] Perhaps the רבנן were concerned that if we allowed this דברים שבלב, that would cause other types of דברים שבלב to be acceptable as well.

[9] It is to be assumed that if one was מבטל the גט במחשבה without verbalizing it at all, and not doing any action which would indicate that he intends to be מבטל the גט, in such a case it would not be a ביטול even מן התורה. Therefore the רבנן are merely ignoring the indicating factors and are basing their ruling on the fact that the ביטול was not verbalized, which causes a ביטול to be voided מן התורה.

[10] In the case of דברים שבלב it may be argued that מן התורה a ביטול בלב is no ביטול. Therefore even though he

תוספות reconsiders this last proof:

וצריך עיון כי שמא בטול שלא בבית דין אינו מועיל להקל אבל יועיל להחמיר –

and this requires additional **thoughtful inquiry for perhaps** when the רבנן say that **a בטול not in the presence of a בי"ד** and neither בפני שליח ואשה **is not effective,** that means **to be lenient** it is not a ביטול (we cannot say she is not a גרושה at all; she will be אסור בתרומה if she is an אשת כהן) **however** the ביטול **will be valid to be strict.** She will be considered a גרושה להחמיר (מדרבנן) but she will not be able to marry (since מן התורה it is a valid ביטול) unless she receives a new גט. Therefore there is no proof that the רבנן can nullify a ביטול and validate the גט.

תוספות will now reconsider the concept of two types of דברים שבלב (where he could or could not have been verbal):

ועוד נראה לרבינו יצחק כי דברים שבלב אינם דברים –

And it appears furthermore to the ר"י that the rule of **דברים שבלב אינם דברים** applies –

אפילו היכא דקיימא לן שנאנס מלפרש –

even in a case **where we are certain that he was prevented** against his will **from being explicit**; nevertheless it is considered דברים שבלב and is אינם דברים. Here too by ביטול הגט even if he tried to do all he could, nevertheless it is considered דברים שבלב. There is no difference by דברים שבלב whether he could or could not have verbalized his intent. In all cases it is דברים שבלב אינם דברים.

כמו שרוצה להוכיח בפרק ב' דקדושין (דף נ,א) דדברים שבלב אינם דברים –

as the גמרא **attempted to prove in the second פרק of קידושין that דברים שבלב is not considered דברים** regardless whether his not saying was באונס or ברצון. The גמרא attempted to proves it from the דין -

וכופין[11] אותו עד שיאמר רוצה אני דגט ודכפרה[12] –

that we force him until he says 'I want' both **by גט and by a קרבן.** This

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was מגלה דעת that he wants to be מבטל, nevertheless the חכמים (disregard the גילוי דעת, and) consider it as a regular דברים שבלב, where מן התורה it is no ביטול. However by ביטל שלא בפני השליח וכו', there מן התורה for sure it is a proper ביטול and the woman is not מגורשת, how are the רבנן validating this גט, nullifying the ביטול, and allowing an אשת איש מן התורה to remarry! This proves that the רבנן have this power to void a ביטול.

[11] The רש"ש amends the גירסא to מהא דכופין וכו'.

[12] A גט and a קרבן must be done willingly. Under certain circumstances a man must divorce his wife. Similarly a person must sometimes bring a קרבן. In either of these case, if the person refuses to write the גט or to bring the קרבן, בי"ד will pressure the person by all means available until the person verbalizes and says I agree to write the גט willingly or to bring the קרבן voluntarily. It is obvious that the person is really not willing to do either; he is agreeing only on account of the pressure. In his heart – דברים שבלב he refuses to go along with the coercion. Nevertheless we dismiss the דברים שבלב even though it is באונס and we only consider his verbalization of assent.

proves that דברים שבלב אינם דברים even if he is נאנס מלפרש; he is forcibly prevented from expressing his true will[13].

תוספות concludes that we should not surmise from this that we never take into consideration what the person's intent is if he does not verbalize it. There is an exception to this rule.

ולא מהני דברים שבלב להיות דברים אלא היכא שבלא גילוי דעתו –

and דברים שבלב are not considered דברים unless in a situation that even **without his גילוי דעת**

יש לנו לדעת דעתו מעצמנו:

We can assume his intention by ourselves. If it is something which an average person's intent is known, even if he did not verbalize it, it is not considered דברים שבלב; and we assume that his intent is what a 'normal' person intends to do. For instance when a person gifts all his properties to a stranger, and after his demise it became known that he had a son. We void the gift to the stranger, for we assume that had he known that he had a son he would not have gifted all his properties to a stranger.

Summary

The דין of גילוי דעתא בגיטא מילתא היא (according to רבא) applies only when the גילוי דעת was known to us prior to the אשה receiving the גט. If we know (after the אשה received the גט) retroactively that the בעל intended to be מבטל the גט, it is considered דברים שבלב and there is no ביטול.

It is possible to assume that דברים שבלב אינם דברים, only if the דברים שבלב could have been verbalized. If the דברים שבלב could not have been verbalized on account of an אונס, then they are valid דברים. In our case where he was נאנס מלפרש then it should not have considered דברים שבלב; nonetheless the רבנן consider it דברים שבלב, and validate the גט. This may be inferred from the דין that a ביטול without anyone's knowledge is void מדרבנן, even if it was בפה. However this inference may be refuted if we were to assume that a ביטול is still valid לחומרא but not לקולא שלא בפניו.

One may assume however that דברים שבלב are always אינם דברים even when נאנס מלפרש; as is indicated by the attempted proofs that דברים שבלב אינם דברים from גט וכפרה. In those instances it is certainly נאנס מלפרש and nevertheless we attempt to derive from them that דברים שבלב אינם דברים.

[13] The גמרא there actually rejects this proof saying that a ישראל really wants to have a כפרה and to listen to the חכמים who tell him to divorce his wife.

The only exception to דברים שבלב אינם דברים will be in a situation where his intent is obviously known without him needing to make any indication.

THINKING IT OVER

1. According to אביי who maintains גילוי דעתא בגיטא לאו מילתא היא, how would he explain the הו"א of our גמרא that I would say איגלאי מילתא למפרע?

2. What would be the דין in a case where the בעל ran after the שליח and he caught up with the שליח before the גט was given to the אשה, and after verifying that the אשה did not receive the גט, the בעל said ברוך הטוב והמטיב?

3. How can we explain the two opposing opinions of תוספות whether דברים שבלב אינם דברים is only when לא חשש לפרש or even when נאנס מלפרש?