

18.09.03

84b (כיצד יעשה) → 86a (ושׂיפא ליה בגדפא דאוזא) (כיצד יעשה)

1. ואיש אשר ישכב את זכר משוכבי אשה תועבה עשו שניהם מות יומתו דמיהם בם: ויקרא כ"ג
 2. כל גדר וכל שבועת אסר לענת נפש אישה וקיימו ואישה יפרנו: במדבר ל"ד
 3. וכהן כי יקנה נפש קנין פסול הוא יאכל בו ויליד ביתו הם יאכלו בלחמו: ויקרא כ"ב א
 4. ואם אין אחים לאביו ונתתם את נחלתו לשארו הקרב אליו ממשפחתו ונרש אתה והיתה לבני ישראל לחקת משפט כאשר צוה ה' את משה: במדבר כ"א

- I Analysis of the rest of א משנה
- a Resolution (according to רבנן): he should take it back and give it to her without the exclusionary clause
- i חזקיה. this is per רשב"א, who said (in re: גט given under false pretenses) that he must take it back etc.
- ii רב כהנא (בבלי, like חזקיה); here it is different
- 1 Reason: she already acquired it to become לכהונה (→ words alone don't fix it, must retake & give again)
- b However: if it was written in the גט, it is פסול (and can't be re-taken and given again)
- i ד' ספרא. the משנה's rule is "if it was written in it"
- 1 Justification (he's just restating the משנה): סד"א: תורה; if beforehand, even בע"פ
- ii דבא. distinction between בע"פ and כתבו בתוכו only after תורה; if before, even בע"פ
- 1 Note: רבא is consistent, as he told סופרי גיטין to keep the husband silent (w/תנאים) until after they write תורה
- II תנאים: dispute רבי/חכמים about תנאים
- a דבני. all תנאים invalidate a גט
- b חכמים. only תנאים that invalidate orally invalidate in writing → "חוק" invalidates; "על מנת" doesn't invalidate
- i ד' זירא. dispute only if stated before תורה –
- 1 דבני. we ban ע"מ as a precaution against חוק; חכמים do not accept גזירה
- 2 However: after תורה, all agree that either one is valid
- (a) And: our משנה that invalidates כתבו בתוכו (per our interpretation – חוק); but פוסל ע"מ isn't (i) Could be: רבנן – if written before the תורה or consensus – if written after תורה
- ii דבא. dispute is only if stated after תורה
- 1 דבני. we ban as a precaution of a condition stated before תורה; רבנן – we don't extend the ban
- 2 However: if before the תורה – all agree that it is invalid
- (a) And: our משנה (as per above) must be after the תורה and only per רבנן
- iii ד' תנא taught before ר"ז. a גט with a תנאי written in is פסול according to all
- 1 Challenge: there is no consensus
- 2 Rather: according to all, it is valid (if written after תורה)
- (a) Question: why not "fix" שמועה to be invalid – according to רבי
- (b) Answer: more likely that he confused פסול for כשר, not דברי הכל
- III משנה ב: an exclusionary condition in a גט where פ' is otherwise forbidden to her
- a If: he makes the גט conditional on her being prohibited to e.g. father or slave where קידושין aren't possible – valid
- b But if: he makes the גט conditional on her being prohibited to an איסור כהונה or איסור לאו or איסור לאו – invalid
- i Note: רישא lists father, brother, slave or non-Jew; כלל extends to all עריות
- ii And: סיפא extends to כלל of עמוני ומואבי etc.
- c Questions (ר"נ of דבא):
- i What if he: excludes a קטן – right now he isn't able to make קידושין but he will be able to later – valid?
- 1 Answer: if a קטנה can be divorced from קידושין made by her father
- (a) How: if we require והיתה...ויצאה; even though she can't be מתקדשת
- (b) Rather: since she will eventually come to the age of הויה, she can be divorced; same here (→ גט is invalid)
- ii What if he: excludes the unborn? They aren't currently alive, but will become בני קידושין
- 1 Answer: if he excludes a slave or non-Jew, doesn't affect גירושין, even though they may convert
- 2 Block: in those cases, their conversion/freedom isn't inevitable, but these will be born
- iii What if he: excludes her sister's husband (who is אסור to her as long as her sister is alive) is it a גט?
- 1 Answer: just like עבד ונכרי aren't currently a גט
- 2 Block: conversion/freedom isn't the usual course of events; death is (and she may predecease her husband)
- iv What if he: excludes her זנות – even though he didn't exclude marriage, he did block ביאה
- 1 Answer: from our משנה, where father etc. aren't שייך בגט – must be זנות (b/c father isn't a נישואין to her at all)
- (a) Therefore: only זנות with עריות isn't a שייך; but זנות with another is considered a שייך (→ גט פסול)
- (b) Block: perhaps it is about נישואין – if they violated the law and married

- v *What if he:* excluded כדרכה ביאה שלא כדרכה
 1 *He didn't:* exclude כדרכה ביאה, but perhaps per v1, we equate the two
- vi *What if he:* excluded הפרת נדרים
 1 *He didn't:* exclude marriage; but perhaps per v2, הפרת נדרים is part of the marital relationship
- vii *What if he:* excluded תרומה-eating
 1 *He didn't:* exclude anything about marriage; but perhaps per v3, תרומה is part of the relationship
- viii *What if he:* excluded הירושה
 1 *He didn't:* exclude anything about marriage; but perhaps per v4, that is inherent in the relationship
- ix *What if he:* excluded קידושי שטר
 1 *He didn't:* block marriage, as she can have וביאה כסף וקידושי; or perhaps והיתה... equates them
- IV ג משנה: The תורף of the גט – “הרי את מותרת לכל אדם”
 a *יהודה* (more detailed language)
 i *Dispute:* whether שאין מוכיחות ידיים are sufficient (ר' יהודה – insufficient)
 1 *And:* without the clear language, it seems that the גט is just proof of divorce and it was effected verbally
 b “הרי את לעצמך” or “הרי את בת חורין” גט שחרור
 i *דב יהודה* formulated an exact wording for שטר מכירת עבד, including the slave's having no שחין
 1 *Aside (אביי):* remedy for שחין is ginger and metal shavings, olive oil, white naphtha, applied with goose feather
- V Clarification of several formulae of separation
 a *If:* he used הרי את לעצמך for divorce, is it valid? Is total separation or just financial independence intended?
 i *(לר' אשי) רבינא*: if it works for a שפחה, who is owned by him, ק"ו it works for אשה
 ii *Question (רבינא):* if he says אין לי עסק בך to his slave, is that a valid שחרור
 1 *Answer (from ברייתא):* if he sells his עבד to גוי, he goes free and he requires גט שחרור
 (a) *דשב"ג*: only if he didn't write “אוננו” (which is “when you flee him, אין לי עסק בך”); if he did – no need
- VI Practicum
 a *אביי*: details about orthography of גט (כתוב מלא וחסר) which might mislead as to meaning
 b *Question:* is ... ודן needed?
 i *Answer:* apparently not, as רבא mandated a particular formula but didn't include ... ודן
 ii *Block:* his reported formula is not the entire גט; he may have required ... ודן
 c *רבא's formula:* included “from this day on” – to oppose ר' יוסי's opinion that the date on the שטר establishes time of effect
 i *And:* included “forever” to oppose that question he asked of ר"ג regarding a temporary divorce (היום... ולמחר)