

Three types of גיטין are invalid

שלשה גיטין פסולים –

OVERVIEW

The גמרא quotes the משנה of the last פרק concerning פסולין גיטין; where ר' עדי מסירה, only עדי חתימה and requires no תנא קמא. Our תוספות will be discussing the opinion that the ת"ק of this משנה is ר"מ. Even though there seem to be some differences between ר"מ and ת"ק, nevertheless they can be reconciled.

איכא דמוקי בפרק בתרא (לקמן דף פו,א) הך מתניתין כרבי מאיר -

There are those אמוראים quoted¹ in the last פרק of גיטין מס' who establish that the ת"ק of this משנה of פסולין גיטין follows the opinion of ר"מ.²

anticipates the following question:

אף על גב דאית ליה לרבי מאיר כל המשנה ממטבע שטבעו חכמים בגיטין הולד ממזר -
Even though ר"מ is of the opinion³ that he who deviates from the proscribed⁴ method that the חכמים proscribed concerning גיטין, the child that is born after the woman remarries on the basis of such a גט, that child is a ממזר. In all these three גיטין there was a deviation from the proscribed method (they are גיטין פסולים) and nevertheless the משנה states כשר הולד כשר. ואם ניסת הולד כשר. How can we reconcile this with the opinion of ר"מ?

responds:

אומר רבינו תם דהכא היינו טעמא דהולד כשר -

The ר"ת says that the reason that here the child is deemed to be כשר and not a ממזר is -

דכך היה המטבע שלא יפסל הולד בהנך שלשה -

Because this was the original stipulation of the חכמים when they instituted the various תקנות of writing גיטין that in these three cases enumerated in this משנה, the child will not be considered פסול.

ר"מ has additional difficulties reconciling the משנה of גיטין ג with the ruling of ר"מ:

¹ The גמרא there, when discussing this משנה, states: הניחא לר"מ; this (משנה) is understood according to ר"מ.

² It would seem appropriate that the ת"ק of ר"א (who maintains עדי מסירה כרתי) should be ר"מ who maintains עדי חתימה כרתי.

³ See גמרא ה,ב.

⁴ The word מטבע means an imprinted coin. It is to be understood to mean, that we are to follow a uniform pattern, just as all coins are imprinted in the same way.

ואף על גב דרבי מאיר סבר וכתב היינו וחתם –

And even though ר"מ is of the opinion that when the תורה writes the word (לה) **וכתב**; the תורה **means** that the גט should be **signed** (by witnesses). How can we reconcile this opinion of ר"מ with this משנה which states: כתב בכתב ידו ואין עליו עדים: the גט is כשר. There are no עדים on this גט; how can it be a כשר?!⁵

answers: תוספות

מכל מקום כשר הולד בכתב ידו ואין עליו עדים -

Nevertheless, the child will be deemed כשר, in the case where the גט was written **in the husband's handwriting**, even though **there are no witnesses** who signed the גט, even according to ר"מ. The reason being –

דכיון שהבעל עצמו כתב אין לך חתימה גדולה מזו -

That since the husband himself wrote the גט in his own handwriting, there is no greater act of signing the גט, than this act of the husband writing the גט himself.⁶

now questions how the third case of the משנה can be reconciled with ר"מ who requires עדי חתימה:

ואין בו אלא עד אחד –

And concerning the case where there is only one witness who signed on the גט; how can ר"מ agree that הולד כשר –

qualifies and explains his question: תוספות

למאן דאמר בפרק בתרא (גם זה שם) כתב ידו ועד שנינו שפיר -

According to the אמורא in the last פרק, who interprets the משנה which states **אין בו אלא עד אחד**, to mean that the גט was written in the husband's **hand writing** and in addition **a witness** signed as well. That is how we interpret the משנה; **it is understood** that this may follow the ruling of ר"מ; as was stated previously that since it is in the husband's handwriting מזו חתימה גדולה אין לך חתימה גדולה מזו.⁷

אלא למאן דאמר דכתב סופר ועד קשה –

⁵ תוספות is asking that this is not merely a case of 'המשנה ממטבע שטבעו חכמים וכו' (which we can explain [as just did] that the חכמים made an exception by these three גיטין), but rather this is a פסול דאורייתא if we maintain (as ר"מ does) that עדי חתימה כרתי

⁶ The reason why וכתב means וחתם is that we need the witnesses to ascertain that the husband is actually initiating the divorce and directing the סופר to write the גט. Through the חתימת העדים we know that there was a וכתב. How much greater is this assurance (that the husband is initiating the divorce) when the גט is in the husband's own handwriting. See 'Thinking it over' # 1.

⁷ The משנה teaches us this דין of כתב ידו ועד, in addition to the דין of כתב ידו, in order to inform us that even if it was כשר בדיעבד, nevertheless it is a פסול גט. הולד כשר is בדיעבד. See following (הא) תוס' ד"ה יש (הא).

However, according to the one who interprets the statement אין בו אלא ע"א to mean there was merely **the handwriting of the scribe plus the signature of one witness, it is difficult to understand** why the גט should be כשר even according to ר"מ. There are no two עדים signing the גט. We cannot say here אין לך חתימה גדולה מזו, for it was merely the handwriting of a scribe, not the husband.

anticipates a possible resolution to this question. Perhaps we can say that the handwriting of the סופר be considered as an additional witness. One may argue that the סופר by writing the גט is testifying that the husband is divorcing his wife. Together with the witness who actually signed the גט we have two witnesses. refutes this idea.

ניחוש דשמה סופר כתוב להתלמד וזרקו לאשפה -

We should be concerned perhaps the סופר wrote the גט for practice and he threw it into the garbage dump -

ובאתה האשה והחתימה עליו עד אחד ואין כאן שנים -

And then the woman (perhaps) came along, found the גט and had one witness sign it, and we do not have here two witnesses. The writing of the סופר does not assure us that the husband asked the סופר to write the גט. It is possible that the סופר wrote the גט for practice. The question remains how this can be a כשר גט, according to ר"מ, since we do not have two עדים.

replies:

ויש לומר שהסופרים חוששים למכשול ונזהרין בכך -

And one can say that the סופרים are concerned for various problems⁸ that may develop and are careful to prevent these types of problem by destroying any גט which was written להתלמד. We can therefore assume that this גט was written at the request of the husband, and together with the signature of the witness, it can be considered as if two witnesses (the סופר and the ע"א) signed it.

responds to an anticipated question; if the סופרים are so careful to destroy any גט that was written להתלמד, then obviously this גט was written at the request of the husband. Let us consider the handwriting of the סופר as one עד, and we should require only one more additional עד. Why does the משנה say that is כתב סופר ועד?

responds:

ומיהו אין רגילות להזהר לגמרי שתחשב כתיבת סופר כעד אחד -

However, they are not that accustomed to be very scrupulous never to leave lying around a גט that was written להתלמד that the handwriting of the

⁸ See 'Thinking it over' # 2.

ע"א should be considered as a valid סופר It is only בדיעבד that we are not פוסל the כתב if there was ועד סופר. Initially, however we require two עדים. A גט with כתב is not פסול, for we have no ironclad assurance that the סופרים are scrupulously careful with גיטין that are written להתלמד.

SUMMARY

The ג' גיטין פסולים of משנה which states כשר ואם נשאת הולד כשר can be reconciled to follow (even) the opinion of ר"מ who maintains that כל המשנה ממטבע שטבעו. The reason why by these ג' גיטין and that חכמים בגיטין הולד ממזר is because the חכמים מתקן that these three גיטין are an exception to this rule and the וולד is כשר.

The reason why כשר is because there is no greater חתימה than the כתב יד of the husband himself.

The case of ע"א אין בו אלא ע"א is easily understood according to the opinion that it means כתב סופר וע"א. Even according to the opinion that it is כתב ידו וע"א, there are really two עדים on this גט. The סופר is also testifying that the husband asked him to write the גט. Usually סופרים are meticulous in destroying גיטין written for practice. The fact that this גט is being presented (and signed by an ע"א), lends us to believe that the husband told the סופר to write the גט. It is not sufficient proof however to permit using such a גט לכתחילה.

THINKING IT OVER

1. Why then is it a גט? ⁹ אין לך חתימה גדולה מזו is כתב ידו explains that תוספות. ¹⁰ פסול?

2. ¹¹ חוששים למכשול סופרים the גיטין להתלמד states that when writing תוספות. What מכשול can there be since we are discussing the opinion of ר"מ that ¹² is not required? לכתחילה לשמה?

3. What proof can be brought (from the words of ר"מ himself) to support what תוספות contends: וכו' כל כך וכו'?

⁹ See footnote # 6.

¹⁰ See following תוס' ד"ה כתב.

¹¹ See footnote # 8.

¹² See בל"י.