**דסתם יהודה וגליל כשעת חירום דמי - גליל andיהודה For**

**are generally considered to be in a wartime state**

Overview

The גמרא concluded that generally a מחאה שלא בפניו is a valid מחאה (and therefore a חזקה שלא בפניו הויא חזקה). However during a state of conflict between two regions a מחאה שלא בפניו is not a מחאה (and neither is the חזקה valid). יהודה and גליל are considered to be in a state of perpetual conflict. Therefore there is no מחאה (and no חזקה) between יהודה וגליל.

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תוספות asks a question:

**תימה דבריש גיטין (דף ד,ב ושם) תנן[[1]](#footnote-1) דבארץ ישראל אין צריך לומר -**

**This is astounding! For we learnt in a משנה in the beginning of** מסכת **גיטין that in א"י there is no requirement to say** thatthe גט was **–**

**בפני נכתב ובפני נחתם[[2]](#footnote-2) אפילו מיהודה לגליל -**

**written in my presence and signed in my presence,** **even** if the גט is brought **from יהודה to גליל**; which are considered here to be on a wartime status.We are not concerned about finding עדי קיום –

**משום דאיכא עולי רגלים ובתי דינין ועדים מצויין לקיימו -**

**Because there are those who ascend** to ירושלים for the **holidays and** there are **courts of law** throughout א"י, **so** therefore there are **witnesses available to be מקיים** the גט. The people, who are עולה רגל, or are going to בי"ד, from יהודה, will be able to be מקיים the גט in גליל (and vice versa).It is evident from this גמרא in גיטין that sufficient people travel from יהודה to גליל to be מקיים a גט. These people who are traveling should also be able to relate the מחאה. Why is there a difference between a מחאה and קיום?!

תוספות answers:

**ויש לומר דהתם האשה מחזרת אחרי עדי קיום -**

**And one can say** that there is indeed a difference between מחאה and חזקה, **for there** by a גט **the woman is searching for עדי קיום;** she needs them to authenticate the גט (in order to remarry, etc.) Therefore –

**אף על פי דיהודה וגליל כשעת חירום דמי תמצא עדי קיום כיון דאיכא עולי רגלים -**

**Even though that יהודה and גליל are considered to be on a wartime** basis, nevertheless **she will find the עדי קיום since there are עולי רגלים** who travel between יהודה and גליל. She is searching for them; therefore she will surely find them.

**אבל המחזיק אין רגיל לחזור אחרי עדי מחאה -**

**However it is not usual** for **the** new **possessor** of the property **to search for עדי מחאה.** Therefore even if there are a few people who travel between יהודה וגליל, the מחזיק will not hear anything from them, since he is not investigating if a מחאה was lodged against him.[[3]](#footnote-3)

תוספות has an additional question:

**ואם תאמר התם [שם דף ז.א] דאמר שאני בני מחוזא דניידי -**

**And if you will say; that** the גמרא **states there that inhabitants of מחוזא are different[[4]](#footnote-4) for they travel** continually –

**וצריך לומר אפילו באותה שכונה בפני נכתב [ובפני נחתם[[5]](#footnote-5)] דאין עדים מצויין לקיימו -**

**And** therefore the שליח הגט **is required to say בפ"נ [ובפ"נ] even** if he brings a גט **in the same neighborhood,** **for witnesses are not available to authenticate** the גט, even if it was brought from one house to another in the same neighborhood. The people of מחוזא are always traveling on business and they may not be available to be מקיים the גט and/or they may not recognize the signatures of their associates even in the same שכונה. It would therefore seem that since even for a גט, where the woman is searching specifically for עדי קיום, nevertheless מחוזא is considered a place where there are no עדים מצויין לקיימו –

**אטו במחוזא לא תועיל מחאה שלא בפניו -**

**Does it therefore follow that in מחוזא an absentee מחאה will not be effective?!** In the previous answer, תוספות concluded that it is more likely that a woman will find the עדי קיום from a war zone, than the מחזיק will hear the מחאה שלא בפניו from that same place. Therefore in a case where the woman will not find עדי קיום (such as in מחוזא), it would seem that the מחזיק will certainly not hear the מחאה שלא בפניו. It seems therefore that in מחוזא a מחאה שלא בפניו will not be effective.[[6]](#footnote-6) תוספות finds this to be highly unlikely!

תוספות answers:

**ויש לומר דהתם דרך הליכתן מן העיר כששמעו מחאה -**

**And one can say that there** in מחוזא, **on their way** when **they leave the city** of מחוזא for their travels, **if** these travelers **heard a מחאה (**from someone in מחוזא) –

**רגילות הוא לומר פלוני מיחה ושומעין אחרים עד שנשמע הקול למחזיק -**

**It is customary** for the traveler **to remark** to others,that **so and so protested** the occupation of his field **and others hear** about this מחאה and in turn relate it to others **until the מחזיק hears of this protest.** It is not necessary for the party that heard the initial protest to remain in the city, in order for the מחזיק to be aware of the protest. Even if the initial hearing party (or any subsequent hearing parties) leave the city, the word will still get around to others who are remaining in the city, until it will ultimately reach the מחזיק.

**אבל גבי גט אין רגיל שיאמרו בהליכתן אנו חתמנו על הגט -**

**However by a גט it is not usual that** the signers of the גט **will say while leaving** מחוזא, that **we signed on a גט**,**[[7]](#footnote-7)** and it is equally unusual for them to say **–**

**[או[[8]](#footnote-8) מכירין אנו חתימת עדים החתומים]:**

**[(or** that**) we recognize the signatures of the signing witnesses** (which is also a valid קיום)**].[[9]](#footnote-9)** People usually do not say these kinds of things (as opposed to saying that פלוני מיחה [which is a standard topic of conversation]). Therefore the woman will not be able to find the עדים who would be מקיים her גט.

Summary

A woman is more concerned with finding עדי קיום for her גט than a person is concerned whether anyone made a מחאה on his חזקה. Therefore a woman will more easily find עדי קיום from a שעת חירום situation that the מחזיק will hear a מחאה in this same situation.

Conversely people are more likely to mention about hearing a מחאה than mentioning that they signed a גט. Therefore in a city of frequent travelers (like מחוזא) it is more likely that the מחזיק will hear a מחאה שלא בפניו than she will find her עדי קיום.

Thinking it over

1. תוספות second question was that in מחוזא a מחאה שלא בפניו should not be valid.[[10]](#footnote-10) Did תוספות mean that the מחאה should not be valid unless it is בפניו, otherwise the חזקה is valid; or that since a מחאה שלא בפניו is not valid (in מחוזא), the חזקה should not be valid?

2. תוספות implies that if the עדים would say that אנו חתמנו על הגט, etc. and it would be reported to בי"ד it would be a valid קיום. [[11]](#footnote-11) This seems to contradict the rule that an עד מפי עד is invalid![[12]](#footnote-12)

1. דף ב,א. [↑](#footnote-ref-1)
2. When a שליח brings a גט from חוץ לארץ to א"י, he must proclaim בפ"נ ובפ"נ. This is considered an authentication of the גט, and prevents the husband from claiming that he never sent it. It is necessary that the שליח be מקיים the גט by saying בפ"נ ובפ"נ, for since it is from חו"ל we may not be able to authenticate it otherwise. The גמרא explains that in א"י itself however there is no such requirement [↑](#footnote-ref-2)
3. See previous תוספות יז,ב ד"ה מחאה footnote # 3. [↑](#footnote-ref-3)
4. In other cities in the same country, even in חו"ל, no בפ"נ is required (according to רבא) since in the same country there are עדים מצויין לקיימו. However מחוזא, which was in חו"ל, is different. [↑](#footnote-ref-4)
5. See הגהות הב"ח. [↑](#footnote-ref-5)
6. See ‘Thinking it over # 1. [↑](#footnote-ref-6)
7. While people may be interested if anyone divorced, they are not particularly concerned who signed the גט. [↑](#footnote-ref-7)
8. According to the marginal note, the bracketed statement is from a manuscript (attributed to תוס'). [↑](#footnote-ref-8)
9. It seems from תוספות that if they said אנחנו חתמנו על הגט or מכירים אנו חתימת העדים and this would be reported to בי"ד (by two עדים) it would be a proper קיום. See: ‘Thinking it over’ # 2. תוספות in גיטין ד,ב ד"ה כיון answers simply that she will not find the עדי קיום; implying that the עדים themselves must testify in בי"ד. See however ח"ב מ"ת אות ריד. [↑](#footnote-ref-9)
10. See footnote # 6. [↑](#footnote-ref-10)
11. See footnote # 9. [↑](#footnote-ref-11)
12. See סוכ"ד and משכנות הרועים אות צ. [↑](#footnote-ref-12)