If he told her this he can ruin her – אי אמר לה הכי מצי מקלקל לה

Overview

רב נחמן stated that the ruling of the משנה that one may not remarry his wife whom he divorced because of a שם רע or נדר, is only if he explicitly told her when he was divorcing her that he is doing so because of the ש"ר or נדר. The reason, says ר"נ, is because if he stated it so, he can ruin her.[1] There is a dispute between רש"י and תוספות as to what מקלקל לה means and how the חכמים prevent this from happening.

נראה דחששא זו אינה כי אם לעז בעלמא ולא שיהיה ממש גט בטל ובניה ממזרים -

It appears to תוספות **that this concern** of מצי מקלקל לה, **is merely** that he will **spread a rumor** that her divorce is invalid, **but not that the גט should be actually nullified and her children** from her second husband will be **ממזרים -**

דהא לא אמר על מנת[2] -

For he did not make a stipulation when he divorced her; he merely said, 'I am divorcing you because of this reason' –

תוספות anticipates a difficulty:

דאף על גב דבכמה דוכתי מהני גילוי דעת כמו שטר מברחת[3] דהאשה שנפלו (כתובות דף עט,א) -

For even though in many instances a 'revelation of one's mindset' is effective to nullify a transaction (even without saying ע"מ), **like** the case of a **שטר מברחת in** פרק **האשה שנפלו -**

וזבין ולא איצטריכו ליה זוזי דפרק אלמנה ניזונת (שם דף צז,א) -

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[1] See רש"י ד"ה טעמא who writes; **טעמא**. דמתני' משום קלקולא שלא יקלקלנה על בעלה לאחר שתנשא לאחר ויאמר אילו הייתי יודע שהדברים בדאין או שהנדר יש לו הפרה אפילו היו נותנין לי מאה מנה לא הייתי מגרשיך וכן אמרתי בשעת גירושין שמפני כך אני מוציאך וכשגרשתיך היה בדעתי להחזירך אם ימצאו דברים בדאים **ונמצא גט בטל ובניה מן השני ממזרין** לפיכך אומרים לו קודם גירושין הוי יודע שלא תחזירנה עולמית ושוב אינו נאמן לומר כן שכיון שידע שאסור לו להחזירה אפילו לא תנשא לאחר ולא חש להמתין ולבדוק אחר הדברים גילה בדעתו שלא היתה חביבה עליו: From פרש"י it seems that without this תקנה the גט will be בטל. However תוספות disagrees.

[2] על מנת means that he states, 'I am taking this action on the condition that this stipulation will be fulfilled'. If he would have said here, 'I am divorcing you ע"מ that you made a נדר which I cannot nullify, or the negative rumors about you are true', and it turned out that this stipulation is not true, the גט would be בטל. However since no clear stipulation was made, he merely stated, 'I am divorcing you because of these reasons', the גט will remain valid even though the reasons were not true.

[3] A שטר מברחת means a note where the intent is to hide one's assets. For instance, a widow with assets, who wishes to remarry, but does not want that her new husband should have any claim to her assets, so she writes a (fictitious) deed transferring her assets to her daughter. The widow may at a later date reclaim her assets from her daughter (even against her daughter's will), for we understand that this transfer was only to protect her assets from her new husband. This גילוי דעת is sufficient to invalidate the transfer of assets to her daughter, even if she did not make any stipulation (by saying ע"מ).

And in the case **in פרק אלמנה ניזונת, where he sold** his property for he needed the money to buy something else, **and** it turned out **that he did not need** the money; the rule is that the sale is nullified because of this גילוי דעת. The question is why his גילוי דעת here is not sufficient to invalidate the גט?![4]

תוספות responds:

הכא ליכא למימר הכי מדבעי לרבי מאיר תנאי כפול[5] -

Here we cannot say that גילוי דעת should be effective; תוספות proves this, **since according to ר''מ, we require a double stipulation -**

לכך נראה דלא אתי אלא ללעז בעלמא שיוציא עליה לעז כדי להחזירה[6] -

Therefore (since he cannot be מבטל the גט) **it appears** to תוספות **that it will only be merely a rumor; that he will spread the rumor** that the divorce is invalid, **in order to have** his wife **return** to him –

תוספות responds to an anticipated difficulty:[7]

אף על גב דכבר נישאת לאחר שריא ליה דזנות דשוגג הוא[8] -

And even though she already married someone else, nevertheless he assumes that she is **permitted to him for it was a זנות בשוגג -**

לכך אמרו חכמים דלא יחזיר דהשתא שוב לא יוציא לעז[9] -

Therefore the חכמים ruled that he cannot take her back (even if she did not

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[4] Presumably, according to רש"י (see footnote # 1 & # 10) this גילוי דעת is the reason why the גט is בטל.

[5] There is a general dispute between ר"מ ורבנן whether we require a תנאי כפול. According to ר"מ in order for the stipulation (תנאי) to nullify the transaction, both sides of the תנאי must be stated; i.e. 'if these conditions will be met, the transaction is valid, and if they are not met, the transaction is nullified'. However according to the רבנן we do not require a תנאי כפול rather only one side of the תנאי needs to be said, i.e.' if these conditions are met the transaction will be valid'. That is sufficient to nullify the transaction if the conditions are not met. It follows that in a case where the רבנן do not even require a תנאי to nullify a transaction, but a גילוי מילתא is sufficient, ר"מ would certainly not require a תנאי כפול. Later (on the ב' עמוד) the גמרא states that the משנה there which ruled that one who divorces his wife because (he suspects that) she is an איילונית, he may remarry her, and we are not concerned for קלקול, since the משנה is according to ר"מ who requires a תנאי כפול and in this case he was not כופל the תנאי, so he cannot nullify the גט. The concern there by איילונית is the same as the concern here by ר"ש or נדר, therefore since we see that ר"מ requires a תנאי כפול to nullify the גט, this proves that a גילוי מילתא is not sufficient to nullify the גט. See 'Thinking it over'.

[6] According to תוספות the reason we tell him that you will not ever be able to remarry this woman (even if she does not marry anyone else) is because if we permit him to remarry her, he will spread a rumor that the divorce is invalid since he realized that the stories about her were not true (and there will be a לעז on [her and] her children). However once we warn him that he will not be able to remarry her ever (regardless whether she remarries someone else or not), he will not be מוציא לעז. See footnote # 9.

[7] תוספות is asking what will he gain with his לעז; since according to him the גט is בטל, and she (as an אשת איש [according to him]) is living willingly with another man, so she is a סוטה who is אסורה לבעלה, how can he take her back?!

[8] She thought that she was מגורשת, and by a זנות בשוגג she may return to her husband. This is what he assumes.

[9] The reason he is מוציא לעז is in order to take her back; however once he realizes that he cannot take her back (because of this תקנת חכמים), there is no point in being מוציא לעז.

remarry), **so now he will not be מוציא לעז.**

In summation; according to תוס' if the rule would be יחזיר (if she did not remarry), he will claim the גט is void (in an attempt to take back his wife), and that will make a לעז on the children. Therefore the חכמים made a תקנה that he cannot take her back ever (even if she does not remarry), in which case there is no reason for him to be מוציא לעז, since he will never be able to have her back.

תוספות cites s'רש"י explanation (why there is no concern):

ורש״י פירש[10] דאפילו יאמר אילו הייתי יודע כולי אינו נאמן -

And רש''י explained that even if he will say; 'if I would have known that my reasons are unfounded, **etc.** (I would not have divorced her)**' he would** (still) **not be believed -**

דכיון דיודע שאסור להחזירה ולא חש להמתין ולבדוק אחר הדברים -

For since he knows that he is forbidden to take her back and he was not concerned to wait and verify these issues -

גילה בדעתו שלא היתה חביבה עליו -

He revealed his mind that she is not so dear to him, so he will not be believed when he said. 'if I knew this was not true I would have not divorced you'.

תוספות responds to an anticipated difficulty:[11]

ולרבי מאיר דבעי תנאי כפול כי לא כפליה למילתיה אפילו לעז ליכא[12] -

And according to ר''מ who requires a תנאי כפול, if he was not כופל the תנאי, there will not even be לעז –

תוספות responds to another anticipated difficulty:

והא דקאמר רבי מאיר כל נדר שצריך חקירת חכם לא יחזיר[13] -

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[10] בד"ה טעמא. According to רש"י if he will challenge the גט (before the תקנה) he would be believed and the children would be ממזרים; however once there is the תק"ח that if he divorces her because of ש"ר or נדר, he can never have her back for his wife (even if she does not remarry), he will no longer be believed to challenge the גט.

[11] We mentioned previously (see footnote # 5) that according to ר"מ if he divorced his wife because she is an איילונית he may take her back, for we are not concerned for לעז since לא כפליה לתנאו. Seemingly in our case if not for the תק"ח there is the concern for מוציא לעז even though there was not a תנאי (for the husband maintains that his גילוי דעת is good enough to nullify the גט), so why is there no concern according to ר"מ (and he may take back the איילונית) when there was an actual תנאי (but לא כפלו)?

[12] In our case (not according to ר"מ) we are concerned that the husband will think that his גילוי דעת is as good as a תנאי, therefore there will be לעז, however according to ר"מ since we require a תנאי כפול, it is understood that without a תנאי כפול the גט is valid, so he cannot be מוציא לעז.

[13] From the גמרא later on the ב' עמוד when it wishes to reconcile our משנה of לא יחזיר and the following משנה where the כפליה is where לא כפליה לתנאיה; indicating that our משנה is that the following משנה is where יחזיר maintain רבנן (ר"מ) לתנאיה; however that cannot be for if כפליה לתנאיה, what would לא יחזיר accomplish, the children will be ממזרים (if it

And this which ר''מ stated in our משנה; **'any נדר which** the woman made that **requires the examination of a חכם, he may not take her back' -**

היינו בדכפליה למילתיה[14] ולא כפליה לתנאיה[15] -

This is in a case where he repeated the statement, but did not double the תנאי -

דאי כפליה לתנאיה אין מועיל מה שלא יחזיר[16] דלעולם איכא קלקולא:

For if he doubled the תנאי, the rule **that he may never take her back is ineffective, for there will always be** the problem of **קלקול.**

Summary

According to רש"י the concern is that he will be מבטל the גט and the תק"ח accomplishes that we do not believe him. According to תוספות the concern is for לעז, and the תק"ח assures us that he will not be מוציא לעז.

Thinking it over

1. תוספות states that in our case (of מוציא משום ש"ר ונדר), a גילוי דעת is insufficient to nullify the גט (as opposed to other situations where it is sufficient). תוספות goes on to prove it.[17] However תוספות does not explain why indeed a גילוי דעת is insufficient here. What could be the reason why indeed a גילוי דעת is insufficient here?![18]

2. Will the last two questions[19] of תוספות apply to פרש"י as well?

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turns out that there is no נדר or ר"ש), regardless whether יחזיר or יחזיר לא

[14] This means he said to her, 'I am divorcing you because of the נדר or ר"ש, but if it weren't for the נדר or ר"ש, I would not divorce you' (but he never said the גט should be בטל); this is referred to as כפליה למילתיה, but if he said that if there is no נדר or ר"ש, the גט should be בטל, that is called כפליה לתנאו.

[15] It would seem that כפליה למילתיה ולא לתנאו will be similar according to ר"מ like a גילוי דעת according to the רבנן. Therefore we are concerned that he will mistakenly assume that since כפליה למילתיה the גט should be בטל (as if he were כפליה לתנאיה), and therefore he will be מוציא לעז; however in truth since we tell him יחזיר לא there is no concern for לעז. See footnote # 9.

[16] If it turns out that there is no נדר or ר"ש, the children from the new husband will be ממזרים. See footnote # 13.

[17] See footnote # 5.

[18] See אוצר מפרשי התלמוד # 69-79.

[19] See footnote # 11 & # 13.