וחתמו ונתנו לה כשר –

And he had it **signed and he gave it to her, it is a כשר** גט**.**

Overview

The גמרא quotes ר"נ that ר"מ is of the opinion that כתיבה שלא לשמה is כשר even מדרבנן. Our תוספות will prove that this means that it is כשר לכתחילה to give a woman a גט that was written שלא לשמה; contrary to the superficial understanding of s'ר"נ quote.

The משנה in פרק כל הגט states[1] that a סופר who writes גיטין[2] טופסי is required to leave space to insert the names of the parties. There is a dispute in the גמרא whose opinion this משנה is following. Some maintain that this משנה follows the opinion of ר"א exclusively, who maintains that כתיבה לשמה is required (for the תורף). However according to ר"מ the סופר is permitted to write the names as well, since כתיבה לשמה is not required (only חתימה לשמה is required). Others however maintain that this משנה can follow the opinion of ר"מ. The reason why the סופר is to leave out the names is on account of a תיקון חכמים as will be explained in this תוספות.

לכתחילה נמי כשר לחתום וליתן -

Even initially it is permitted to have witnesses **sign** this גט **and give** it to her[3] -

דבפרק כל הגט (לקמן דף כו,ב) **ובהכותב** (כתובות דף פה,א) **מוכיח מדרב נחמן דהכא -**

For in פרק כל הגט and in **הכותב** פרק**,** the גמרות there **prove from this** statement of **רב נחמן here -**

דלמיחזי כשיקרא לא חיישינן -

That we are not concerned that 'it is perceived as a falsehood'.[4]

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[1] לקמן כו,א.

[2] The standard גט form is called the טופס. The insertion of the names and date is called the תורף.

[3] תוספות is not saying that it is לכתחילה מותר to write a complete גט שלא לשמה and give it to the woman. This will depend on the שיטות in פרק כל הגט. See 'Overview', and later in תוספות. Our תוספות is discussing a גט that was already written שלא לשמה; that it may לכתחילה be signed and delivered to the woman.

[4] The גמרות there are discussing the case of a הנפק, an authentication of a שטר by בי"ד, where the text of the הנפק is written before the process of authentication takes place. רבא is of the opinion that such a הנפק is פסול. It is מיחזי כשיקרא; it appears as a falsehood, since when the הנפק was written, the שטר was not as yet authenticated. [The הנפק states that we have seen this שטר and authenticated the signatures. When these words were written, בי"ד, did not as yet see the שטר in question.] The גמרא rejects this view, based on this statement of רב נחמן. [In the case of this גט which was found באשפה; when the סופר wrote it, the husband did not tell the סופר to write it, or that he intends to divorce his wife. This גט too, is מיחזי כשיקרא.]

Were we to assume that רב נחמן is מכשיר this גט that was found in the אשפה only בדיעבד, however לכתחילה one is not to use this גט, then that would support the view of רבא, that there is a concern of מיחזי כשיקרא.[5] The fact the גמרא uses רב נחמן to refute רבא (and the הנפק is כשר לכתחילה), proves that similarly, for such a גט, one is לכתחילה permitted to have it signed and given to the woman.

תוספות cites an additional proof:

ועוד תנן בפרק כל הגט (לקמן דף כו,א) הכותב טופסי גיטין -

And furthermore we learned in a פרק כל הגט in משנה, 'one who writes the 'forms' of גיטין -

צריך שיניח מקום האיש והאשה -

is required to leave blank **spaces** where to insert (later) the names **of the man and the woman.'**

וקאמר בגמרא משום קטטה ורבי מאיר היא -

And the גמרא there[6] **says** according to one interpretation of the משנה that the reason why he is required to omit the names is **on account** it may cause **strife** between the husband and wife; for the משנה **follows** the opinion of **ר"מ.**[7]

The גמרא there offers another explanation why according to ר"מ who does not require כתיבה לשמה, nevertheless the סופר may not write the names.

או משום תקנת עגונות -

Or because it is **for the benefit of עגונות.**[8]

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[5] If that were the case, an explanation would be needed why indeed is it לכתחילה פסול to be given to the wife? We are not concerned about שלא לשמה, for ר"מ does not require כתיבה לשמה. It is פסול לכתחילה (only) because it is מיחזי כשיקרא. The גט states that the husband is divorcing his wife; however when it was written there was no indication that this husband is going to divorce his wife. This גט was found in the garbage!

[6] דף כו,ב.

[7] Basically the סופר is permitted to write the entire גט including the names of the husband and wife, even if the husband did not instruct him to do so. This גט will be כשר to use if it becomes necessary, for ר"מ is of the opinion that כתיבה לשמה is not required (מן התורה). However the חכמים restricted writing the names, for they were concerned that perhaps the woman will become aware of this גט being written by the סופר with her and her husband's names in it. She will erroneously surmise that her husband intends to divorce her; that he instructed the סופר to write the גט. This will lead to strife between the husband and wife. Therefore the חכמים prohibited the writing of the names.

[8] Were the סופר permitted to write the names as well; there may be an occasion where the husband is disturbed by something his wife did, and will go in haste to the סופר for a גט and the סופר may have it all prepared. The husband will have it signed and delivered to his wife immediately. She may remain an עגונה an unwed woman. [Usually the term עגונה is reserved for a woman whose husband's whereabouts are unknown, denying her the opportunity to remarry. In this case she may remarry legally; however maybe it will be difficult for her to remarry, so we consider her as a (potential) עגונה.] Therefore the חכמים instituted that the סופר not write the names, so there will be a 'cooling off' period; in which the husband will have the

We see from these גמרות, that we would be permitted to write a complete גט, including the names שלא לשמה; it is only an account of the abovementioned (two) concerns that the חכמים prohibit the סופר from writing the names.

משמע במצאו באשפה דלא שייכי הני טעמי שרי אפילו לכתחילה -

It is implied that **when it was** (already written and) **found in the refuse where these** abovementioned **reasons are not applicable**[9] (for the גט is already written, we are discussing only whether he may have the גט signed by witnesses) **it is permitted even initially** to have this גט signed by witnesses and given to the woman as a valid גט. If we were to say that this גט which was found in the אשפה is not כשר לכתחילה, this would require some sort of justification why מצאו באשפה is not כשר לכתחילה. The גמרא should have used that reason instead, to explain why the סופר should not write the names in the גט. The fact that the concerns the גמרא there mentions are not applicable to מצאו באשפה is evidence that מצאו באשפה is כשר לכתחילה.

תוספות will bolster his proof that according to ר"מ a גט written שלא לשמה is כשר לכתחילה:

ומאן דמפרש נמי התם משום תקנת סופרים ורבי אלעזר היא -

And according to **the one who also explains** the משנה **there** that the reason the סופר who writes the גט must omit the names **is because it is beneficial for the scribes, and** the משנה follows the opinion **of ר"א.** According to ר"א the כתיבה must be לשמה thereby initially requiring that the entire גט, including the טופס form, be written לשמה.[10] The חכמים however, in deference to the need of the סופרים[11] agreed that they may write the טופס even שלא לשמה as long as the names are written לשמה. According to this viewpoint, that the משנה which requires omitting the names, follows the view of ר"א, not of ר"מ, this –

משמע דלרבי מאיר אין צריך להניח כלום ושרי לכתוב הכל -

Implies that according to ר"מ, the סופר **need not leave anything** blank **and he may write everything** including the names. According to this מאן דאמר it is obvious[12] that מצאו באשפה is כשר לכתחילה.[13]

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time to reconsider any rash action he may have intended.

[9] תוספות is perhaps implying that if the סופר had already written the names of the parties (שלא לשמה); the גט is כשר לכתחילה.

[10] The reason why the טופס need be written לשמה is because גזירה טופס אטו תורף. The תקנת סופרים neutralized this חשש.

[11] The סופרים prefer that the גט be written when they have spare time; and not be rushed when someone needs a divorce immediately.

[12] According to this opinion the סופר may לכתחילה write a גט including names שלא לשמה and then use this גט. Certainly if it was already written one may have it signed and delivered לכתחילה.

[13] See 'Thinking it over # 1.

Now that תוספות has asserted and proven that מצאו באשפה is כשר לכתחילה, why does ר"נ say 'and he had it signed, it is כשר', indicating seemingly that it is כשר only בדיעבד.[14] He should have said: חותמו ונותנו לה; 'he may have it signed and give it to her', if it is כשר לכתחילה. Our תוספות will address this now:

והא דלא קאמר הכא חתמו ונתנו לה -

And as to the reason **that ר"נ did not state here, 'he may have it signed and given to her' –**

אומר רבינו תם משום דהוה משמע דלא סגי דלא עביד הכי -

The ר"ת explained for such an expression **would have implied that it would be insufficient had he not done so.** People might have interpreted this statement to mean that if one finds a גט with his and his wife's name on it he is obligated to give it to his wife as a divorce[15]. In order to prevent such a misrepresentation ר"נ chose deliberately to state that if he had it signed and gave it her it is כשר; but not that he is required to give it to her.[16]

In conclusion: the דין is that a גט that was נכתב שלא לשמה is כשר לכתחילה. Now תוספות will presently ask; why is שלא לשמה different than מחובר.

ואם תאמר מאי שנא דבעי לרבי מאיר לכתחילה כתיבה בתלוש -

And if you will say; why is there a difference between the דינים of שלא לשמה and מחובר that regarding מחובר, **according to ר"מ it is initially required** that the גט **be written** when it is **detached** from the ground -

למאן[17] דמוקי מתניתין דמחובר כרבי מאיר[18] -

According to the one who established that the משנה of במחובר אין כותבין **follows** the opinion of **ר"מ** -

ושלא לשמה שרי אפילו לכתחילה -

However, one is permitted, even initially, to give a גט that was written **שלא לשמה.**[19] Why do we distinguish between these two דינים; that שלא לשמה is מותר לכתחילה while מחובר is אסור לכתחילה?[20]

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[14] The expression 'and signed' as well as the term 'כשר' all indicate a בדיעבד status. See מהרש"א.

[15] Perhaps תוספות does not mean that we would have actually assumed that this should be the דין; that he must divorce his wife. Rather, תוספות means, that it is not a proper to use such a syntax that can be misconstrued to mean that he is required to divorce his wife. See סוכת דוד (and אמ"ה # 47).

[16] See 'Thinking it over' # 2.

[17] See the גמרא דף כא,ב and previous תוספות דף ג,ב ד"ה דתנן.

[18] According to the other מ"ד who says that the משנה of אין כותבין במחובר follows the opinion of ר"א; then ר"מ can maintain that both מחובר and שלא לשמה are כשר לכתחילה by כתיבה.

[19] In reality one would even be permitted to write the entire גט (including the names) שלא לשמה לכתחילה, were it not for the reasons of קטטה and תקנות עגונות. See 'Thinking it over' # 3.

[20] כתיבה במחובר is אסור because we are גוזר כתיבה אטו חתימה. Why are we not גוזר כתיבה אטו חתימה by שלא לשמה?

תוספות answers:

ואומר רבינו תם דלגבי לשמה לא חיישינן אי מייתי גט לעדים שאינו כתוב לשמה -

And the ר"ת says; concerning the requirement of signing the **לשמה** גט **we are not concerned that if he brings a גט to witnesses (**for their signature), **which was not written לשמה;** we are not concerned –

שיחתמו גם הם שלא לשמה כיון דידעי דצריך לשמה לא אתו למיטעי -

That the witnesses **will also sign שלא לשמה since** the עדים **know that it is required** to sign the **לשמה** גט **they will not come to err;** they will sign it לשמה. There is no connection between the writing and the signing, that we should be concerned that since it was written שלא לשמה the witnesses will sign שלא לשמה.[21] The witnesses are generally not present at the writing of a document. It is merely presented to them. They cannot distinguish whether it was written לשמה or not.[22] This is concerning לשמה –

אבל במחובר אי כתב לה במחובר זימנין דמישתלי ואין נזכרין לתלוש וחתמי:

However, concerning the פסול of **מחובר,** there it is different **if the גט were to be written במחובר**, and then the עדים would be called to sign, **oftentimes** the may **forget** that the חתימה must be בתלוש **and they will not remember to detach** the גט. **And they will sign** במחובר**.** Here there is a definite connection between the כתיבה and the חתימה. The עדים see a גט written במחובר; it is מחובר in front of their eyes. They may continue with the signing process in the same manner, forgetting to make the necessary changes, namely detaching the גט.

Summary

A גט that was נמצא באשפה (written שלא לשמה) is כשר לכתחילה according to ר"מ.

תוספות proves this from: A) the fact that we derive from this statement of רב נחמן that למיחזי לשיקרא לא חיישינן, B) The גמרות states that the only reason why the names have to be omitted is on account of קטטה or תקנות עגונות; no mention of שלא לשמה; C) If the משנה of כל הגט is according to ר"א, then according to ר"מ one is allowed לכתחילה to write the entire גט שלא לשמה.

Notwithstanding the above, ר"נ chose to phrase this היתר in a בדיעבד style; for were it couched in the affirmative it would have implied that the husband is obligated to divorce his wife, had such a גט been found באשפה.

Concerning מחובר we are לכתחילה required to write בתלוש, for otherwise the עדים may forget to detach the גט before they sign it. Concerning שלא לשמה

[21] See 'Thinking it over' # 4.

[22] Witnesses will either sign לשמה or not, based on their knowledge of the לשמה requirement, but not based on whether or not it was written לשמה.

however there is no concern that if it was written שלא לשמה it will be signed שלא לשמה.

THINKING IT OVER

1. Why does תוספות not mention first (the proof) that according to the מ"ד who maintains that the משנה of הכותב טופסי גיטין follows the opinion of ר"א, [23] then according to ר"מ one may (even) write the גט לכתחילה לשמה?

2. It seems that either way ר"נ would have phrased his statement it can be misinterpreted.[24] The manner in which he actually states it, seems to say that it is only כשר בדיעבד; which is not so. Had he stated חתמו ונתנו לה as תוספות asked, it would have been misinterpreted to mean that he must give it to her. What made רב נחמן decide on the phrase he actually chose?

3. How does the ר"ת state that כתיבה שלא לשמה is מותר לכתחילה? [25] We only know that if it was נכתב שלא לשמה you may give it to the woman, but we are not permitted to write the תורף of the גט לכתחילה שלא לשמה (according to those who say that the משנה of הכותב טופסי גיטין follows the opinion of ר"מ).

4. How are we to understand the meaning of the גזירה כתיבה אטו חתימה, by מחובר (or שלא לשמה)? [26] Is it to be understood in a broad sense, that if the דין is that the כתיבה is מותר, then people may assume that the חתימה is also מותר; or is it in a more practical sense, that if the כתיבה is במחובר (שלא לשמה), then the same will happen to the חתימה?

[23] See footnote # 13.
[24] See footnote # 16.
[25] See footnote # 19.
[26] See footnote # 21. See also 'Appendix' to next תוספות ד"ה מודה.