

## חד<sup>1</sup> אתי בעל מערער ופסיל ליה –

**One; the husband may come, contest the גט and invalidate it**

### OVERVIEW

is, בפ"נ require saying the reason why the רבנן stated previously<sup>2</sup> that תוספות The גמרא states that if one שליח is נאמן to say בפ"נ, then there will be a problem if אתי בעל ומערער, because ופסיל ליה. Our תוספות will be discussing two issues. First, what is meant by the words 'ופסיל ליה'? Second, what did the גמרא (when asking this question) think, is being accomplished by saying בפ"נ?

יש לפרש דפסיל ליה ממש -

**We can interpret** the גמרא to mean that the husband, by contesting the גט, and contradicting the שליח's testimony, **will actually invalidate** the גט. The גט will be a פסול גט, and the woman will not be able to remarry with this גט.

אף על גב דלא מהימן וליכא אלא לעז בעלמא מיפסל -

**Even though** the husband is **not** actually **believed**<sup>3</sup> in his claim to contest the גט **and there is no** real concern for the כשרות of the גט; **merely idle gossip** caused by the husband's (false) claims, nevertheless the גט will be considered פסול<sup>4</sup>, and בי"ד will require the woman to receive another גט before she will be permitted to remarry.<sup>5</sup>

תוספות poses a question:

ואם תאמר אם כן מאי סלקא דעתין דמהני בפני נכתב<sup>6</sup> כיון דאכתי איכא לעז -

**And if you will say; if this is true**, that if the husband contests the גט, then the גט will be פסול, despite the fact that the שליח said בפ"נ, **what did** the גמרא **originally think that בפ"נ would accomplish** to validate the גט **since there**

<sup>1</sup> It is unclear whether תוספות is referring to the first 'חד אתי בעל וכו', which is discussing רבה, or the second 'חד אתי בעל וכו', which is discussing רבא. From the 'תוס' הרא"ש and מהרש"א it appears that 'תוס' is referring to the first 'חד'. The מהר"ם maintains that it is the second, See footnotes # 6, 13.

<sup>2</sup> סוף ד"ה ורבנן (בב, ג,א).

<sup>3</sup> He is not believed (according to רבה) since ספרי דדייני גמירי (רבה) since רוב בקיאי, or (according to רבא) since עדים בפ"נ שליח is testifying על השטר וכו'.

<sup>4</sup> It will be פסול only מדרבנן. However, מן התורה it is a valid גט.

<sup>5</sup> בי"ד will not allow her to remarry under these circumstances where people will gossip about her marital status.

<sup>6</sup> This may seemingly indicate that תוספות is discussing the הגמרא according to רבה, since תוספות mentions only בפני נכתב and not נחתם. See footnote #1.

**still will be gossip** which will nullify the גט.

explained previously that the reason for saying בפ"נ is because we are concerned that the husband<sup>7</sup> will contest the גט (thereby making it פסול).<sup>8</sup> This seemingly means that once the שליה says בפ"נ, the בעל cannot contest this גט, for that is the purpose of saying בפ"נ. Now, however, the גמרא is saying that if the בעל is מערער the גט will (still) be פסול on account of לעז, even if the שליה says בפ"נ. The question here is that there is no point at all of saying בפ"נ<sup>9</sup>. Instead of asking<sup>10</sup> הא קולא הוא חומרא הוא, the גמרא should have said that since there will still be a לעז if the husband is מערער and the גט will be פסול, therefore nothing was accomplished<sup>11</sup> by having the שליה say בפ"נ.

answers:

**ויש לומר דסלקא דעתין דמהני דרוב פעמים לא יוציא שיסבור שלא יאמינוהו -**

**And one can say that originally the גמרא thought that saying בפ"נ would help** to the extent that in a majority of situations the husband will not foment gossip, once the שליה says בפ"נ for the husband (erroneously) **imagines that he will not be believed** against the testimony of the שליה. It is to this extent only, that בפ"נ is useful. It may prevent the husband from being מערער. Therefore the גמרא cannot ask what does בפ"נ accomplish.

**ומיהו אי מפיק ליה מיפסל -**

**However, if the husband does foment gossip by contesting the גט, the גט will be פסול.** The woman will require a new גט, before בי"ד will permit her to remarry. Therefore the גמרא asks that this קולא can eventually become a חומרא if the בעל is מערער.

anticipates a difficulty with this interpretation, and answers it:

**ולמאי דסלקא דעתין הא דקתני אם יש עליו עוררים יתקיים בחותמו -**

**And according to the understanding of the גמרא at this point,** that the בעל will be פוסל despite the saying of בפ"נ, it will be necessary to say; **that which the משנה states; 'if there are those who contest this גט it should be authenticated by its signatories';** which (seemingly) refers *only* to a גט that was brought in א"י, where בפ"נ is not said. Nevertheless, at this point in the גמרא,

<sup>7</sup> There is no concern on the part of בי"ד itself that the גט may be פסול.

<sup>8</sup> See end of תוס' ב"ב ד"ה ורבנן (on ג,א).

<sup>9</sup> If the בעל is not מערער, we do not need בפ"נ, according to תוספות, because there is no חשש. If the בעל is מערער, then בפ"נ will not help. The גט will be פסול on account of the לעז.

<sup>10</sup> The question 'הא קולא וכו'', indicates that even though you may have accomplished something presently, nevertheless it may be detrimental in the future. Now however it seems that nothing at all was accomplished by the saying of בפ"נ.

<sup>11</sup> See 'Thinking it over' # 1

where we assume that פוסל is ערעור הבעל, even when בפ"נ was said, we will be forced to say that the phrase יש עליו עוררים etc. -

**קאי נמי<sup>12</sup> אהמביא גט ממדינת הים -**

**refers also to the case of where one brought a גט ממדה"י** and said בפ"נ, nevertheless if the בעל is מערער, the דין is יתקיים בחותמיו.<sup>13</sup>

This entire discussion is only in the גמרא of this אמינא. It is only then that the גמרא is of the opinion that מערער will be פוסל לעז. The conclusion of the גמרא is different, as תוספות will now conclude:

**ומשני מידק דייק ולא אתי בעל ומערער -**

**And the גמרא responds** to the concern that the בעל will be מערער; saying that the שליה will be **very scrupulous** that the גט be executed properly (so as not to soil his reputation) **and the husband will not come to contest<sup>14</sup>** the גט.<sup>15</sup>

**ואפילו יערער לא יאמינוהו וליכא לעז כלל -**

**And furthermore even if he will be מערער he will not be believed** by anyone, **and therefore there is no לעז at all** even by the populace at large. The people all know that the שליה is very meticulous and has no reason to lie, as opposed to the בעל, who may be suspect. The people will assume (correctly) that the בעל is lying. The גט will therefore be כשר.

This concludes the first interpretation of תוספות, which is of the opinion that in the הוה, the גמרא maintained that מערער will be פוסל the גט on account of לעז, even if בפ"נ was said. תוספות will now state an opposing view.

**ומיהו אין נראה לרבינו יצחק לפרש כן שיהא פסול משום לעז בעלמא -**

**However the ר"י does not agree that we should interpret the גמרא in this manner that the גט should be פסול on account of idle gossip –**

**כיון דקים לן שהוא כשר -**

**כשר is satisfied<sup>16</sup> that the גט is** כי"ד **since**

**ועוד מדלא תנן ברישא המביא גט ממדינת הים אם יש עליו עוררין וכולי -**

**And an additional proof that the בעל is not נאמן if he is מערער against the**

<sup>12</sup> The משנה states this rule – יתקיים בחותמיו – immediately after stating גט בארץ ישראל, which indicates that this rule applies only in א"י where בפ"נ is not said, and not from מדה"י when בפ"נ is said.

<sup>13</sup> Seemingly this would indicate that תוס' is discussing the סוגית הגמרא according to רבא. See footnote # 1. If we interpret תוס' to be discussing רבה, we can say that יתקיים בחותמיו would mean, to ask the עדים if it was written לשמה. See מהר"ם שי"ף # 2.

<sup>14</sup> See 'Thinking it over' # 2.

<sup>15</sup> Presumably the husband is present during the writing and signing of the גט. He observes how the שליה is meticulously watching that everything be done properly. This will discourage him from being מערער, for he is convinced that he will not be believed.

<sup>16</sup> See previous תוס' ב,ב ד"ה לפי (הב') וכו'.

שליח, **since the משנה did not state in the first case** (where the גט was brought **ממדה"י** and the שליח says **בפ"נ**), that if **'someone brings a גט ממדה"י and the husband contests it, etc'**, it should be מקוים, which the משנה should have stated according to the previous opinion in תוספות -

**כדקתני סיפא -**

**As in fact the משנה does state it in the סיפא.** The fact that the משנה does not state it in the רישא, indicates that at no point did we think that the בעל would be believed against the שליח's saying of **בפ"נ**.

What then does the גמרא mean when saying: **חד אתי בעל מערער ופסיל ליה**, since the ר"י maintains that the בעל will not be believed, even in the הו"א? תוספות concludes:

**ונראה לפרש דפסיל ליה היינו שיאמינוהו ללעז -**

**And it appears to be that the interpretation** of the words: **'דפסיל ליה'** **is that the people will believe the לעז.** This is something that is detrimental to the woman; people may not want to marry her, etc. That is the חומרא which we are concerned about.

**אבל מכל מקום הגט כשר -**

**Nevertheless, in spite** of the fact that there may be לעז, **the גט is כשר.** She will be allowed to remarry despite the לעז. The גמרא will conclude that since the שליח is מידק דייק, there is not even לעז against the woman.

## **SUMMARY**

There are two ways in understanding the flow of the גמרא.

The first is that the גמרא in the הו"א thought that if the בעל is מערער (even) after the שליח says **בפ"נ**, he will be פוסל the גט. The reason why the גט will be פסול is (not because we actually believe the ערעור; which we do not, but rather), because the ערעור הבעל will cause a הוצאת לעז on the woman, and we do not want her to get married under these circumstances. According to this הו"א that ערעור will be פוסל the גט in spite of **בפ"נ**, we would have to conclude; a) the purpose of saying **בפ"נ** is (only) to discourage the husband from being מערער, and b) that when the משנה states: **אם יש עליו עוררים יתקיים**, בחותמו, it refers both to הו"ל and הו"א, even when the שליח said **בפ"נ**.

The second interpretation (according to the ר"י) is that there never was a סברה that ערעור הבעל should be פוסל the גט if the שליח says **בפ"נ**.<sup>17</sup> When the גמרא states: **חד אתי בעל מערער ופסיל ליה**; that means that people will believe the

<sup>17</sup> The first interpretation will claim that this is contrary to the simple reading of the text: **'ופסיל ליה'**.

בי"ד and will gossip about this woman. This will be detrimental to her. בפ"נ however will permit her to remarry once the שליה testified that <sup>18</sup> a) and b) Therefore this interpretation will not agree with conclusions <sup>19</sup> stated above.

This disagreement is only concerning the הו"א of the גמרא. In the מסקנא, all will agree that once the שליה says בפ"נ, the ערעור הבעל will not be heeded at all.

### **THINKING IT OVER**

1. Explain why תוספות question (וא"ת),<sup>20</sup> is only if we follow תוספות interpretation of ורבנן הוא דאצרוך, but it is no question according to רש"י's interpretation.<sup>21</sup>

2. In explaining the תירוץ (of the גמרא that מידק דייק), why does תוספות have to say<sup>22</sup> that the בעל will not be מערער? It would be sufficient to say (as תוספות concludes) that he will not be believed.

3. How does the ר"י understand, according to the הו"א, what בפ"נ accomplishes? Seemingly without the בפ"נ there is only a חשש of לעז, and לעז, as the ר"י says, cannot be פוסל הגט.<sup>23</sup>

4. What are the relative merits and difficulties of understanding our גמרא according to each of תוספות interpretations?

---

<sup>18</sup> However, see מהר"ם שי"ף.

<sup>19</sup> This second interpretation will maintain that both these conclusions are faulty. Conclusion 'a)' which states that the whole תקנה of saying בפ"נ has no real power, it is just an attempt to dissuade the בעל from being מערער, seems like no תקנה at all. Conclusion 'b)' which states that חו"ל applies to ואם יש עליו עוררין seems to defy the simple reading of the משנה that it applies to א"י exclusively.

<sup>20</sup> See footnote # 11.

<sup>21</sup> See נח"מ.

<sup>22</sup> See footnote # 14.

<sup>23</sup> See נח"מ and מהרש"א (הארוך), מהר"ם שי"ף.