

## לא תתיחד עמו אלא בעדים –

**She should not seclude herself with him; only if there are witnesses**

### OVERVIEW

The גמרא cites a משנה,<sup>1</sup> which rules that she should not seclude herself with her husband if he gave her a provisional גט. There are varying views as to which case the משנה is referencing, and the reason for this ruling.

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### **פירוש בקונטרס<sup>2</sup> משום גט ישן<sup>3</sup> -**

**explained** that the reason she should not be מתייחד with her husband is **because** we are concerned for a גט ישן<sup>4</sup>.

### **ולא פירש לטעמיה דפירש בגיטין<sup>5</sup> (דף עג,א) -**

And רש"י here **did not explain** this משנה of עמו לא תתייחד **according to his view as he explained it in גיטין** מס', where רש"י explains that the rule of עמו לא תתייחד is referring to (the previous משנה [see footnote # 1] which cites) a case where a man gave a גט to his wife and said, this גט should be effective from today, if I will die. The reason why עמו לא תתייחד is as רש"י explains there -

### **דבמהיום אם מתי מגורשת למפרע משעת נתינה ולא תתייחד עמו משום חשש קידושין -**

**Because** in the case where one states when giving a גט, 'the גט should be effective from today if I die' (מהיום אם מתי), the rule is that when the husband dies, **she becomes divorced retroactively, from the time of the giving of the גט, and therefore she should not be מתייחד with her husband** after she receives the גט, **because there is the concern** that during this יחוד, there will be a ביאה for the sake

<sup>1</sup> זה גיטין אם מתי, וכו' לא אמר כלום. מהיום אם מתי, which reads: גיטין עב,א in משנה previous משנה follows a גיטין עג,א. This משנה follows a previous משנה in עב,א, which reads: גיטין עג,א. מעכשיו אם מתי ה"ז גט.

<sup>2</sup> שכיב מרע שכתב ומסר גט לאשתו ע"מ שאם מת יהא גט למפרע וכו' לא תתייחד עמו וכו' והוי ליה גט ישן רש"י writes where בד"ה לא רש"י. See footnote # 4.

<sup>3</sup> A גט ישן means 'an old גט'. A גט ישן is a גט that was written and before it was given to the wife (or before it became effective), the husband and his wife were secluded together. ב"ה rules (in גיטין עט,ב) that it is prohibited from using this גט ישן, because it is possible that they will have a child (from this encounter) and (since the גט has an earlier date) people will (incorrectly) say that her גט preceded her son (and there will be unsavory rumors about the lineage of her son). Here too since there were מתייחד after the date of the גט there is the concern of קודם לבנה (see following footnote # 4).

<sup>4</sup> It will be necessary to say that when רש"י writes 'ש'אם מת יהא גט למפרע', it means that the גט will become effective a 'while' immediately preceding his death (and therefore there is [only] the חשש of גט ישן). However it cannot mean that the גט is effective from the time of giving, for then there is no חשש of גט ישן (see footnote # 7). [There is also no need to mention the חשש of a גט ישן, for there is the greater concern of קדושין לשם (see footnote # 6).]

<sup>5</sup> זה שנתן גט ואמר לה מהיום אם מתי, לא תתייחד עמו, ש'אם יבא עליה, דאיכא למ"ד חיישין שמא בעל לשם; ד"ה לא רש"י states; רש"י there קדושין וצריכה גט שני, וכו'.

of **קידושין**, and she will regain her marital status, while she thinks (after her husband died) that she is divorced. This concern and interpretation is -

**כמו המגרש אשתו ולנה עמו בפונדקי בית הלל אומרים צריכה הימנו גט שני** (שם דף פא,א) -

**Like the case of one who divorced his wife and she slept over with him in an inn, where גט rules that she needs a second גט from him** in order to be divorced, for the same reason that there may have been **קידושין** לשם ביאה. This is how רש"י explains the משנה - מס' גיטין in לא תתייחד עמו of

**[ולא שייך גט ישן כלל לפירוש דהתם]<sup>6</sup> -**

**[And the idea of גט ישן is not at all applicable to his explanation there in גיטין]<sup>7</sup> -**  
**וכן משמע התם בגמרא<sup>8</sup> -**

**And this is what it seems from the גמרא there** that the concern is that she will be מקודשת. This concludes the discussion of פירש"י in גיטין (and here in כתובות).

Tosfos offers his interpretation:

**אבל לרבינו תם דמפרש מה היא באותן הימים<sup>9</sup> קאי אמהיום אם מתי -**

**However according to the ר"ת who explains** that the question (which the משנה asks there in עג,א, גיטין), **‘what is her status in those days’**; the ר"ת explains that **‘those days’ refer to** the case where the man said to his wife, **‘here is your גט,** **‘מהיום אם מתי’**; the question of the משנה there is what is her marital status until the husband dies (and according to ר' יהודה who maintains that she is considered to be fully married, the גמרא there<sup>10</sup> explains that she is not divorced למפרע from the time of the giving of the גט) -

**ונעשה כאומר מעת שאני בעולם -**

**for we assume that (when he said מתי אם מתי) it is as if he said,** the גט will be effective **from the last moment that I am in the world (alive) -**

<sup>6</sup> The חשש of גט ישן is in a case where the גט was written but does not become effective until after the יחוד (either because it was so stipulated or because it was not given until after the יחוד). In this case there is (only) a חשש of false rumors regarding the child that he was born after the divorce (since the date on the גט is before the time of the יחוד), even though that in truth the child was born before the effective date of the גט. [There can be no חשש of לשם ביאה לשם קידושין, since indeed she is still מקודשת to her husband.] However if the יחוד took place after the גט became effective, there is a more serious concern; she is already divorced, and now she is living with a man (her former husband), who may be לשם קידושין בועל her, and so in reality she is מקודשת, while in her mind she thinks that it was ‘merely’ a ביאה, and she is [still] divorced and may remarry [without יבום]. This involves the חשש of אשת איש [or יבמה לשוק]. רש"י in our גמרא explains that the concern of עמו לא תתייחד is on account of גט ישן, and in גיטין מס' חשש according to רש"י is because of לשם קידושין בעילה לשם קידושין.

<sup>7</sup> She is מגורשת therefore if she had a child by this יחוד; it is indeed קודם לבנה, so there is no concern that people will say it, since it is true. [In addition for if she is מגורשת למפרע there is the greater concern of לשם ביאה לשם קידושין.]

<sup>8</sup> The גמרא there states that if we saw that נבעלה by her husband we are concerned that it was לשם קידושין עג,ב.

<sup>9</sup> The משנה עג,א states: מגורשת ואינה מגורשת ויאמר רבי יוסי דבריה רבי יוסי אומר מגורשת ואינה מגורשת. עג,ב.

<sup>10</sup> If we were to assume מתי אם מתי to mean literally that the גט becomes effective retroactively from the time of death, we have the problem of גט לאחר מיתה. Therefore we interpret his words to mean מעת שאני בעולם.

שאינ דעתו לגרשה אף על פי שאומר מהיום אלא שעה אחת לפני מיתתו -

For even though he said מהיום, nevertheless he does not intend the גירושין to retroactively take effect as of now, but rather his intent is that it takes effect, one 'hour' before he dies; according to this explanation -

הוי טעמא משום גט ישן ובתוספתא<sup>11</sup> משמע כפירוש רבינו תם:

The reason why קידושין is because of גט ישן, and not because of עמו (since she is still married to him). And in the תוספתא it seems that the reason for קידושין is as the ר"ת explained, on account of גט ישן, for גט ישן means that the גט goes into effect right before he dies, so there can be no חשש of קידושין.

### SUMMARY

The reason why the משנה rules בעדים עמו in a case of מתי אף תתייחד depends on whether she is מגורשת למפרע (so the reason is because of a קידושין) or whether she is מגורשת סמוך למיתה (where the reason is because of גט ישן).

### THINKING IT OVER

Why indeed did רש"י change his פשט in כתובות from his explanation in גיטין<sup>12</sup>!

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<sup>11</sup> גיטין פ"ה ה"ד. From the תוספותא there it is evident that by מתי אף תתייחד she is מקודשת up to the time of (immediately preceding the) מיתה. Therefore there is no חשש of קידושין but only of גט ישן. See אמר ד"ה א"ה.

<sup>12</sup> See שיטה מקובצת.