

How shall he do it.

כיצד יעשה -

OVERVIEW

The גמרא teaches us that according to ר"מ if the שליה did not say בפ"נ and the woman remarried, she must leave her second husband, and the child born from that husband is a ממזר. However the חכמים disagree and say that the child is not a ממזר. The ברייתא continues: 'what should he do, he should redeliver the גט to her and say בפ"נ'. The question is; what does this 'remedy' of redelivering the גט accomplish?

One may interpret that this 'remedy' of redelivering the גט will prevent the child from becoming a ממזר according to the חכמים. If however he does not redeliver the גט, the child will be a ממזר. (According to ר"מ, however, this remedy will not prevent the child from being a ממזר.)

Alternately we may say that this remedy is only for ר"מ. If the שליה redelivers the גט the child will not be a ממזר. (According to the חכמים however, no remedy is needed. The child is never a ממזר.)

תוספות does not accept either of these interpretations.

פירוש כיצד יעשה לרבנן שתנשא לכתחילה או אם נישאת שלא תצא -

The explanation of 'כיצד יעשה' is: what should we do according to the רבנן, in order that this woman may remarry initially or if she already remarried despite the fact that she was prohibited to remarry, nevertheless she should not be required to leave her new husband. It is the wife's situation only that we are seeking to remedy by having the שליה redeliver the גט while saying בפ"נ –

אבל לולד אין צריך תקנה דבלא תקנה לא הוי ממזר -

However, concerning the child that was born from this (illegal) marriage there is no need for any rectification, for without instituting any further procedures, such as the שליה stating בפ"נ while redelivering the גט, the child will not be a ממזר even though the שליה did not say בפ"נ.

דלית להו כל המשנה כולי -

For they do not subscribe to the stipulation that "whoever alters etc. the form that the חכמים instituted by גיטין then (the woman must leave her husband and) the child is a ממזר".

ולרבי מאיר כיצד יעשה קודם נישואין -

And according to ר"מ the remedy of 'כיצד יעשה' applies only before she remarries. Redelivering the גט then and saying בפ"נ will permit her to remarry initially

without reservations.

אבל לאחר נישואין מסתבר דלרבי מאיר אין תקנה -

However, after she remarried illegally, without the שליח saying בפ"נ, it seems logical that according to ר"מ there is no remedy for this woman or her child. She will have to leave her new husband, and the child will be deemed a ¹ממזר.

דכיון דהולד ממזר אם כן כל הדרכים האלו בה ותצא מזה ומזה -

for since the child is a ממזר as ר"מ clearly states: 'כל המשנה ממטבע שטבעו' חכמים בגיטין יוציא והולד ממזר' that indicates to us that ר"מ considers her as a woman who was מזנה while married² **therefore all these rules³ apply to her** including **that she must leave both** the current and past husbands -

וכל הנהו דתנן לקמן בהזורק (דף פ,א):

And all the other consequences that the משנה teaches us in ⁴פרק הזורק apply to her.

SUMMARY

If a שליח delivers a גט and does not say בפ"נ and she did not remarry yet; according to the חכמים and ר"מ: if the שליח will redeliver the גט and say בפ"נ before she remarries, then she may remarry לכתחילה. If however the שליח did not redeliver the גט and she remarried, then according to ר"מ there is no point in redelivering the גט. She will be considered as an אשת איש who was מזנה and the דין will be תצא מזה ומזה והולד ממזר וכל הדרכים האלו בה דין. According to the חכמים however if he redelivers the גט then she may remain remarried. If not she must leave her present husband. In either case however, according to the חכמים, the child will not be a ממזר.

THINKING IT OVER

When the שליח redelivers the גט, is she מגורשת retroactively from the original נתינה or from the present נתינה? If it is effective retroactively, why according to ר"מ do we not redeliver the גט even after the נישואין? If the גט is effective only from the present onwards, why do the חכמים say that תצא?⁵

¹ Even if the גט was redelivered before she conceived. See מאירי and סוכ"ד.

² The offspring of such a union is a ממזר.

³ Which are applicable to married woman who are מזנה.

⁴ The משנה there enumerates all the consequences if a woman remarries without being divorced (properly). This woman in our case will suffer the same consequences according to ר"מ.

⁵ See לחם יהודה.