

All who go out to the wars of דוד would write a writ of divorce to his wife – גט כריתות כותב לאשתו

OVERVIEW

The גמרא explained that דוד did not transgress the איסור of אשת איש with שבע, since all who went to wage the battles of דוד would write a גט כריתות to his wife (and that included אוריה, the [former] husband of שבע). There is a disagreement between רש"י and תוספות how this divorce was effective.

פירש בקונטרס שאם ימות במלחמה¹ יהא גט משעת כתיבתו² -

רש"י explained that they would give the גט with a stipulation, **that if he will die in the war the גט should be effective retroactively from the time it was written** and delivered to the wife.

פרש"י has a difficulty with תוספות:

וקשה לרבינו תם דאם כן³ מאי כל היוצא אם לא מהני אלא למי שאין לו בנים ויש לו יבם -
And the ר"ת has a difficulty with פרש"י, for if indeed it is so, why is it that 'everyone who went out to war' wrote this גט, since it is of no use except for someone who has no children and there is a יבם (the deceased's brother). However anyone who has a child or has no brother there is seemingly no need for them to write a גט כריתות לאשתו, since there can be no יבום.

פרש"י has an additional question on תוספות:

ועוד דתנן במי שאחזו (גיטין עג,א ושם) מה היא באותן הימים⁴ -
And in addition we learnt in a משנה in שאחזו, פרק מי שאחזו, 'what is she in those days - רבי יהודה אומר הרי היא כאשת איש לכל דבריה -
ר"י says she is like a married woman regarding everything. תוספות now explains what is meant by אותן הימים -
וקאי אמאי דקתני לעיל מינה⁵ הרי זה גיטך מהיום אם מתי וכן משמע בתוספתא⁶ -

¹ However if he returns from the war, the גט is void and it is as if there never was a גט at all.

² The reason for enacting this process is to protect these woman whose husbands have no children, that if their husbands die in the war, they will not be required to go through the יבום וחליצה process, since they are divorced prior to their husband's death. See shortly in תוספות.

³ תוספות assumes that since רש"י mentions the stipulation of death, it indicates that the reason for this custom is on account of יבום as explained in footnote # 2.

⁴ תוספות will shortly explain that באותן הימים refers to a woman who received a גט with this aforementioned type of stipulation. We are discussing the period after the גט was given and before the stipulation was fulfilled.

⁵ The previous משנה in שאחזו states עב,א on גיטין in משנה.

⁶ זה גיטך מהיום אם מתי מחולי זה ימים שבינתיים בעלה זכאי במציאתה וכו' דברי ר' יהודה where it states גיטין פ"ה ה"ד.

And the phrase אותן הימים is referring to that which was taught in a משנה previously, where a man said to his wife, ‘here is your גט from today, if I die’; and so it seems in the תוספתא that אותן הימים refers to a case where he said הר"ז גיטך מהיום - כ"א"א לכל דבריה ר"י says that she is אם מתי, and regarding this case

אלמא אף על גב דאמר מהיום הויא אשת איש גמורה⁷ -

It is evident that even though he said the 𐌹𐌵 should be effective from today, nevertheless she is a complete 𐌺"𐌺 –

כא"א לכל דבריה she cites the s'gr'a explanation why indeed is she

כדמפרש בגמרא⁸ באומר מעת שאני בעולם -

As רבה there explains the view of ר"י, that we understand his statement to mean that the גט should be effective from the (last) moment when I am in this world (when I am still alive) -

פירוש⁹ דהאי דאמר מהיום לא שיחול מיד אלא דעתו שיחול שעה אחת קודם מיתתו -

The clarification of this גמרא is, that this which he said, ‘from today’, he did not mean it should become effective immediately (today) in the event that I die, but rather it his intent that the גט should become effective one ‘hour’ before his death -

דהיינו מעת שהוא בעולם -

For that is what the נגמל means when it states that his intention was **from the last moment that he** (the husband) **is in the world.**

תוספות responds to an anticipated difficulty:¹⁰

וְלֹא אָמַר מֵהַיּוֹם אֵלֶּא לַמַּעֲשׂוּתִי לְאַחַר מִיתָהּ כְּלוֹמַר מֵאֲוֶתוֹ יוֹם שֶׁאֲנִי בְּעוֹלָם יְהוָה גַּם -

For he did not say מהיום to be taken literally, **but rather** he said מהיום **to exclude** that it should become effective **after death, so the meaning** of מהיום is that the גט

⁷ This means that even if he eventually dies and the גט became effective, she is only considered divorced as of an hour before he died, however up till that hour she is an א"א and if she was מזונה with someone during that time she is מחויב מיתה. According to this, even if אוריה gave שבע בת שבע this type of גט, she would be considered an א"א at the time דוד was with her, even though אוריה died later in battle. At this point תוספות assumes that there is no difference whether he said 'מהיום אם מתי' (as mentioned in the משנה) or if he said explicitly that it should become effective from the time of writing (as בא"א לכל דבריה words the stipulation). In both cases she is כאלו נכתב.

⁸ גיטין עג, ב.

⁹ The term פירוש here is rejecting ד"ה אמר there פרש"י who writes מתני' לאו באומר מהיום אם מתי וכו' אלא באומר מעת שאני בעולם להוי גש הלכך לרבי יהודה סמוך למיתה חייל גיטא ומעיקרא אשת איש היא if he actually said פרש"י. According to א"א באותו הימים ר' יהודה (even) מעכשיו

¹⁰ How can we interpret his word מהיום to mean מאת שאני בעולם?

¹¹ The husband is merely concerned that if he dies his wife should not be constrained by the *יָרוּם* process; for this it is sufficient that the divorce take effect a moment before his death. There is no need it should take effect now.

should be effective **from that** very last day that I am in the world.

גיטין in גמרא with פרש"י reconciles תוספות

ומיהו יש לחלק בין מהיום לפירש בהדיא שיחול משעת כתיבה -

However one can distinguish between a case where he said **מהיום** אם מתי (the case in the משנה where she is considered an א"א according to ר"י), **to a case where he explicitly specified that it should become effective from the time of writing** (as in the case of מלחמת ביד דוד [as רש"י suggests]), where it is logical to assume that the גט will become effective retroactively to the time of כתיבה. The reason for the difference -

דעל כרחך משעת כתיבה קאמר שיהא גט¹² -

For perforce you must say that in this case he certainly said that the גט should be effective משעת כתיבה.

פרש"י extends his understanding of תוספות

ועוד נראה דאפילו אמר מהיום יש ליישב פירוש הקונטרס -

And it appears, furthermore, that even if he said מהיום (and did not explicitly say שיחול משעת כתיבה, nevertheless) **we can justify פרש"י -**

דלאו דוקא פירש שאם ימות במלחמה אלא היו מתנים אם לא יחזור מן המלחמה -

For the man does not explicitly say that it should be a מהיום if he will die in the war, but rather they would stipulate it should be a מהיום, if he will not return from the war, for whatever reason even if not because of death -

ואגב ריהטיה נקט בקונטרס אם ימות דסתם מי שאינו חוזר מן המלחמה אינו חוזר לפי שמת -
And **ריהטיה** mentioned **אם ימות**, out of habit, for generally one who does not return from war, the reason he does not return is because he died, but **אם ימות** is - לאו דוקא

אלא הוא הדין אם נשבה¹³ -

And the same stipulation applies if he was captured that it should be a מהיום -

והשתא מהיום דהכא אין שייך לומר מעת שאני בעולם¹⁴ כהוא דמי שאחזו -

And now that the stipulation is not מתי, therefore the word **מהיום**, here in this case, **cannot be interpreted to mean מאת שאני בעולם** as the word **מהיום** there in **פרק מי שאתחזו**, where he emphatically said **אם מתי** -

¹² He did not merely say מהיום, which can be interpreted to mean from the last day I am alive, but he especially said it should be effective משעת כתיבה; this indicates that it becomes effective retroactively as of שעת כתיבה ונתינה.

¹³ This also answers תוספות first question on פרש"י; how does this תקנה help for someone who has children. The answer is apparent; everyone wrote a גט in case they were captured, so their wives would not remain עגונות (unable to remarry).

¹⁴ His stipulation is in order to allow her to remarry in case he does not return from war (he was captured, etc.); nothing is accomplished if his stipulation is מאת שאני בעולם (since he may still be alive). Therefore he means מעכשיו.

אלא מהיום מיום כתיבה קאמר -

But rather here the word מהיום means from the day of writing the גט.

asks: תוספות

ואם תאמר והרי חזר אוריה ונתבטל הגט¹⁵ -

And if you will say; but אוריה returned from the battle, so the גט was nullified –

answers: תוספות

ויש לומר שהיה מתנה אם לא יחזור בסוף המלחמה והרי לא חזר לבסוף -

And one can say; that the stipulation was, if he did not return at the end of the war then it should be a גט מהיום, and indeed אוריה did not return at the end of the war; he merely returned during a battle.

finds support for פרש"י תוספות

וניחא לפירוש זה הא דאמרינן בפרק הזהב (בבא מציעא נט,א ושם) -

And according to this interpretation it will be easier understood that which was said in the name of ר' יוחנן in פרק הזהב -

נוח לו לאדם שיבעול ספק אשת איש ואל ילבין פני חבירו ברבים -

It is preferable that a person should be a ספק א"א בועל, than to whiten the face of his friend (to shame him) in public -

ומפיק ליה מהאי מעשה דבת שבע דספק אשת איש הואי¹⁶ דדלמא יחזור מן המלחמה¹⁷ -

And דוד derives it from this episode with בת שבע, who was a ספק א"א (when דוד was with her), for perhaps אוריה would return from the war; in which case the גט would be בטל and she would remain an א"א throughout the entire period until his death.

offers an alternate interpretation: תוספות

ורבינו תם מפרש כותב גט כריתות לגמרי בלא שום תנאי -

And the ר"ת explains that he would write a complete גט כריתות without any stipulations; the soldiers would divorce their wives, before going to war.

asks on פר"ת תוספות

ולפירוש קשה אמאי קרי לה ספק אשת איש הא הואי גרושה גמורה¹⁸ -

¹⁵ The stipulation was (as amended by תוספות); this is your גט מהיום if I do not return from the war; as soon as אוריה returned the גט is בטל. However according to our original understanding that it means only מיתה there is no question, since אוריה died (מהר"ם שי"ף).

¹⁶ interprets this פסוק (תהילים לה,טו in) דמו ולא דמו ונאספו קרעו ולא דמו to mean that the people would ask דוד teasingly what is the rule regarding one who is א"א and בא על א"א but מיתתו בחנק דוד would answer. עיי"ש, חלק לעוה"ב he has no מלבין פני חבירו ברבים is, however one who is לעוה"ב.

¹⁷ See footnote # 18.

However there is a difficulty with פר"ת, for why does the גמרא in הזהב refer to פרק שבע as a ספק א"א, since she was a complete גרושה, since she received a גט, without any stipulations.

answers: תוספות

ואומר רבינו תם דקרי לה ספק אשת איש לפי שהיו מגרשין בצינעא -

And the ר"ת answered that the גמרא refers to ב"ש as a ספק א"א since they would divorce their wives privately (without any publicity); the reason was -

שלא יהא נודע ויקפצו עליהם בני אדם לקדשם¹⁹ -

So that it should not be known that these women are divorced, in order to prevent people from jumping at the opportunity to marry these 'divorcees'.

פירש"י ask one final question on תוספות

ולפירוש הקונטרס קשה קצת איך בא עליה²⁰ למה לא היה ירא²¹ שמא יחזור:

But there is a slight difficulty on פרש"י; how did ב"ש come on to ב"ש, why was he not concerned that perhaps אוריה would return, the גט would then be בטל and ב"ש would be an א"א.

SUMMARY

According to רש"י, the גט כריתות was given with a stipulation that it should become effective as of now if he does not return after the war is over. According to פר"ת it was a final גט without any stipulations.

THINKING IT OVER

1. How are to understand that which תוספות states that they were מגרש בצנעה²² The states that כל היוצא למלחמת בי"ד גט כריתות כותב לאשתו גמרא בצנעה?!²³

2. מגרש writes that בת שבע was considered a ספק א"א, since they would be מגרש. It is not clear as to who considered her a ספק א"א; the people who mocked²⁴.

¹⁸ However, according to פרש"י it is understood; since there is a ספק whether אוריה would return (in which case she always was an א"א) or if he will not return from the מלחמה (in which case she was retroactively a ספק א"א when she was with דוד), therefore she is considered a ספק א"א.

¹⁹ The divorcing husbands hoped to return from the war and remarry their former wives. They did not want them to be מקודשת to others in the meantime, so as not to lose them. See 'Thinking it over' # 1 & 2.

²⁰ See 'Thinking it over' # 3.

²¹ According to פר"ת however there is no difficulty for ב"ש was completely מגורשת as soon as אוריה went to war.

²² See footnote # 19.

²³ See אור ההמה.

דוד, assumed she was an א"א ודאי, and דוד knew she was a גרושה, so by whom was there this ספק.

3. תוספות asks on פרש"י how was דוד בא עליה since אוריה may return and she will be an א"א ודאי.²⁵ How will תוספות explain the first answer of the גמרא which states that ב"ש was not אסור to דוד since it was an אונס. The same question remains, however, how did דוד allow himself to be מאנס an א"א ודאי?!²⁶

²⁴ See footnote # 19.

²⁵ See footnote # 20.

²⁶ See רש"ש.