

דיבורא דאית ביה מעשה – Speech that contains within it action

Overview

The גמרא explains that ר"ה does not mention מוסר since it is a damage that is caused by speaking only, without any action. To which the גמרא challenges that a מוצש"ר also damages by speech only and nevertheless ר"ה includes it. The גמרא responded that מוצש"ר has an action associated with the דיבור. מוצש"ר will explain the מעשה that there is by a מוצש"ר.

דבכתובות בפרק נערה (דף מו,א) אמר רבי אליעזר בן יעקב לא נאמרו דברים הללו –
For in מוציא a מוציא, פרק נערה in מסכת כתובות said 'these rules concerning a מוציא are not applicable –

אלא כשבעל -

unless the accusing husband **had relations** with his accused wife'. The בעילה is considered the מעשה associated with the דיבור of מוצש"ר.

ורבי יהודה אית ליה התם עד שישכור עדים:

And ר"י maintains there that the laws of מוצש"ר do not take effect unless the accusing husband **hired** (false) **witnesses** to testify that his wife committed adultery while she was an ארוסה. Hiring the עדים is the מעשה.

Summary

The מעשה of מוצש"ר is; either the בעילה, or the hiring of the witnesses.

Thinking it over

1. How can we know that ר"ה agrees to the ruling of either ראב"י or ר"י?
2. According to ר"י that he hired (false) witnesses to support his הוצאת ש"ר, it is understood that there is a מעשה involved in causing the נזק. However according to ראב"י the מעשה בעילה does not seem to be part of the נזק; it is merely a תנאי in the laws of מוצש"ר! Why should the מזיק of מוצש"ר be considered a מעשה דאית ביה מעשה?!
3. What does תוספות want to teach us, when רש"י² already explained that the בעילה is אית ביה מעשה?

¹ If the husband is lying he (receives מלקות and) must pay a hundred כסף to his father-in-law.

² ד"ה דיבורא.