

## And if she married she need not leave

## ואם ניסת לא תצא -

### OVERVIEW

The ברייתא states that if there were two עדים who testified that the husband died (or divorced his wife) and two other עדים contradict them and claim that he did not die, the ruling is that if the wife remarried she is not required to leave her new husband.

The גמרא in מסכת כתובות asks a question on the ברייתא:

How may this new couple remain together? It is a case of תרי ותרי; she is a ספק אשת ספק איסור מדאורייתא. It is a ספק איסור. If they have relations with each other, they are both required to bring an אשם תלוי; for they may have transgressed an איסור ערוה. Our גמרא will cite the answers offered in the תוספות.

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**בפרק ב' דכתובות (דף כב, ב ושם דיבור המתחיל כגון) מוקי כשניסת לאחד מעדיה<sup>1</sup> ואומרת ברי לי<sup>2</sup> -**

The גמרא in the second פרק of מסכת כתובות establishes that this ruling applies in a case that she remarried to one of the witnesses who testified on her behalf. As far as the wife is concerned there is also no ספק איסור for we are discussing a case where she said **I am certain** that I am no longer married. Since they are both certain that there is no איסור (ספק), therefore we allow them to remain married.

There still remains the question of suspicion. Perhaps this עד and this woman are in collusion.<sup>3</sup> They want to marry each other and therefore each claims that the husband died. answers -

**וחשדא ליכא כדפירשתי התם<sup>4</sup>:**

**And there is no room for suspicion as I explained there** in מסכת כתובות. In a case where two witnesses testify (as is the case here), there is never any concern of collusion. The second עד would never testify falsely so that his fellow עד could achieve his illegitimate goal. אין אדם חוטא ולא לו. No person sins on behalf of someone else

### SUMMARY

In a case of תרי ותרי the new couple may remain married if she remarried an עד and claims that she is certain her husband is dead.

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<sup>1</sup> For this עד there is no ספק איסור. He is certain that she is no longer married to her husband; he saw him dead.

<sup>2</sup> ברייתא explains that her being certain means that she claims that if he would be alive he would have been here by now.

<sup>3</sup> The rule is that an עד is believed to testify that the husband died. However because of the suspicion that he is testifying falsely because he may want to marry her, the עד is forbidden to marry this woman.

<sup>4</sup> דף כב, ב ד"ה כגון.

### **THINKING IT OVER**

Why can they not get married <sup>5</sup>לכתחילה

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<sup>5</sup> See נח"מ (in the גמרא ד"ה הרי