

It was a גט regarding יבום

גט יבמין הוה –

OVERVIEW

The גמרא relates an incident where a woman who was divorced accepted upon herself with a נדר, that she did not take more than a certain amount for her כתובה. This seemingly proves that even for a גרושה we use a נדר rather than a שבועה (even though by a גרושה the argument of יתמי קמיא טרחא does not apply). The גמרא rejected this proof saying that the divorce there was not a divorce from her husband (who actually died), but rather it was a גט יבמין. There is a dispute between רש"י and תוספות as to what a גט יבמין means.

פירש בקונטרס שנתן לה גט לפוסלה על האחין¹ וכתובתה על נכסי בעלה הראשון² –
רש"י explained that one of the brothers of her deceased husband gave her a גט to invalidate her to be מתייבם by the other brothers, and her כתובה is due from the estate of her first (deceased) husband.³

רש"י disagrees with תוספות:

וקשה דלא היה להם להזכיר גט –

And it is difficult to understand this interpretation, for the גמרא should not have mentioned גט at all -

דלא ניתנה כתובה ליגבות עד שתחלוץ⁴ והיה להם לכתוב שחלצה –

Since her כתובה cannot be collected (from her husband's estate) until she preforms חליצה. The גמרא should have written that she performed חליצה!

גמרא offers his explanation of the תוספות:

ואמר רבינו יצחק גט יבמין הוה דלאחר שנתייבמה גרשה היבם –

And the ר"י said that גט יבמין הוא means that after יבום (took place), the יבם

¹ The rule is that a woman who is זקוקה ליבום and one of the brothers writes her a גט, she cannot have יבום with any of the brothers and she cannot marry 'outside' until she receives חליצה from one of the brothers.

² According to רש"י the גמרא's answer is readily understood; this woman is an אלמנה and by an אלמנה we do not administer an oath, therefore here too (even though the reason of יתמי קמי טרחא does not apply, for she has no children, nevertheless not to differentiate between אלמנות), she does not swear. See footnote # 5.

³ The rule is when a woman dies childless and is up for יבום, she collects her כתובה payment from the estate of her deceased husband [even if one of the brothers is מייבם her; the responsibility is not on the estate of the יבם, but rather on the original estate of her deceased husband].

⁴ Usually when a husband dies the widow is entitled to collect her כתובה immediately (if she so desires). However here since the laws of יבום apply when the husband died, she is still bound to the brothers. She cannot marry until חליצה is performed, and (therefore) also cannot collect her כתובה until after the חליצה. On that שטר that was sent from א"י it should have stated she received חליצה, for otherwise she cannot collect her כתובה.

divorced her –

וכתובתה על נכסי בעלה הראשון ומוריא היתירא⁵ משום דקא טרחה קמי אחיו:
And (since⁷) her כתובה is to be collected from the estate of her first (deceased) husband, [and] she is considered a מוריא היתירא (thus exempting her from a שבועה and obligating her to make a נדר), because she toiled for her husband's brothers (and one of them was מייבם her).

SUMMARY

רש"י explains a גט יבמין to mean a גט which one of her potential יבמין gave her to invalidate anyone (else) to be מייבם her. תוספות maintains that it is a גט that her יבם (who was מייבם her) gave her.

THINKING IT OVER

⁸ [If this is a reason for טרחה קמי אחיו since she is מורה היתר writes that she is מורה היתר תוספות why do we not say even by a גרושה that she is מורה היתר because she was גרושה? טרחה קמי בעלה⁹

⁵ [According to רש"י it is understood why she takes a נדר and not a שבועה even though she is not מורה היתר; see footnote # 2. However] according to תוספות, she is now a 'regular' גרושה, why is she not required to swear. תוספות explains that nonetheless she is מורה היתר.

⁶ She feels she deserves something extra since she took care of her husband's assets after his death. This is for the benefit of the brothers (in תוספות case for the benefit of her יבם) who will inherit the estate of the deceased (less the כתובה payment). See 'Thinking it over'.

⁷ If the כתובה would be from the נכסי יבם then she is a regular גרושה and would be required to swear.

⁸ See footnote # 5.

⁹ See # 10. אמ"ה and נח"מ.