לא תתיחד עמו אלא בעדים –

She should not seclude herself with him; only if there are witnesses

Overview

The גמרא cites a משנה,[[1]](#footnote-1) which rules that she should not seclude herself with her husband if he gave her a provisional גט. There are varying views as to which case the משנה is referencing, and the reason for this ruling.

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פירוש בקונטרס[[2]](#footnote-2) משום גט ישן[[3]](#footnote-3) -

רש"י explained that the reason she should not be מתייחד with her husband is because we are concerned for a גט ישן.[[4]](#footnote-4)

ולא פירש לטעמיה דפירש בגיטין[[5]](#footnote-5) (דף עג,א) -

And רש"י here did not explain this משנה of לא תתייחד עמו according to his view as he explained it in מס' גיטין, where רש"י explains that the rule of לא תתיחד עמו is referring to (the previous משנה [see footnote # 1] which cites) a case where a man gave a גט to his wife and said, this גט should be effective from today, if I will die. The reason why לא תתייחד עמו is as רש"י explains there -

דבמהיום אם מתי מגורשת למפרע משעת נתינה ולא תתיחד עמו משום חשש קידושין -

Because in the case where one states when giving a גט, ‘the גט should be effective from today if I die’ (מהיום אם מתי), the rule is that when the husband dies, she becomes divorced retroactively, from the time of the giving of the גט, and therefore she should not be מתיחד with her husband after she receives the גט, because there is the concern that during this יחוד, there will be a ביאה for the sake of קידושין, and she will regain her marital status, while she thinks (after her husband died) that she is divorced. This concern and interpretation is -

כמו המגרש אשתו ולנה עמו בפונדקי בית הלל אומרים צריכה הימנו גט שני (שם דף פא,א) -

Like the case of one who divorced his wife and she slept over with him in an inn, where ב"ה rules that she needs a second גט from him in order to be divorced, for the same reason that there may have been ביאה לשם קידושין. This is how רש"י explains the משנה of לא תתייחד עמו in מס' גיטין -

[ולא שייך גט ישן כלל לפירוש דהתם][[6]](#footnote-6) -

[And the idea of גט ישן is not at all applicable to his explanation there in גיטין][[7]](#footnote-7)

וכן משמע התם בגמרא[[8]](#footnote-8) -

And this is what it seems from the גמרא there that the concern is that she will be מקודשת. This concludes the discussion of פירש"י in גיטין (and here in כתובות).

תוספות offers his interpretation:

אבל לרבינו תם דמפרש מה היא באותן הימים[[9]](#footnote-9) קאי אמהיום אם מתי -

However according to the ר"ת who explains that the question (which the משנה asks there in גיטין עג,א), ‘what is her status in those days’; the ר"ת explains that ‘those days’ refer to the case where the man said to his wife, ‘here is your גט, מהיום אם מתי’; the question of the משנה there is what is her marital status until the husband dies (and according to ר' יהודה who maintains that she is considered to be fully married, the גמרא there[[10]](#footnote-10) explains that she is not divorced למפרע from the time of the giving of the גט) -

ונעשה כאומר מעת שאני בעולם -

for we assume that (when he said מהיום אם מתי) it is as if he said, the גט will be effective from the last moment that I am in the world (alive) -

שאין דעתו לגרשה אף על פי שאומר מהיום אלא שעה אחת לפני מיתתו -

For even though he said מהיום, nevertheless he does not intend the גירושין to retroactively take effect as of now, but rather his intent is that it takes effect, one ‘hour’ before he dies; according to this explanation -

הוי טעמא משום גט ישן ובתוספתא[[11]](#footnote-11) משמע כפירוש רבינו תם :

The reason why לא תתייחד עמו is because of גט ישן, and not because of קידושין (since she is still married to him). And in the תוספתא it seems that the reason for לא תתייחד עמו is as the ר"ת explained, on account of גט ישן, for מהיום אם מתי means that the גט goes into effect right before he dies, so there can be no חשש of קידושין.

Summary

The reason why the משנה rules אל תתייחד עמו בעדים in a case of מהיום אם מתי depends on whether she is מגורשת למפרע (so the reason is because of a ביאה לשם קידושין) or whether she is מגורשת סמוך למיתה (where the reason is because of גט ישן).

Thinking it over

Why indeed did רש"י change his פשט in כתובות from his explanation in גיטין?![[12]](#footnote-12)

1. גיטין עג,א. This משנה follows a previous משנה in גיטין עב,א which reads: זה גיטיך אם מתי, וכו' לא אמר כלום. מהיום אם מתי, מעכשיו אם מתי ה"ז גט. [↑](#footnote-ref-1)
2. בד"ה לא where רש"י writes שכיב מרע שכתב ומסר גט לאשתו ע"מ שאם מת יהא גט למפרע וכו' לא תתיחד עמו וכו' והוי ליה גט ישן. See footnote # 4. [↑](#footnote-ref-2)
3. A גט ישן means ‘an old גט’. A גט ישן is a גט that was written and before it was given to the wife (or before it became effective), the husband and his wife were secluded together. ב"ה rules (in גיטין עט,ב) that it is prohibited from using this גט ישן, because it is possible that they will have a child (from this encounter) and (since the גט has an earlier date) people will (incorrectly) say that her גט preceded her son (and there will be unsavory rumors about the lineage of her son). Here too since there were מתייחד after the date of the גט there is the concern of שמא יאמרו גיטה קודם לבנה (see following footnote # 4) [↑](#footnote-ref-3)
4. It will be necessary to say that when רש"י writes 'שאם מת יהא גט למפרע', it means that the גט will become effective a ‘while’ immediately preceding his death (and therefore there is [only] the חשש of גט ישן). However it cannot mean that the גט is effective from the time of giving, for then there is no חשש of גט ישן (see footnote # 7). [There is also no need to mention the חשש of a גט ישן, for there is the greater concern of בעילה לשם קדושין (see footnote # 6).] [↑](#footnote-ref-4)
5. רש"י there ד"ה לא states; זה שנתן גט ואמר לה מהיום אם מתי, לא תתייחד עמו, שמא יבא עליה, דאיכא למ"ד חיישינן שמא בעל לשם קדושין וצריכה גט שני, וכו'. [↑](#footnote-ref-5)
6. The חשש of גט ישן is in a case where the גט was written but does not become effective until after the יחוד (either because it was so stipulated or because it was not given until after the יחוד). In this case there is (only) a חשש of false rumors regarding the child that he was born after the divorce (since the date on the גט is before the time of the יחוד), even though that in truth the child was born before the effective date of the גט. [There can be no חשש of ביאה לשם קידושין, since indeed she is still מקודשת to her husband.] However if the יחוד took place after the גט became effective, there is a more serious concern; she is already divorced, and now she is living with a man (her former husband), who may be בועל her לשם קדושין, and so in reality she is מקודשת, while in her mind she thinks that it was ‘merely’ a ביאה, and she is [still] divorced and may remarry [without יבום]. This involves the חשש of אשת איש [or יבמה לשוק]. רש"י in our גמרא explains that the concern of לא תתיחד עמו is on account of גט ישן, and in מס' גיטין the חשש according to רש"י is because of בעילה לשם קידושין. [↑](#footnote-ref-6)
7. She is מגורשת למפרע therefore if she had a child by this יחוד; it is indeed גיטה קודם לבנה, so there is no concern that people will say it, since it is true. [In addition for if she is מגורשת למפרע there is the greater concern of ביאה לשם קדושין.] [↑](#footnote-ref-7)
8. עג,ב. The גמרא there states that if we saw that נבעלה by her husband we are concerned that it was לשם קידושין. [↑](#footnote-ref-8)
9. The משנה on עג,א states: מה היא באותן הימים רבי יהודה אומר כאשת איש לכל דבריה רבי יוסי אומר מגורשת ואינה מגורשת. [↑](#footnote-ref-9)
10. עג,ב. If we were to assume מהיום אם מתי to mean literally that the גט becomes effective retroactively from the time of death, we have the problem of אין גט לאחר מיתה. Therefore we interpret his words to mean מעת שאני בעולם. [↑](#footnote-ref-10)
11. גיטין פ"ה ה"ד. From the תוספותא there it is evident that by מהיום אם מתי she is מקודשת up to the time of (immediately preceding the) מיתה. Therefore there is no חשש of קידושין but only of גט ישן. See תוספות גיטין עג,א ד"ה אמר. [↑](#footnote-ref-11)
12. See שיטה מקובצת. [↑](#footnote-ref-12)