

## OVERVIEW of the Daf

### 1) Two witnesses who deliver a גט (cont.)

The Gemara concludes the incident relevant to the case of two witnesses who deliver a גט.

Tangentially, the Gemara discusses whether the Persians are worse than the Romans.

R' Yochanan explains that the Mishnah's case of one witness to the writing and two witnesses to the signatures refers to where the witness to the writing is delivering the גט.

R' Ami infers from this that R' Yochanan maintains that two witnesses that deliver a גט from outside of Eretz Yisroel are required to make the declaration.

R' Assi suggested an application of R' Ami's conclusion to which R' Ami agreed.

A second, opposite, conversation between R' Ami and R' Assi is recorded.

When asked, R' Ami stated that his second conclusion is correct.

2) **MISHNAH:** The Mishnah presents details related to the disqualification of a predated גט.

### 3) Including the date on a גט

R' Yochanan asserts that the date is included on a גט out of concern that a man may try to protect his sister's daughter. Reish Lakish maintains that the enactment is to be able determine who has the rights to the fruit of the wife's melog property.

Each opinion explains why he rejects the position of the other.

Each position is unsuccessfully challenged.

Abaye questions the effectiveness of the decree if (בדיעבד she remarried and had children) the divorce is valid.

R' Yosef explains that it is effective in that לכתחילה she should not remarry with this גט.

Abaye presents another unsuccessful challenge to the enactment. ■

## REVIEW and Remember

1. Who are better; the Romans or the Persians?  
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2. What are the two reasons Chazal mandated including the date on a גט?  
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3. How do Reish Lakish and R' Yochanan explain R' Shimon's opinion allowing a predated גט?  
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4. How precise must the date be on a גט?  
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## Distinctive INSIGHT

*Witnesses on a גט is a different type of testimony*

מפני מה תיקנו זמן

The Gemara asks why it was that the rabbis decreed that a date must be included in a גט. Rabbi Yochanan and Reish Lakish each provide their answers.

Pnei Yehoshua asks why the Gemara had to ask this question in the first place. Is it not obvious that the precise date of the גט is necessary in order to examine the witnesses to ascertain whether they are telling the truth? The rule is that testimony is not valid unless it can be subject to the scrutiny of the הזמה process (Bava Kamma 75b), and precise timing is critical in this regard. He answers that the nature of testimony on a גט document is qualitatively different than it is on other documents. The witnesses on a גט do not serve as regular Torah witnesses. Rather, they sign that the husband instructed the scribe to write this גט for the wife, and that this is not a forgery fabricated by the wife or anyone else. Therefore, these witnesses are not subject to normal parameters of testimony, where הזמה must be possible.

Based upon this insight, as well as other sources, Pnei Yehoshua therefore maintains that witnesses on a גט do not function as Torah-level witnesses. He also cites the opinion of Rambam (עדות ג:ד) who says that no written testimony has validity from the Torah. The verse clearly states "from the mouths of two witnesses shall a matter be established," and we learn that only oral testimony is valid, not written. The signatures on a גט are not what validates the process, and we must say that they sign only to show that that this is not a forgery.

Harav Chaim on Rambam (ibid.) learns that when Rambam writes that witnesses' signatures are not recognized on a Torah level, he was not referring to documents which themselves effect a condition. For example, a document for a גט or for kiddushin is certainly valid, as the document with its witnesses is what creates the transition of marriage status. The Torah certainly considers these to be valid. Rambam was only referring to documents which are used for proof. For example, after a purchase or a transaction is done, a sales document or loan document is given to be used as a proof to the sale or loan. This is where the

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 By Rabbi Shalom Zaiden in memory of his brother-in-law  
 ר' שמחה בן דוב, ע"ה

# HALACHAH Highlight

## Writing a גט at night

כתב ביום ונחתם ביום בלילה ונחתם בלילה

If it was written during the day and signed at night, [or if it was written] at night and signed at night

Radvaz<sup>1</sup> was asked to comment why, since we are careful to be strict in all matters related to gittin, do Jews in Egypt divorce at night if Or Zarua writes that one should not divorce at night and a גט delivered at night is disqualified. Radvaz wrote that he could not find where Or Zarua issued the ruling attributed to his name but he did find others quoting this ruling in the name of Or Zarua. He suggests that this ruling is based on a halacha of chalitzah. Many Poskim rule that one may not do chalitzah at night and the reason is that the performance of chalitzah allows the yevamah to collect her kesubah. Accordingly, chalitzah is considered like the beginning of a court case that may not be performed at night. By extension it is prohibited to divorce a woman at night since the divorce allows her to collect her kesubah and it is thus considered like the beginning of a court case that may not be performed at night.

After presenting this explanation Radvaz writes that he offered this explanation to explain the position ascribed to Or Zarua but he finds it difficult to accept that this is the

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testimony, which is written, is not a Torah-level one.

Pnei Yehoshua notes that Ramban argues against Rambam, and he holds that even written testimony, when it appears on a document, is valid on a Torah level. Nevertheless, even Ramban would hold that in the case of גט, where הזמה cannot be applied, such signatures cannot be valid on a Torah basis. הזמה itself is a חידוש, and it can only be applied to oral testimony. ■

halacha since it was not mentioned by any Tannaim, Amoraim or renowned halachic authority. Furthermore, our Mishnah discusses many cases of gittin written or signed at night and it does not make any reference to the fact that a גט written at night should be invalid. Regarding the parallel between chalitzah and גט Radvaz asserts that the cases are not parallel. First of all, he notes that if we were to consider a גט as if it was the beginning of a court case we should require a Beis Din present for the process of writing the גט which is not required. Secondly, the rationale to distinguish between the two cases is that the Torah indicates that chalitzah requires a Beis Din (ועלתה יבמתו) (השערה) and thus may not be done at night but the Torah does not indicate that a גט requires a Beis Din and is like any other legal document that can be drawn up, signed and delivered at night. ■

<sup>1</sup>שו"ת הרדב"ז אלף קנ"ה (ח"ד סי' פ"ד). ■

# STORIES Off the Daf

## The Invalid Divorce

"ביום ונחתם בלילה..."

A certain man had a quarrel with his wife and divorced her. After waiting the required three months, this woman remarried. Shortly after this, someone pointed out that when writing the גט the scribe had erred. Instead of writing the year, "פ"ט" he wrote the year "כ"ט". This was clearly a case of a גט מוקדם, but did the hapless woman really have to leave both husbands forever?

This tragic case caused an uproar

and was brought to the attention of the Rosh, ז"ל. He replied, "Although a גט מוקדם is definitely invalid, as we see in Gittin 17 that a divorce that was written one day and signed the next is invalid, this case is actually not as tragic as it sounds. It is definitely true that the divorce is invalid, but that is her saving grace. Her first husband never divorced her and she may go back to him at any time. What she did was no betrayal of her husband since she thought they were divorced. It is as though nothing has happened.

"This is similar to the Gemara that states that one who has the name of a married woman and then receives the name of a divorced woman is pre-

sumed to be divorced. Although there was a rumor that she was married, there is another that she was divorced and this nullifies the earlier rumor.

"Everyone knows that one who divorced with an invalid גט has not affected his marriage in any way. Even after this woman returns to her first husband, no one will question this. It is unlikely that this will even generate a rumor that she was married to another in the interim since everyone knows she was mistakenly divorced. Therefore, she does not require any divorce from the second husband and may return to the first. In our case, it is as if the גט פסול never happened!"<sup>1</sup> ■

<sup>1</sup>שו"ת הראש, כלל מה, סימן ו'

