

**If it was derived from there - אי מההיא הוה אמינא הני מילי דיעבד -  
I would have said that it applies only if it already occurred.**

### **OVERVIEW**

The גמרא stated that (according to רבה) the phrase צריך במדה"י צריך was written so that we should infer from it that אין צריך במדה"י. The גמרא asked: we do not need any inference; the פטור in א"י is clearly stated in the סיפא: סיפא: 'וכו' המביא גט בא"י א"צ וכו'. To which the גמרא replied "That from *there* I may think that the פטור is only בדיעבד". Our תוספות will be discussing what the גמרא means when it states 'from *there*'; are we referring to the inference from the רישא, or to the more explicit statement of the סיפא. דיעבד will also discuss what precisely is meant by the term תוספות.

#### **פירוש בקונטרס אי מדיוקא דרישא -**

**interprets** that when the גמרא states 'if it was derived from there', that the term 'there' refers to 'from the inference that was made from the **beginning**' of the משנה. The משנה stated צריך במדה"י צריך, from which we inferred that אין צריך במדה"י. This inference would have taught us that only בדיעבד is not required בא"י, but I would have maintained that initially even במדה"י, one must say בא"י. The סיפא which states 'וכו' צריך וכו' teaches us that even לכתחילה there is no requirement to say בא"י (even).

#### **ופירוש כן משום דאסיפא לא הוה מצי למימר הני מילי דיעבד -**

**And interpreted in this manner** that הו"א הנ"מ דיעבד is referring to the המביא גט בא"י אינו צריך לומר **סיפא** which states **for concerning the דיוקא דרישא** **could not have said that it applies only בדיעבד**, but לכתחילה I may have assumed that he is required to say בא"י -

#### **דהא בהדיא קתני אין צריך דמשמע לכתחילה -**

**For it is clearly stated in the סיפא that he is not required to say בא"י** if he brings a גט בא"י **which implies that initially** he is not required to say בא"י<sup>1</sup>.

תוספות is not satisfied with this interpretation:

#### **ומיהו לשון אי מההיא לא משמע הכי -**

**However the expression 'if it is derived from *there*' does not indicate so;** the way רש"י interprets it. The לשון 'אי מההיא', indicates that we are discussing the סיפא of

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

<sup>2</sup>המביא גט בא"י אין צריך וכו'

סיפא will now offer his interpretation that 'אי מההיא' can indeed refer to the תוספות

**ונראה ליישב דהכא שייך למיתני אין צריך בדיעבד -**

**And it appears that it can be resolved that here in this case it is possible to state 'he is not required'** which usually implies לכתחילה; nevertheless here it can mean **בדיעבד**. This may seem contradictory; the term 'not required' means he is not required to do something. Seemingly when the משנה states המביא גט בא"י א"צ לומר בפ"נ, means he is not required to say בפ"נ, how can we interpret it to mean that if he did not say בפ"נ it is כשר בדיעבד? What would the term אין צריך mean? What is he not required to do?!

- אין צריך explains: The term תוספות

**כלומר אין צריך ליטלו הימנה כשלא אמר בפני נכתב ובפני נחתם -**

**Means to say he is not required to retrieve the גט from the woman when he did not say בפ"נ ובפ"נ**. One may think that if he brought a גט בא"י and did not say בפ"נ he should be required initially to retrieve the גט from the woman and give it to her a second time after saying בפ"נ -

**דאמר לקמן כיצד יעשה יטלנה הימנה ויחזור ויתן לה בפני שנים -**

**For the גמרא says later<sup>3</sup> concerning a שליח who brought a גט ממדה"י, and gave it to the woman, and did not say בפ"נ: what should he do to rectify his mistake; he should retrieve the גט from the woman, then give it to her again in the presence of two witnesses -**

**ויאמר בפני נכתב ובפני נחתם -**

**And he should say** (prior to this second giving) **בפ"נ ובפ"נ**. We might have thought that this same requirement would apply to המביא גט בא"י; that if the woman is still present, he is to retrieve it from her and give it to her again. Therefore, the משנה states אין צריך, that even if the woman is present, he is not required to retrieve it from her, because in שליח a גט is כשר בדיעבד (even) if the שליח did not say בפ"נ. However, לכתחילה a שליח may be required to say בפ"נ even in א"י. This is what we may have thought had the משנה written only the סיפא. Therefore, we have the extra דרישא דיוקא, which teaches us that

<sup>2</sup> The גמרא was discussing the phrase 'ממדינה למדינה במדה"י', saying that it excludes בא"י. The גמרא then brought another phrase from the סיפא of the משנה (המביא גט בא"י א"צ) which states clearly (and not only from an inference) that בפ"נ is not required in א"י. This seemingly makes superfluous the need for the previous inference. To which the גמרא replies (seemingly) that the previous inference is still necessary: 'for בא"י, if it were to state only there, etc.' It would seem that the phrase 'only there' is referring to the contradictory quote from the סיפא. The question is 'from there', and the answer concerning 'from there' should be identical to the question.

<sup>3</sup> דף ה, ב

even בדיעבד one is not required to say בפ"נ in א"י; not only

will question the premise that had the משנה taught us only once the פטור of saying א"י in בפ"נ, we may have thought that the פטור in א"י is only בדיעבד, but even in א"י there is a requirement to say בפ"נ.

**אבל קשה דאמרינן בריש פרק ב' (לקמן דף טו, א) -**

**However, there is a difficulty; for we say later in the גמרא in the beginning of the second פרק.** Concerning that which the משנה there says –

**המביא גט ממדינת הים ואמר בפני נכתב אבל לא בפני נחתם כולי פסול -**

**‘One who brings a גט from overseas and he said נכתב, however he did not say בפני נחתם etc., the דין is that the גט is פסול’.**

**ופריך בגמרא תנינא חדא זימנא המביא גט כולי -**

**And the גמרא there asks on this previously quoted משנה, we have already learnt this דין one time previously. The גמרא then quotes our משנה, ‘one who brings a גט etc., is required to say בפ"נ ובפ"נ’.** What is the משנה in פ"ב teaching us?

**ומשני אי מההיא הוה אמינא צריך ואי לא אמר כשר -**

**And the גמרא there answers: if we would know this דין only from the משנה in פרק א' I may say that the דין is that he is required to say בפ"נ ובפ"נ as the משנה actually states. However, if he did not say בפ"נ ובפ"נ, nevertheless the גט is כשר. In our משנה it is merely stated that one is required to say בפ"נ. It does not state that if one did not state בפ"נ the גט is פסול. Therefore, we require the משנה in פ"ב to teach us that even בדיעבד, if one does not say בפ"נ the גט is פסול. This concludes the גמרא quoted from פ"ב.**

now continues with his question:

**והיכי הוה מצי למימר הכי הא אמרינן הכא -**

**But how could the גמרא have said this; that from our משנה we would have thought that it is only a חיוב לכתחילה and not בדיעבד; פסול; for we said here -**

**דאי לא תנא אלא חד בבא הוה אמינא דבארץ ישראל לכתחילה צריך -**

**That if the משנה would have taught us only one time concerning the exclusion of א"י from בפ"נ we would have said that in א"י initially it is required to say בפ"נ; the exclusion only teaches us that בדיעבד it is כשר.**

**מכלל דבמדינת הים אפילו בדיעבד נמי צריך -**

**This implies that in מדה"י the requirement to say בפ"נ applies even בדיעבד; meaning that if בפ"נ was not said the גט is פסול even בדיעבד. Our גמרא surmises that if it would say only once in the משנה that א"י is פטור, it would mean לכתחילה and חיוב. Obviously since חו"ל is different and more stringent than א"י, the requirement**

of saying in ב"נ is not only a חיוב לכתחילה but also פסול בדיעבד.<sup>4</sup> These two גמרות seemingly contradict each other. Our גמרא seems to maintain that in our משנה the חיוב of ב"נ in מדה"א is even בדיעבד. The גמרא in פ"ב maintains that the חיוב of our משנה is only לכתחילה and not בדיעבד.

answers: תוספות

**ויש לומר דמאחר דתנא הכא תרי בבי -**

**And one can say: that after the משנה here states two cases -**

**לאשמועינן דארץ ישראל אפילו לכתחילה אין צריך -**

**To teach us that in מדה"א there is no requirement of ב"נ even לכתחילה -**

**אם כן מהשתא מצינן למימר דהא דצריך במדינת הים היינו לכתחילה -**

**Therefore, at this point<sup>5</sup> (when we know for sure that אין לכתחילה אין**

**לכתחילה) we can say that the requirement to say ב"נ in מדה"א is only לכתחילה (צריך**

**אבל בדיעבד כשר להכי איצטריך מתניתין דפרק ב' -**

**However, the גט will be כשר even without ב"נ therefore we require**

**the משנה in פ"ב to teach us that even בדיעבד the גט is פסול if ב"נ was not said (properly).**

will offer another interpretation concerning what the גמרא states here that we need to be taught twice the פטור in מדה"א.

**ועוד נראה לרבינו יצחק דהכי פירוש -**

**And furthermore, it appears to the ר"י that this is the interpretation of**

**the גמרא here, that if it would have said only the סיפא, we might have said -**

**הני מילי בדיעבד שלא ראה כתיבת הגט וחתימתו -**

**When does this ruling apply that ב"נ is not required בא"י, only בדיעבד; this**

**means that the שליה did not manage to see the writing and signing of the**

**גט, only then do we not enforce the דין of saying ב"נ in מדה"א -**

**אבל לכתחילה צריך שיראה כתיבה הגט וחתימתו כדי שיוכל לומר בפני נכתב -**

<sup>4</sup> If, as the גמרא asserts in פ"ב, our משנה can be understood that one is only required to say ב"נ in מדה"א, why does our משנה need to teach us twice concerning the פטור in מדה"א? Since חו"ל which is obligated to say ב"נ, nevertheless it is only a לכתחילה obligation, then obviously מדה"א which is not required to say ב"נ, it must mean a פטור לכתחילה, otherwise it is identical with חו"ל.

<sup>5</sup> While we were still debating the need for the משנה to teach us twice the פטור in מדה"א, we definitely maintained that the חיוב בחו"ל is even בדיעבד. Otherwise, we would not be able to resolve the need to teach us twice the פטור in מדה"א. Once that issue was resolved that in מדה"א the פטור is even לכתחילה, then we may imagine that the חיוב in חו"ל is also only לכתחילה. The issues depend on each other. We usually assume the minimum חיידוש. Therefore, we at first assume the פטור in מדה"א to be minimum; only בדיעבד. After we are 'forced' by the duplicity of the משנה to assume the פטור in מדה"א to be even לכתחילה; then we assume the minimum in the חיוב of חו"ל. It is limited only to לכתחילה. For additional discussion of this matter, see 'Appendix'.

**However, initially even in א"י, the שליה is required to see the writing and signing of the גט in order that he be capable of saying בפ"נ -**

**קא משמע לן דלא צריך -**

The משנה teaches us מדיוקא that he is not required at all to see the הגט in order to sign it. א"י.

According to this interpretation, when we thought that בא"י there is a requirement to say בפ"נ; it meant that he should see the הגט in order to say בפ"נ. Therefore, it follows that in חו"ל it is required not only that he see the הגט, but even more, as תוספות continues –

**ובמדינת הים אם לא ראה כתיבת הגט וחתימתו אין יכול להביאו וליתנו לה -**

**And in מדה"י we are stricter than in א"י; if the שליה did not see כתיבת וחתימת הגט he is not able to bring and deliver the גט to the woman.** In א"י (according to the ה"א if it would say only the סיפא) one is required to see the הגט in order to say בפ"נ. If the שליה did not see then 'בדיעבד' he may deliver the גט without saying בפ"נ. In חו"ל however, if the שליה does not see the הגט we do not allow him to deliver such a גט -

**ואם הביא ונתנו הוה אמינא דכשר אי לא מתניתין דפרק ב' -**

**However, if the שליה 'transgressed' and brought such a גט and delivered it to the woman, I would have thought that it is כשר בדיעבד even in מדה"י, were it not for the משנה in פ"ב, which states explicitly that if בפ"נ was not said it is בדיעבד even פסול.**

The contradiction is now resolved. If the פטור of א"י would say only once, we would assume that (even though he is required to see the הגט, nevertheless) if בדיעבד he did not see the הגט he may give the גט to the woman. However, in מדה"י in such a בדיעבד where he did not see the הגט, he may not deliver the גט. This is what our גמרא states here. In פ"ב, the גמרא continues this pattern, that from our משנה in פ"א we would assume that even though he may not give a גט without saying בפ"נ, nevertheless if he did deliver the גט without saying בפ"נ, then בדיעבד it would be כשר. Therefore, we have the משנה in פ"ב to teach us that even בדיעבד it is פסול.

תוספות concludes:

**והשתא מיתרצה נמי פירכא קמייתא:**

**And now** that we have introduced a new type of בדיעבד and לכתחילה **the first question** that תוספות asked **is also answered.** We can now more easily understand that the גמרא when it says 'אי מההיא הו"א' בדיעבד, is referring to א"י, and nonetheless I would have thought that only בדיעבד, if he did not see the writing of the גט, then he may deliver it without saying בפ"נ. Initially

however he should make every attempt to see כתיבת הגט in order to say בפ"נ. Therefore, the משנה teaches a second time that בפ"נ is not required at all in א"י. No attempt need be made to see the כתיבה הגט.

## **SUMMARY**

There is a disagreement between רש"י and תוספות as to the meaning of 'אי מההיא'. According to רש"י, it refers to the דיוקא דרישא. It cannot refer to the סיפא, because in the סיפא it states explicitly 'אין צריך וכו'. That means that even בפ"נ one is not required to say.

תוספות is of the opinion that the expression 'אי מההיא' cannot be referring to the דיוקא דרישא, it must refer therefore to the סיפא; that the פטור בא"י is בדיעבד. However, even בפ"נ is required. We will understand the term אין צריך to mean that if he did not say בפ"נ he is not required to retrieve the גט and redeliver it while saying בפ"נ.

The ר"י (agrees with תוספות that מההיא refers to the סיפא and) maintains that the term בדיעבד means that if he did not see כתיבת הגט, he is not required to say בפ"נ. However, he is required to see the כתיבת הגט, in order to say בפ"נ. This interpretation of the ר"י, resolves the following contradiction between the two גמרות concerning the duplicities of the משניות.

In our הו"א it is inferred that the חיוב במדה"י is even בדיעבד, while the הו"א in ב"ב is that the חיוב במדה"י is only לכתחילה. According to the ר"י the two גמרות are discussing two different types of בדיעבד and לכתחילה. In our גמרא the חיוב בדיעבד means if he did not see כתיבת הגט he may not (לכתחילה) deliver it since he cannot say בפ"נ. In ב"ב this latter case is considered לכתחילה. The term בדיעבד means that even if he delivered the גט, if he did not say בפ"נ it is a פסול גט.

הו"א himself answered the contradiction by stating that the הו"א in ב"ב was assumed only after the מסקנא in our גמרא.

## **THINKING IT OVER**

1. According to רש"י<sup>6</sup> why is it necessary to have the דיוקא דרישא; seemingly from the סיפא we know that the פטור בא"י is even לכתחילה?<sup>7</sup>

2. What are the relative strengths (and weaknesses) of רש"י's and תוספות

<sup>6</sup> See footnote # 1.

<sup>7</sup> See נח"מ and מהרש"א הארוך.

(including the ר"י interpretation of 'אי מההיא וכו'')

## APPENDIX<sup>8</sup>

There are two גמרות which are explaining duplicities in the משניות. The גמרא here is explaining the duplicity concerning the פטור of saying בפ"נ in א"י. The גמרא in פ"ב, is explaining the duplicity concerning the חיוב of saying בפ"נ in י"י. The need for both these duplicities is basically the same; there is a difference between לכתחילה and בדיעבד. In our משנה the duplicity is needed to ascertain that the פטור בא"י is even לכתחילה. In פ"ב the duplicity is needed to ascertain that the חיוב במדה"י is even בדיעבד.

These two explanations are at odds with each other in two respects. We maintain here that stating the פטור in א"י only once would mean that it is only בפ"נ in א"י of חיוב. The only way we can make such an assumption, is if there is a more basic presumption that במדה"י the requirement for בפ"נ is even בדיעבד (otherwise א"י and מדה"י would be identical)<sup>9</sup>. The גמרא in פ"ב maintains that from the משנה in א"י we would think that the חיוב במדה"י is only לכתחילה. To assume that, there must be a more basic presumption that בא"י the פטור is even לכתחילה (otherwise א"י and מדה"י would be identical).

To summarize: our גמרא (in the הו"א) maintains explicitly that: a) the פטור בא"י is only בדיעבד, and (therefore by inference) b) the חיוב במדה"י is even בדיעבד. The גמרא in פ"ב (in the הו"א) maintains (by inference): a) the פטור in א"י is even לכתחילה, and (states explicitly) b) the חיוב במדה"י is only לכתחילה.<sup>10</sup> These two גמרות seemingly contradict each other. Specifically, תוספות asks that the basic presumption of our גמרא that the חיוב במדה"י is even בדיעבד is in contradiction to the assumption of the הו"א in פ"ב, namely that the חיוב במדה"י is only לכתחילה.<sup>11</sup>

<sup>8</sup> See footnote # 5. The phrase 'קצרה יד לשונו בהעתקתו אל הקולמוס', may apply to various sections of this 'Appendix'.

<sup>9</sup> The basic presumption (which we infer from the הו"א) is more elementary and valid than the assumption of the הו"א itself. This is evidenced by the fact the basic presumption allows us to assume such a הו"א. More importantly the basic presumption remains in the מסקנא, as opposed to the assumption of the הו"א which is refuted by the duplicity of the משנה.

<sup>10</sup> Only questions contradiction 'b' concerning the חיוב במדה"י, not contradiction 'a' concerning the פטור in א"י.

<sup>11</sup> This question may be rephrased as follows: Let the משנה duplicate only the פטור of א"י, this would force us to assume that in הו"ל the חיוב is even בדיעבד (for if it were also only לכתחילה, there could never be a הו"א).

פטרור answers that after we have resolved the duplicity in א"י, that the לכתחילה is even לכתחילה, we can then assume that the חיוב במדה"י is only לכתחילה.

However, this seems not to answer the question. It seems that תוספות asks the question according to the הו"א. The answer is that according to the מסקנא there is no question. Either there is a question or no need for an answer. At issue here is that the two גמרות are inherently contradicting each other as to the basic premise of the חיוב במדה"י; do we assume that it is only לכתחילה or even בדיעבד.<sup>12</sup>

A possible solution may be as follows: There may be two types of assumptions in a אמינא. One is created out of necessity. For example<sup>13</sup>; in our משנה since there is duplicity concerning the פטרור בא"י; we therefore create a הו"א that in א"י the פטרור is only בדיעבד. It would be difficult to say that if indeed the משנה only stated 'א"צ וכו' המביא גט בא"י, that we would interpret it to mean only בדיעבד. There is another type of הו"א that is (more) inherent; in which the reading of the text itself 'forces' one to assume this position or הו"א. It is only because we find proof to the contrary, that we are required to abandon this הו"א.

פ"ב in גמרא when he asked the question, assumed that the הו"א of the חיוב במדה"י was based on an inherent assumption.<sup>14</sup> This is the obvious reading of the text; it is פסול but not צריך. On the other hand, תוספות certainly understands that the basic presumption of our סוגיא that the חיוב במדה"י is even בדיעבד, is certainly inherently true. Therefore, תוספות asks; How can the גמרא in פ"ב basically assume that the חיוב במדה"י is only לכתחילה? This defies the basic presumption of our גמרא that the חיוב במדה"י is even בדיעבד.<sup>15</sup>

הו"א answers that this is a mistaken assumption. There is no inherent הו"א

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פ"ב in משנה it is also [but פטרור בדיעבד]. Then it would not be necessary to repeat the משנה in פ"ב, for we have sufficient proof from the duplicity of the פטרור in א"י that the חיוב במדה"י is even בדיעבד. This question can also be reversed that the duplicity should only be concerning הו"ל and not concerning א"י.

<sup>12</sup> Similarly there is a basic contradiction whether the פטרור in א"י is לכתחילה or בדיעבד.

<sup>13</sup> This example is more appropriate according to תוספות explanation of 'הנ"מ דיעבד' of א"י מההיא הו"א.

<sup>14</sup> This may also explain why תוספות did not question the other contradiction: How can we have a הו"א that לכתחילה is only בדיעבד; this contradicts the presumption in פ"ב that understands the חיוב of our משנה to be only לכתחילה, thereby inferring that the פטרור בא"י is even לכתחילה? תוספות perhaps could not maintain that the assumption that the פטרור בא"י is only בדיעבד to be an inherent one, especially not according to his פשט in אי מההיא הו"א הנ"מ בדיעבד.

<sup>15</sup> Stated slightly differently; we cannot have inherent contradictory presumptions.



concerning *מדה"י* whether our *משנה* means (only) *לכתחילה* or (even) *בדיעבד*. Our *משנה* may mean either. We are not sure.<sup>16</sup> If it would mean only *לכתחילה* we will have to search for a different explanation for the duplicity of the *פטור בא"י* (and vice versa concerning the duplicity of *מדה"י*).<sup>17</sup> It is a *הו"א* of convenience; both here and in *פ"ב*.<sup>18</sup> We are forced to assume the *הו"א* of either *מדה"י* or *א"י* to justify the duplicity of the *משניות*. There are no basic assumptions or presumptions. Therefore, there are no basic inherent contradictions. Both *הו"א* are based on the fact that there is a dual duplicity. This is perhaps what *תוספות* refers to when he says that *'מהשתא מצינן למימר'*; once either duplicity is stated and resolved; we know, for instance, that the *פטור בא"י* is certainly even *לכתחילה*, then *'מצינן למימר'*, as a matter of 'convenience'; to explain the duplicity of *מדה"י*, we can justify such a *הו"א*. In the *מסקנא* (as well as in the *הו"א*) there are no inherent contradictions. Each duplicity was stated so that no matter what the basic presumptions are, the *דין* will be very clear; *בא"י פטור אפילו לכתחילה* and *במדה"י חייב אפילו בדיעבד*.

<sup>16</sup> Similarly (or even more so according to *תוספות*) there is no inherent *הו"א* that the *פטור בא"י* is only *בדיעבד*.

<sup>17</sup> We may use the following explanation of the *ר"י*. We cannot ask therefore (see footnote # 11) let there be only one duplicity (e.g. concerning *א"י*) and we will know the other (*מדה"י*). There is no valid presumption. Even after the duplicity of *א"י* we may still argue that *לכתחילה* is *מדה"י*. The presumption of the *הו"א* has no inherent value. We can always maintain that there is a different *צריכותא*.

<sup>18</sup> Therefore there is no logical contradiction.