

However if she married – אבל ניסת ואחר כך באו עדים הרי זו לא תצא and the witnesses came afterward, she need not leave.

Overview

The case at hand: Two עדים testify that the husband died, and two other עדים testify that he is alive. All agree that initially she may not remarry. If she remarried (her עד¹), the חכמים maintain that she may remain married to him. תרי maintains that she is required to leave him (since it is תרי (ותרי). However, if she did remarry (her עד) before the second group of עדים testified, then רמב"י agrees that she need not leave him. רמב"י infers from רבא that we are concerned for דינא².

And the reason why ר' מנחם ברבי יוסי claims that she need not leave³ is – **because it is demeaning for the בי"ד** to change a ruling.

has a difficulty:

and the רשב"א has a difficulty, with this interpretation that the reason יוסי רבי מנחם ברבי יוסי says לא תצא is on account of דינא. **for you are forced to say that the reason** for לא תצא **is not** –

because it is a דינא – משום זילותא דבי דינא הוא

for if it is indeed so; that the reason of לא תצא is because of דינא, then the ruling should be –

that even is she did not remarry yet – דאפילו לא נשאת

but rather בי"ד permitted her to remarry on the basis of the (first group of) עדים – אלא התירוה לינשא

she should be permitted to remarry, even after the second group of עדים came and testified⁶. If בי"ד will change its original ruling on account of the second group

¹ See previous תוספות ד"ה ואם.

² The view of the חכמים does not indicate whether or not we are דינא. The חכמים maintain that לא תצא in either case, whether בי"ד gave her permission to remarry or not. They are of the opinion that בי"ד does not have the power to separate them on account of a ספק, since the parties themselves have no ספק (see previous תוספות ד"ה ואם). There is no זילותא here at all; they can always remain married (see following footnote # 3).

³ רמב"י is of the opinion that תצא (if she remarried when it was תרי). This indicates that he is of the opinion that בי"ד will separate them on account of the ספק. Why should it be different if she remarried before the תרי ותרי; now it is a situation of תרי ותרי and the same ספק exists?! רבא infers from this that it is only because of דינא (for previously בי"ד permitted her to remarry); therefore בי"ד does not take any action. However if באו עדים ואח"כ נישאת (we say תצא, for) there is no זילותא; since בי"ד never permitted her to remarry.

⁴ עיין שם הגדולים בערכו (מס' 178).

⁵ See footnote # 11.

⁶ See previous תוספות ד"ה ואם that we are discussing a case where she is marrying one of the עדים who is certain (as she is) that her husband died.

of זילותא דבי דינא, it will be a זילותא דבי דינא. It is the opinion of תוספות that there is a זילותא דבי דינא, not only when the original פסק of בי"ד was acted upon (i.e. the woman remarried), but even if no action was taken. The mere fact that בי"ד changes its ruling is considered a זילותא דבי דינא –

as is indicated in the entire discussion here in the גמרא – **זילותא דבי דינא – דאיכא זילותא** –

even if no action was taken, based on the פסק בי"ד ⁷. The fact that רמב"י says תצא לא only if נשאת but not if it was only התירוה לינשא proves that the reason of תצא לא נשאת ואם is not on account of זילותא דבי דינא. There must be a different explanation⁸. How then, can רבא prove from רמב"י that we are concerned for זילותא?

anticipates a possible rebuttal to his question and rejects it.

and if you will say, indeed it is so; that on account of זילותא we should allow her to remarry even if התירוה לינשא, and in fact it is so as well, for –

when it says in the ברייתא ‘and she remarried’, it does not mean that she actually remarried; but rather –

it means that בי"ד **permitted her to remarry**. תוספות will now explain what would the term 'לא תצא' mean if נשאת means התירוה לינשא –

and she will furthermore ‘not be required to depart’ from her original permissible status. The term 'לא תצא' will mean that once she was given permission to remarry, she never leaves that status that she acquired; the status of a woman permitted to remarry. If we were to interpret נשאת and לא תצא in this manner, the objection of the רשב"א will have been addressed. If she retains her היתר, this certainly proves that we are concerned for זילותא.

– התירוה לינשא means נשאת The רשב"א rejects this rebuttal: We cannot say that the term

because when the ברייתא mentions the case of **נשאת, in that case –**

we cannot interpret the term 'נשאת' to mean that –

they permitted her to remarry; for since it is then תרי ותרי בי"ד will certainly prohibit her from remarrying –

– **but rather** in the case of נשאת ואח"כ באו עדים, the term 'נשאת' means –

she actually remarried (without permission from בי"ד). Therefore we must assume that the term 'נשאת' in the case of באו עדים also means נשאת מממש. That only if she actually remarries does רמב"י maintain that לא תצא. However if it was merely התירוה לינשא, then the ruling would be that she cannot remarry if the other עדים came. This should prove that we are not concerned for זילותא דבי דינא –

⁷ Later the גמרא will be discussing the issue of זילותא דבי דינא in regards to the כהונה status. There is no indication that any action was taken when either confirming or disclaiming his status as a כהן.

⁸ תוספות will shortly state what that explanation is.

ניסת ואח"כ באו עדים לא תצא – **and you are forced to say** that the reason for זילותא is not on account of זילותא, but rather –

the reason why it is לא תצא is because – **טעמא**

we cannot take her away from her husband just on the basis of a **doubt**; that maybe she is still married to the original husband. A ספק is not powerful enough to take such a drastic step¹⁰.

but it is not on account of זילותא.¹¹ We are not concerned with זילותא. If we would be concerned for זילותא, then she would be able to remarry once חושש רמב"י permitted her. The question remains; how did רבא derive from רמב"י that we are חושש for זילותא דבי דינא?

answers:

and we can say as follows – **ויש לומר**

זילותא לא תצא is because of really the reason – **לעולם טעמא משום זילותא**. There was a difficulty however; if the reason is because of זילותא then even if התירוה לינשא she should retain this היתר even after the other עדים came. תוספות will explain that there is a זילותא only if נשאת ממש but not if התירוה לינשא.

– נשאת ואח"כ באו עדים if and only – **ודוקא כשנשאת ואחר כך באו עדים**

is there a דינא דבי דינא – **איכא זילותא דבי דינא** if בי"ד will force her to leave her new husband. תוספות explains:

for this woman is already presently forbidden to have relations with the whole world – **שכבר נאסרה לכל העולם**

since she remarried. Her present status is that of a married woman. **– כיון שנשאת**

– so it comes out – **נמצא**

that which בי"ד is rescinding its permission to forbid her to this witness whom she married; – **מה שחוזרין לאסרה לעד שנשאת**

we are rescinding our permission only in regards to – **אין חוזרין אלא בעבורו** the עד. This is the only accomplishment that this new prohibition will effect. This is considered a זילותא. First בי"ד says she is permitted to remarry, then בי"ד says you must leave this עד, whom you married. For the rest of the world this rescinding is meaningless; they were not able to marry her while she was married to the עד and they cannot marry her now either, on account of the תרי ותרי. The חזרה is only in regard to this עד.

however if the עדים came before she remarried; then even though she had a היתר to remarry – **אבל אם באו עדים קודם שנשאת**

it will not be a זילותא if בי"ד voids that היתר. The reason is – **ליכא זילותא**

⁹ See footnote # 11.

¹⁰ This will explain the difference between נישאת and התירוה לינשא. If it was merely לינשא, then we cannot use the סברה of מפקי לה מבעל, since she is not married yet. In the case of באו עדים ואח"כ we will (*be forced to*) say that it is a קנס since they were עובר on בי"ד. See footnote # 13.

¹¹ The רשב"א is not phrasing his question in the form of; 'how can we prove from רמב"י that we are חושש', perhaps the reason of לא תצא is because מפקי לה מבעל. Rather the question is phrased that since we certainly cannot use the reason of זילותא, therefore the reason must be because of מפקי לה. See footnote # 13.

– בי"ד **for forcibly** – דעל כרחק

היתר is required to rescind the first blanket – צריכין לחזור מהיתרה הראשון

Originally when only one group of עדים came, בי"ד gave her a היתר to remarry whomever she pleases, since no one contradicted the עדים. However now since she did not remarry and a second group of עדים came who contradict the first group, then obviously בי"ד must retract the first היתר –

in order to prohibit her from remarrying to anyone. – כדי לאסרה לכל העולם

She certainly cannot marry now whomever she pleases, for it is תרי ותרי; there is a ספק –
12 She (at most) can only remarry the עד – אשת איש דאורייתא

therefore there is no זילותא – הלכך ליכא זילותא

if בי"ד will also prohibit here from marrying her witnesses¹³ – אם אוסרים אותה נמי לעדיה. A זילותא דבי דינא is only if it seems that בי"ד made a mistake. If new

עדים come then everyone understands that the original פסק of בי"ד cannot remain. בי"ד cannot permit a דאורייתא ספיקא. Once בי"ד changes its פסק concerning everyone, there is no זילותא if we include her עדים in this איסור. People will understand it is part of the general איסור. However if she actually married one of the עדים and then the second group of עדים came, then if בי"ד will change its פסק it will affect only the עד who she married; everyone else is already אסור from before (since she was married to the עד) and will continue to be אסור since it is תרי ותרי. There is no compulsion for בי"ד to prohibit the עד and the woman to remain married, for they both maintain there is not even a איסור. If בי"ד will change their פסק it is a דבי דינא.

ר"י – This answer was given over in the name of the **רבינו יצחק**.

Summary

There is no זילותא if the change of a פסק to an individual is included in a general necessary change to the community at large.

Thinking it over

Perhaps the reason for תצא לא מפקי לה מבעלה ואם ניסת לא תצא is because of מספיקא לא מפקי לה ואם באו עדים ואח"כ ניסת is because there, they transgressed the prohibition of בי"ד, therefore we say תצא as a קנס?¹⁴

¹² זילותא דבי דינא on account of a ספק דאורייתא בי"ד certainly cannot permit a

¹³ זילותא is on account of ניסת ואח"כ באו עדים לא תצא the reason for תצא is explained how it is possible that the reason for תצא is on account of מספיקא לא מפקי לה. There was no explanation however why we cannot say that the reason is on account of מספיקא לא מפקי לה (see footnote # 11). It would seem that if given the choice it would be the reason of זילותא over the reason of מספיקא כו'. If the reason is מספיקא כו', then why if נישאת ואח"כ נישאת do we say תצא? It should be לא תצא since לא מפקינן כו'. See "Thinking it over".

¹⁴ See footnotes # 13 & 10.