He wrote it in his own handwriting, - כתב בכתב ידו ואין עליו עדים
but there were no witnesses signed **on** the גט.

Overview

In the previous תוספות we learnt that the כתב יד of the בעל is as good a חתימה as any. Why therefore is a גט written in the כתב יד of the בעל, invalid? תוספות will explain that since there are no witnesses in this גט, the בעל may write whatever date he wishes. Therefore it is considered as a גט without a date; which is פסול. There are two differing opinion why a גט must be dated[1]; either on account of the חשש שמא יחפה or משום פירי (as will be shortly explained). תוספות will quote these two opinions and explain how they are relevant to this case of כתב בכתב ידו.

טעמא דפסול[2] משום שיוכל לכתוב הזמן כמו שירצה והוי כאין בו זמן -

The reason why this גט is **פסול is because he is able to write** in the גט **whatever date he desires[3] and** so this גט **is considered as** a גט which **has no date.[4]**

תוספות asks:

ואם תאמר בשלמא למאן דאמר בפרק ב' (לקמן דף יז,א) -

And if you will say; while **it is understandable according to the one who maintains in the second פרק -**

דתקנו זמן בגיטין שלא יחפה על בת אחותו -

That the reason the חכמים **instituted** that it is necessary to write **the date in גיטין; is to prevent** the husband **from covering up** in order to protect **his niece** whom he married.[5] If we are to assume that this is the reason why תקנו זמן בגיטין,

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[1] See גמרא דף יז,א.

[2] See previous תוספות ד"ה שלשה, that כתב ידו is אין לך חתימה גדולה מזו.

[3] When witnesses sign on a גט they ascertain that the correct date is written. However when the husband writes the גט, even though it is כשר as far as requiring חתימה(כתיבה ו) is concerned, but no one can vouch that the correct date was written.

[4] A גט without זמן is a גט פסול as this very משנה states.

[5] A man who married his niece or any other permissible relative (or very close friend), and the woman committed adultery while married to her husband; she is liable to be put to death. If the husband cares for her, however, he may (overlook the adultery and) write her a גט after the adultery; and (if) [since] there is no date on the גט, she will claim that she was divorced before the time of the adultery and therefore not מחוייב מיתה (See משום תוס' דף יז,א ד"ה that she is עיי"ש וכו' בחזקת גרושה.). In order to prevent this שמא יחפה, the חכמים instituted that the (correct) date must be written in the גט.

then, תוספות continues, it is understood that –

הכא בכתב ידו נמי איכא למיחש שמא יחפה -

Here in the case where the husband wrote the גט **in his own handwriting, we are also concerned perhaps he will cover up** on his ex-wife by writing an earlier date that precedes the time of adultery and therefore the גט should be פסול -

אבל למאן דפרש התם דתקינו זמן משום פירי -

However, according to the one that explains there that the reason the חכמים **instituted** the writing of **זמן** by גיטין **is on account of 'fruit'**[6] **-**

According to this מאן דאמר -

קשה לרבינו יצחק מה חשש יש בכתב ידו -

The ר"י has a difficulty; what concern is there if the גט was written **בכתב ידו;** why should the גט be פסול if it was written בכתב ידו?! There is a זמן in this גט. The husband cannot write a 'post-dated' גט; for it will be obvious to the woman and בי"ד and it will be not acceptable.[7] If it is a pre-dated גט, then the husband is harming only himself. He is relinquishing his rights to the fruits for the duration between the date on the גט and the actual giving of the גט. The wife will be able to demand and collect (unjustifiably) from him (or the לקוחות) the fruits that were sold during that period. There seems no reason for concern. Why is it פסול?!

תוספות offers a possible explanation and will reject it:

ואם יש לחוש שיקדים זמן לטובת האשה -

And if there is a concern that he will pre-date the גט for the woman's benefit (as will be shortly explained) -

תוספות anticipates a difficulty with the idea that the husband is interested in the woman's benefit -

אף על פי שבא לגרשה -

Even though he is in the process of divorcing her; nevertheless, we can still say that he intends to help her, as תוספות explains -

ולעשות עמה קנוניא שתגבה מלקוחות שמכר להם פירות בינתיים -

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[6] The husband has the rights to the produce ('fruit') of certain properties that the woman brought into the marriage from her estate (נכסי מלוג). This right ceases (according to this מ"ד) from the moment the גט is signed even if she did not receive the גט yet (see גמרא יז,ב and תוס' יז,א ד"ה ר"ל. See 'Thinking it over' # 2). If there were no זמן in the גט, the husband could continue to reap and sell the produce of these fields even after the חתימה. The woman would have to prove that they were sold after the חתימה in order to retrieve her loss. This may prove very difficult since the גט has no זמן. Once the חכמים were מתקן זמן בגיטין, then the woman has to merely show that these fruits were harvested and sold after the זמן הגט, and the husband will have to repay her.

[7] In addition, in a post dated גט the divorce becomes effective on the date written in the גט. The husband is entitled to the פירות until the זמן הגט. See תוס' דף יז,א ד"ה ריש לקיש, see מהר"ם שי"ף here.

For he wants to make a swindle together **with her**; it is for their mutual benefit. תוספות explains the swindle: **she will collect from the customers**[8] any **'fruits' that the husband sold them in the duration -**

מאותו זמן הכתוב בגט עד עכשיו -

From the date (which was pre-dated) **that is written in the גט until the present**, when the גט was actually written and delivered to the woman. The בעל has the right to sell to the לקוחות the פירות נכסי מלוג of the אשה, until the date of the [actual] writing (and delivery) of the גט. If the גט was actually written and delivered to her on ט"ו חשון and the husband pre-dated the גט to ר"ח חשון; the husband has the right to sell them fruit up to ט"ו חשון. However, since the גט is pre-dated to ר"ח חשון, the wife will confront the לקוחות with this גט and demand (illegally) that they return to her any פירות that the husband sold them after ר"ח חשון. The former husband and wife will then divide this illegally acquired fruit between them[9].

תוספות anticipates the question; it seems unlikely that a husband, who is divorcing his wife, will be in collusion with her to perpetrate a swindle on לקוחות. Nevertheless, תוספות will show that this concern is a valid one:

כמו שאנו חושדין את האשה גבי שובר כתובה בפרק שנים אוחזין (בבא מציעא דף יט,א[10]) **-**

Just as we suspect the wife concerning the receipt of a כתובה in פרק שנים אוחזין.[11] We can derive from there that even though the woman seemingly does not gain anything from having a pre-dated receipt; nevertheless we are concerned that she may make a קנוניא with her husband to defraud the לקוחות in the case of a divorce (or his demise). The same applies here.

תוספות will now reject this concern that the husband may predate the גט in order to enable

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[8] The wife may claim her fruits from the customers that bought it after the זמן on the גט (as well as from her husband).

[9] If the לקוחות will try to collect their loss from the husband, they may find it difficult to collect.

[10] The גמרא concerning a שובר לכתובת אשה is on יט,ב.

[11] The גמרא in ב"מ quotes a ברייתא that says; if one found a receipt of a כתובה, stating that the woman (who may still be married) asserts that she received her כתובה payment from the husband; if the woman agrees that this is a valid receipt, it should be given to the husband, to keep as proof that he already paid up the כתובה, and therefore upon his demise or his divorcing his wife he will not owe her anything for her כתובה. The גמרא asks on this ברייתא, how can we return this שובר כתובה to the husband, perhaps it was written and dated in (תש"ס) ניסן and was not actually given to the husband till the receipt of the כתובה payment in תשרי (תשס"א). The woman may have sold her כתובה rights to someone between the dates of ניסן and תשרי, when she was still owed the כתובה and had the right to sell it. The person who bought the כתובה rights from this woman will be able to collect the כתובה payment upon the demise of the husband or the divorce of the wife. However if the date of the שובר is predated as stated, then after she sold the כתובה in (תש"ס) אייר, the husband (or his family) will produce this receipt [after the divorce or his demise] that is dated ניסן, and will not pay the buyer the כתובה; claiming that the woman was paid for her כתובה in ניסן and she had no right to sell it in אייר. (The גמרא there answers why this is of no concern.)

him and his wife to swindle the לקוחות:

אם כן לא נסמוך עליו לטרוף מלקוחות מזמן הכתוב בו -

If indeed this is the concern**;** let the חכמים institute **that we are not to depend on** the date of a גט written בכתב ידו of the husband, in regards **to collecting** the fruits **from the customers, from the date written in** such a גט. It is not necessary to invalidate a גט that is written בכתב יד הבעל, to protect the לקוחות; it would be simpler[12] to enact that such a גט cannot be used (regarding the לקוחות), as proof as to when the divorce took place[13]. The question remains; why is a גט written בכתב יד הבעל, invalid?!

תוספות answers:

ויש לומר דודאי אינו נאמן ולכך פסלוהו דלפעמים תפסיד האשה שלא כדין -

And one can say; that the husband **is certainly not** considered **trustworthy** when it comes to the writing the date of the גט, for the reason mentioned previously, that he may collaborate with his wife to swindle the לקוחות, **and therefore** the חכמים rendered such a גט to be **פסול.** We cannot follow תוספות previous suggestion that we not accept this גט as proof of the date of divorce, for that will complicate matters, **for occasionally the woman will suffer a loss unjustifiably –**

תוספות explains how the woman will suffer a loss:

כשיכתוב הבעל יום שעומד בו ולא יקדים הזמן -

When the husband will write the actual (correct) date and he will not pre-date the גט -

ואז היה לה לטרוף לקוחות מזמן הכתוב והיא לא תוכל לטרוף -

in which case she should be entitled to collect any subsequent sold fruit **from the לקוחות from the date written** in the גט and onwards, **however she will not be able to collect** these fruits that were sold after the (true) date written in the גט -

לפי שאנו חושדין אותו שהקדים הזמן ולכך פסלוהו -

For we suspect him of pre-dating the גט **and therefore** the חכמים **invalidated this** גט, to protect the rights of the wife. [14]

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[12] A גט written בכתב יד הבעל is basically a גט כשר. There is merely a חשש that sometimes (seemingly very rarely) the לקוחות will suffer a loss. To prevent this (rare) loss to the לקוחות, it is more reasonable to bar the גט from being used as an instrument of proof, than to invalidate every proper גט that was written בכתב ידו.

[13] See 'Thinking it Over # 1.

[14] We cannot follow the option that תוספות suggested; namely that a גט בכתב ידו is not admissible evidence as far a זמן is concerned. For even though we may protect the לקוחות from a (rare) loss in the unlikely case

תוספות anticipates a difficulty. Seemingly we are making it worse for the woman. If this גט were not פסול, the פירות would belong to the woman[15] from the date on the גט; the correct date. Now that we are invalidating this גט, the husband may continue 'eating the fruit', causing even greater loss to the woman. תוספות explains:

דהשתא בדין לא תטרוף האשה מזמן הכתוב כיון שהגט פסול -

For now the woman, justifiably, cannot collect from the לקוחות from the written date (even if it is the correct date) **since the גט** was rendered **פסול** by the חכמים. The woman is not suffering any legal loss -

דדוקא בגט כשר גובה מיום הכתיבה -

For only **with a גט כשר can she collect from the date** that is **written** on the גט. This גט, since it is פסול, does not give her any rights to the 'fruits'. She is not losing anything; her husband did not divorce her yet.[16]

תוספות offers another reason why כתב ידו is פסול:

ועוד יש לומר דחיישינן דאחר הכתיבה מיד תתפוס הפירות -

In addition, one can say; that we are concerned that immediately after the writing of the גט; before the husband even gave her the גט, while she is still married **she will** (take the גט before it was delivered to her[17] and) **grab the 'fruits'** that were bought legally, after the date of the גט, but before the גט was delivered to her -

ותאמר שכבר נתגרשה מזמן הכתוב בו:

And she will claim that she was already divorced from the date that was written in the גט. The לקוחות will have a difficult time disproving her. If she grabbed the פירות, she will be considered the מוחזק, and she will retain the פירות שלא כדין.[18]

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of a swindle; however on the other hand the woman will not have any document to protect her rights when the גט is executed properly. It is not logical to institute a תקנה, which may protect a third party from a possible swindle, while denying routine justice for the woman for whom the גט is intended. There is (also) a much greater probability that the woman will be harmed, than that the לקוחות will be protected. A woman must be given a גט, with which she can claim her פירות from the לקוחות.

[15] She would have to provide some outside corroborating evidence that she was indeed divorced on this day; the עדי מסירה, for instance.

[16] Making this גט פסול is ultimately placing a restriction on the husband. He cannot give her a גט written בכתב ידו. He will have to bear the cost and time to rewrite the גט and have עדים sign it. In the duration he will still be married, and be required to fulfill all his obligations to his wife; including feeding her, etc. This will encourage husbands to write proper גיטין for their wives, which they will be able to use to collect their פירות.

[17] See מהר"ם. The תלמידי המהר"ם (as well as the מהר"ם שיף) explain this answer differently, עיי"ש.

[18] In the case of a regular גט בכתב סופר, this concern does not apply. If she grabbed the גט and there are no עדים on the גט, it is a meaningless piece of paper; if the עדים signed on the גט then indeed even if the husband did not give her the גט, nevertheless from the moment the עדים sign the גט, the husband ceases to have any rights to the פירות; they belong to the woman. See מהר"ם. See 'Thinking it over' # 2.

Summary

A גט written בכתב יד הבעל is פסול, because it is considered as a גט without זמן. According to the מאן דאמר that זמן is required on account of the חשש of שמא יחפה; in the case of כתב ידו there certainly is the same חשש.

If we assume that the reason for זמן is פירי, the concern here is as follows: We are concerned that the husband may pre-date the גט in order that he and his ex-wife will make a קנוניא on the לקוחות to deprive from them the פירות they purchased in the time between the date in the גט and the actual giving of the גט. For this concern alone however, the חכמים could rule that the date in a גט, which is בכתב יד הבעל, is not acceptable as proof of the actual time of divorce. This approach, however, would cause that the woman will never have a proof of date of divorce, in a גט בכתב ידו, even if the date is correct. In summation: considering such a גט completely valid, even as a proof of date of divorce may cause the לקוחות to lose out, in the case of a קנוניא. To declare the גט valid, but it cannot be used as a proof of date of divorce, will cause the wife to routinely lose; therefore the חכמים instituted that it is a גט פסול, and the woman is not divorced, and therefore she is not yet entitled to the פירות.

An alternate explanation: The wife may take this גט that was written בכתב ידו, before she is actually divorced, and seize any פירות the לקוחות purchase from that day onwards (until the actual giving of the גט). She will claim that she is already divorced. The גט will support her claim that the פירות are hers.

Thinking it over

1. תוספות asked that if we are concerned about the לקוחות, we should institute that a גט בכתב יד הבעל cannot be used against the לקוחות.[19] Seemingly then this גט is without זמן, concerning פירי; how can it be a גט כשר?[20]

2. In a regular גט the woman owns the פירות from the time of חתימת העדים,[21] even before נתינת הגט. What would the דין be in the case of כתב בכתב ידו (before the חכמים ruled that it is פסול)? Would it be the same or different? Prove your answer and explain it.[22]

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[19] See footnote # 13.

[20] See מהר"ם, בל"י, and סוכ"ד .

[21] See footnote # 6.

[22] See footnote # 18 and סוכ"ד אות פב.