

רבי אלעזר אומר אפילו אין עליו עדים כולי –

גט, etc. said even if there are no witnesses on the ר"א

OVERVIEW

Our גמרא maintains that our משנה, which states that the שליח must say בפני נחתם cannot follow the view of ר"א, since ר"א maintains that חתימה is not required on a גט even מדרבנן. To support this statement, the גמרא quotes the משנה of גיטין פסולין in which ר"א argues with the חכמים and maintains that they are כשרים. כשרים will be discussing two issues: A) How precisely do we derive from this משנה that ר"א does not require חתימה at all, and B) What is the status of a גט without חתימה according to ר"א, לכתחילה.

asks: תוספות

ואם תאמר דילמא דוקא כתב בכתב ידו או בעד אחד דאיירי תנא קמא -

And if you will say; perhaps ר"א maintains that it is a כשר גט, only in the cases where the גט was written in the handwriting of the husband or when one witness signed on the גט, which the first משנה of the תנא is discussing; only in these instances –

מכשיר רבי אלעזר -

does ר"א maintain that the גט is כשר. In these cases there are (two) witness on the גט. In the case of כתב ידו, as תוספות mentioned previously¹ that חתימה גדולה מזו and in the case of one witness, תוספות also explained that whether the גט was written סופר or בכתב it is considered as if two עדים signed. How can we derive from this משנה that ר"א is of the opinion that even if there are no עדים at all, nevertheless the גט is כשר?

answers: תוספות

ויש לומר דהלשון אפילו אין עליו עדים משמע דאין עליו עדים כלל² -

And one can say; that the expression of ר"א, namely, 'even if there were no עדים' signed on the גט; this expression implies that even if there were no עדים at all signed on the גט, nevertheless ר"א maintains that the גט is כשר. If ר"א would maintain that only in these specific cases of the ת"ק the גט is כשר, however if there were no עדים at all in the גט it would be פסול; the משנה should have just stated 'מכשיר בעדי' or 'מכשיר רבי אלעזר' it is כשר. The fact that the משנה added the phrase that ר"א says 'אפילו אין עליו עדים' מסירה. from this we may infer that according to ר"א the גט is כשר even if there are no עדים at all.

¹ תוס' ד"ה שלשה.

² We cannot consider the case of כתב ידו as כולל עליו עדים, for as תוס' ד"ה שלשה taught that כתב ידו is a case of (מהרש"א see) אין לך חתימה גדולה מזו.

Tosfos offers an additional answer:

ועוד דקתני אין העדים חותמין על הגט אלא מפני תקון העולם -

And furthermore we have additional proof that ר"א maintains that a גט is כשר without any עדי חתימה at all; **for the משנה quotes ר"א saying: "witnesses do not really have to sign on a גט; they sign on a גט only for the benefit of the people".** This -

משמע דבעדי מסירה לחוד סגי -

implies that the witnesses that are present when the גט is **delivered** to the woman; those witnesses **alone are sufficient** to render it a כשר גט. No עדי חתימה are required.

Now that we concluded that ר"א maintains that a גט without עדי חתימה at all is כשר. The question arises whether it is כשר לכתחילה or only כשר בדיעבד.³

ונראה לרבינו יצחק דאפילו לכתחילה⁴ מכשיר רבי אלעזר בעדי מסירה -

And it is the opinion of the ר"י that ר"א maintains that even initially (the woman may remarry, for) the גט is כשר **with עדי מסירה** alone, without עדי חתימה -

כדפירש בקונטרס -

as רש"י explained.⁵

כשר לכתחילה will now offer a proof to this opinion that it is

מדקתני לקמן בפרק ב' (דף כא, ב) אין כותבין על נייר מחוק וחכמים מכשירין -

Since we learnt in a משנה later in the second פרק, 'we are not to write a גט on erased parchment⁶ and the חכמים permit' to write on erased parchment.

ואמר מאן חכמים רבי אלעזר דאמר עדי מסירה כרתי -

And the גמרא says⁷, 'who are the חכמים of the משנה that permit writing a גט on erased parchment? It is ר"א who maintains that the עדי מסירה effectuate the divorce'.⁸ This concludes the citation from the משנה and גמרא. Tosfos continues:

³ Concerning the גיטין ג' seemingly ר"א will maintain that it is כשר לכתחילה, for he disagrees with the חכמים who maintain that it is כשר בדיעבד הולד כשר and פסול לכתחילה. See מהר"ם שי"ף for an alternate explanation as well.

⁴ See 'Thinking it over' # 1.

⁵ See רש"י ד"ה ואם.

⁶ It is possible to erase something that was written in the גט (i.e. a certain stricture) after the witnesses already signed it. It will not be noticeable since the original was written on erased parchment. See רש"י on משנה ד"ה נייר.

⁷ דף כב, א בסופו

⁸ We are not concerned that anything was changed in the גט, for the עדי מסירה are present and they are aware of any restrictions or stipulations in the גט.

ומשמע מכשירין וכותבין -

It is implicit in the words of the חכמים of the משנה who say 'מכשירין' – 'it is כשר' (as opposed to the ת"ק who says 'אין כותבין'); that they mean to say **“and we are permitted to write** such a גט לכתחילה. We may infer from this, that just as we may write a גט on a מחוק נייר according to ר"א who maintains כרתי עדי מסירה כרתי (even though it is not permitted if we maintain חתימה כרתי), similarly it is permitted according to ר"א, to write a גט לכתחילה without עדי חתימה as long as there are עדי מסירה.

will present a possible difficulty with this ruling that one is permitted to לכתחילה to write a גט without עדי חתימה (according to ר"א):

והדתנן בהשולח (לקמן דף לד, ב) התקין רבן גמליאל שיהו העדים חותמין על הגט⁹ -

And concerning that which we learnt in a משנה in השולח that ר"ג **instituted that witnesses should sign on the גט**. How can we possibly say that it is permitted to write a גט without עדי חתימה signing?

responds:

לא שצריך לעשות כן אלא תיקן שילמד להם לעשות כן -

it is not compulsory to do so (to have עדי חתימה sign); that is not what the phrase **התקין ר"ג** means, **but** rather the word **תיקן** is to be understood in the sense **that he taught them to do so**; to have עדים sign for the benefit of the people -

שלא יצטרכו לעדי מסירה כשירצו להראות לראיה השטר והגט -

that they should not be required to depend on the מסירה, **when** the recipient of the שטר **and the גט will want to present them as proof**. They will have the עדי חתימה right on the שטר.

אבל אם באים לסמוך לכתחילה אעדי מסירה סומכין:

However, if the parties agree to depend initially solely on the מסירה, **עדי** and they are prepared to forgo the additional convenience of having עדי חתימה, **they may depend** on the מסירה even לכתחילה without עדי חתימה.

SUMMARY

ר"א is of the opinion that even if there are no עדי חתימה on the גט it is still כשר. We derive this from his two statements in the משנה, 1) שאין עליי, 2) שאין העדים חותמין על הגט אלא מפני תיקון העולם and עדים וכו' כשר.

Furthermore, it is permitted to write a גט without any עדי חתימה, and give it to the woman. It may be to the benefit of the recipient of the שטר, that

⁹ See 'Thinking it over' # 3.

he includes עדי חתימה, He is, however, not obligated, to do so.

THINKING IT OVER

1. Do we interpret ¹⁰לכתחילה to mean that we may; a) לכתחילה write and give (such) a גט to the woman, b) once it was written we may give it to her without ע"ה or c) that if the woman received such a גט, she may לכתחילה remarry? Explain your answer.¹¹

2. According to ר"א what is the דין in the case of עליו עדים; is it כתב ידו ואין עליו עדים; is it כשר לכתחילה? Or are we concerned that he may tamper with the זמן?¹²

3. ע"ה questions his premise that according to ר"א we do not require ע"ה, from the משנה which states הגט על הדין. ¹³ Why did not שאלין pose this question from the משנה cited here, where ר"א states שאין תוספות indicate the ע"ה are required?¹⁴

¹⁰ See footnote # 4.

¹¹ See סוכ"ד אות פט.

¹² See רע"א, סוכ"ד, בל"י.

¹³ See footnote # 9.

¹⁴ See בית יהודה (למהריב"ן).