

Perhaps only by death; דלמא מת דוקא דלא ניחא ליה דתפול קמי יבם -
for he is not pleased that she should be bound to the Yovohm

OVERVIEW

The גמרא argues that when the משנה states that if he said יב חודש ועד יב חודש and he died beforehand it is a גט, it is limited to the case where he died, for only there does he want the גט to be effective so she will not be זקוקה ליבום, but if he did not return on account of sickness, it is not a גט (יש אונס בגיטין), for he does not want the גט to be effective. גמרא reconciles this (that he wants the גט to be effective if he dies) with a contradictory גמרא.

תוספות asks:

ואם תאמר בפרק מי שחזר¹ (גיטין דף עג, א ושם) דאמרין אכלו ארי אין לנו -

And if you will say; in פרק מי שחזר, where the גמרא rules that if a lion ate him we do not maintain, etc. and -

פירוש אין לנו שיהא גט ואמאי לא הוי גט הא לא ניחא ליה דתפול קמי יבם² -

The explanation of אין לנו is that we do not maintain that it is a גט (but rather we maintain that it is not a גט), so the question is why is it not a גט, since he is not pleased that she should be זקוקה ליבום as we say here?!³

תוספות answers:

ויש לומר דבאונס דלא שכיח כלל לא אסיק אדעתיה שירצה שיהא⁴ גט:

And one can say that a person does not anticipate an accident which is not common at all, so that he should want that there should be a גט.

SUMMARY

¹ The case there is where someone wrote a גט and said 'מתי מחולי זה הרי"ז גיטך מהיום', and a lion ate him before he recovered from that sickness.

² The issue (in both גמרות) is whether she is זקוקה ליבום (for the husband is dead). So just as we say here that if he said 'יש אונס בגיטין' (even though we maintain [at this point] that the husband is alive), because the husband wants the גט to be effective if he dies, so she will not be זקוקה ליבום; similarly there when he said 'מתי מחולי זה', he also wants it to be effective retroactively ([even] if he died) so she will not be זקוקה ליבום.

³ See 'Thinking it over'.

⁴ Death is an אונס גמור, nevertheless we cannot say that it is לא שכיח כלל, therefore when a person says 'מתי מחולי זה' (even though we maintain [at this point] that the husband is alive), he anticipates the (slight) possibility that he may die, and implicitly desires that if he dies that the גט should be effective retroactively (even if we maintain [at this point] that the husband is alive), in order that his wife should not be זקוקה ליבום. However by an אונס דלא שכיח כלל (such as אכלו ארי) he does not anticipate that אונס at all; therefore we cannot say that he had in mind that if אכלו ארי the גט should be effective retroactively. Therefore, since he said 'מתי מחולי זה', he only meant that the גט should be effective if he dies from this sickness but not if אכלו ארי.

There is a difference between an אונס סתם (like מיתה) where a person anticipates it and wants the גט to be effective (שלא תזקק ליבם), and an אונס which is לא שכיח כלל (such as אכלו ארי) which he does not anticipate and we cannot assume that he wanted the גט to be למפרע in such a case.

THINKING IT OVER

Seemingly the two cases (of אם לא באתי וכו' ומת, and אם לא באתי וכו' ואכלו ארי) are different and cannot be compared. In the case where the תנאי was אם לא באתי עד יב, he is fulfilling the תנאי, for he did not return before יב חודש. That fact that he did not return because of an אונס cannot be considered that his תנאי was not fulfilled (even if we maintain בגיטין), especially since the whole purpose of his תנאי was to prevent her from ליבום זיקה. However in the case of אם מת מחולי זה and אכלו ארי the תנאי was not fulfilled (for he did not die מחולי זה, but rather because אכלו ארי), the סברא of לא ניהא ליה דתפול קמי cannot reconstruct that the תנאי was fulfilled when it was not fulfilled. In short when the תנאי is fulfilled like the case of אם לא באתי וכו' and the only problem is that it was an אונס, the סברא of לא ניהא ליה וכו', is sufficient to remove the obstacle of יש בגיטין, but the סברא of לא ניהא ליה does not have the power for us to consider that the תנאי was fulfilled!⁵

⁵ See ח"ב מ"ת אות כ וכו' in (עד"ז).