

And he receives her גט

ומקבל את גיטה¹ –

OVERVIEW

The גמרא cites a משנה which states certain rights which a father has in his daughter (even when she is a נערה). Among them is the right to accept her גט on her behalf. The issue in this תוספות is whether this right is limited to a קטנה נשואה² or it extends even to a ארוסה.

יש להסתפק אם יכול האב לקבל גט לבתו קטנה משנשאת³ –

It is questionable whether the father is capable of receiving a גט on behalf of his minor daughter once she is a נשואה.

ונראה למורי הרב רבינו יצחק דמשנשאת –

And it appears to my master הר"ר יצחק that once she is a נשואה –

אין האב יכול לקבל לה גט ואפילו היא קטנה –

The father cannot receive a גט for her, and even if she is still a קטנה –

ומביא ראיה מהא דתנן בירושלמי במסכת תרומות בפרק ח'⁴ דהכי תנן התם –

And he brings proof from that which we learnt in a משנה in תלמוד –
האשה⁵ שהיתה אוכלת בתרומה ואמרו לה מת בעליך או גירשך –

A woman who was eating תרומה and they said to her your husband died or he divorced you (and you are eating תרומה illegally) –

וכן העבד⁶ שהיה אוכל בתרומה וכולי –

And similarly a slave who was eating תרומה, etc. and they told him your master died, etc. The issue is whether she is מחוייבת a חומש –

רבי אליעזר מחייב קרן וחומש רבי יהושע פוטר –

¹ If the husband (or his שליח) were to give the גט to the father of the קטנה (or his שליח) she would be מגורשת.

² See רש"י לקמן מגב, רש"י ד"ה ומקבל that this right is limited to an ארוסה (only) [even if she is a נערה]. See also רש"י ד"ה היא יבם (which is considered נישואין). See footnote # 207.

³ Others explain the reason for this ספק (even though in all matters a קטנה נשואה is no longer אביה) is because since the קידושין were done through the father, therefore he has the power to receive the גט. In addition; the reason תוספות mentions this ספק here is because if we assume that the father cannot be מקבל her גט, the question arises why did not the גמרא prove that אירוסין עושה for if ביאה אירוסין עושה then how can the משנה state גיטה את גיטה. Therefore תוספות assumed that the גמרא had this ספק as well whether the father can be מקבל a גט for a קטנה שנישאת. See footnote # 223-224.

⁴ הלכה א' (בתחלתו).

⁵ A woman who is a בת ישראל and is married to a כהן is permitted to eat תרומה as long as she is married.

⁶ An עבד כנעני of a כהן may eat תרומה.

קרן obligates them to pay a ⁷קרן וחומש⁷; while ר"י exempts them from קרן. This concludes the משנה. וחומש.

וקאמר עלה בגמרא ניחא מת בעליך⁸ גירשך מי לא ידעה –

And the גמרא in comments on this משנה; the case of מת בעליך is understood; however the case of גירשך, בעליך, how did she not know?! She cannot be considered a שוגגת since she had to know that she is divorced! She is a מזידה and there is no דין of חומש! The גמרא there offers two answers:

רבנן אמרין כמשנה ראשונה⁹ –

The רבנן explained the view of רבי אליעזר according to the first משנה –

שכן ארוסה בת ישראל אוכלת בתרומה¹⁰ ואביה מקבל גיטה –

That indeed a ארוסה to a כהן may eat תרומה, and her father may receive her גט. The father received her גט unawares to her, and she continued to eat תרומה –

ורבי אלעזר אומר אפילו תימא כמשנה אחרונה –

And רבי אלעזר (the אמורא) explains the view of רבי אליעזר, even according to the משנה אחרונה that only a נשואה may eat תרומה –

תפתר שאמרה לו התקבל לי גיטי במקום פלוני והיה לו להביאו¹¹ בי' ימים –

You will interpret it in a situation where she said to her שליח receive the גט on my behalf in that certain place, and it would usually take ten days for the שליח to reach that place and bring it from there –

ומצא סוס רץ והביאו¹² בה' ימים –

And the שליח found a swift horse and brought the גט in five days. The woman mistakenly thought that she has five more days to eat תרומה, when in reality she was divorced five days prior to what she estimated. This concludes the גמרא there. תוספות now states his proof:

והשתא מדדחיק לאוקמי כמשנה אחרונה וכגון שאמרה התקבל וכולי –

And now since ר' אליעזר chose to establish the view of ר"א in an awkward manner according to the משנה אחרונה and in a case where she said receive, etc. my גט; which is an unusual circumstance –

⁷ The rule is if a non-כהן eats תרומה he must repay the כהן the principle (קרן) plus a fifth (חומש) [actually it is a fourth of the value of the תרומה]. If one eats תרומה במזיד he only pays the קרן, not the חומש.

⁸ She was not with her husband when she was eating the תרומה and was not aware that he died.

⁹ See כתובות נז,א. The משנה there states that we allow twelve months for the ארוסה to prepare herself for the נישואין. At the end of this time if the husband is not yet ready for the נישואין, the woman can eat at his expense (as if there was נישואין) and if he is a כהן she may even eat תרומה (at his expense). The משנה continues that this ruling (that she may eat תרומה) is the משנה ראשונה (the original ruling); however a later ד"ד ruled (משנה אחרונה) that an ארוסה does not eat תרומה unless there was חופה (נישואין).

¹⁰ It is a case where twelve months passed and the husband is not ready for נישואין. See footnote # 9.

¹¹ The word 'להביאו' is somewhat difficult. It seemingly should have said לקבלו. See שאמרה בא"ד שאמרה.

¹² This means that the שליח לקבלה received the גט after (just) five days. She became מגורשת then; five days before she anticipated to become מגורשת.

ולא מוקי לה בשנשאת כשהיא קטנה¹³ ואביה מקבל את גיטה¹⁴ –

And א"ר did not choose to establish the משנה in a case where she became a נשואה when she was a קטנה and her father received her גט; and she was unaware and therefore ate the תרומה בשוגג. The fact the א"ר did not establish the משנה in this manner –

משמע דמשנשאת אף כי היא קטנה אין אביה מקבל גיטה:

This indicates that once she is a נשואה even if she is a קטנה, her father cannot receive her גט on her behalf.

SUMMARY

A father cannot be מקבל a גט for his daughter if she is a נשואה (even for a קטנה).

THINKING IT OVER

תוספות proves that the father cannot be מקבל the גט for his daughter if she is a קטנה נשואה. For if he could, then א"ר should have established the ruling of ר' אליעזר in a case of a נשואה קטנה.¹⁵ However it is possible that a father can be מקבל the גט for a נשואה קטנה; the reason he does not establish it in such a case for if she were a (נשואה) קטנה she would not be מחויב to pay [the קרן and certainly not] the חומש!¹⁶

¹³ See 'Thinking it over'.

¹⁴ This would (seemingly) be a much more common occurrence than a story with a swift horse.

¹⁵ See footnote # 13.

¹⁶ נח"מ בד"ה בא"ד ולא.