

דחיישינן לשתי כתובות – כתובות For we are concerned for two

OVERVIEW

Our ברייתא taught that if a שטר חוב was found, the חכמים maintain that you do not return it (for there is possibility that it was paid), while ר' יוסי maintains that (if there was a הנפק) you do return it, for we are not concerned that it was paid¹. In another ברייתא we learned that if a כתובה was found the חכמים maintain that you do not return it to the woman unless instructed to do so by the husband, while ר' יוסי maintains that if they are currently married it is always returned to the wife (regardless of what the husband claims), however if they are not married we do not return the כתובה to her, (seemingly) because there is the possibility that he paid her. This seems to contradict the first ברייתא. רבינא answered that we need to reverse the opinions of ר' יוסי and the רבנן in the first ברייתא (meaning that the רבנן are not חייש לפרעון), and the reason the רבנן maintain that we do not return the כתובה (in the second ברייתא) is (not because דחיישינן לפרעון) but rather because the husband claims that he already wrote her another כתובה (when they realized this כתובה was lost). תוספות explains why it was necessary for רבינא to maintain that we are קמייתא איפוך.

תוספות responds to an anticipated question:

ובלאו איפוך לא מצי לאוקמא דרבי יוסי חייש לשתי כתובות² –

And without reversing the respective views of the רבנן ור' יוסי in the first ברייתא, **we could not have established** in the second ברייתא, **that ר' יוסי is concerned for two כתובות**, and therefore he maintains לא יחזיר if נתגרשה או נתאלמנה (as we explain according to the רבנן) -

דאם כן עודה תחת בעלה אמאי יחזיר לאשה כשאין הבעל מודה³:

¹ ר' יוסי maintains that as soon as a person pays his debt he rips up the שטר; since the שטר is present, this proves that the debt has not been paid.

² Seemingly we could have left the original texts as is in both ברייתות; and ר' יוסי is חייש לפרעון; however regarding a כתובה, if she was נתאלמנה או נתגרשה we do not return it כשאין הבעל; however regarding a שטר חוב, if she was חייש לפרעון; however regarding a כתובה, if she was נתאלמנה או נתגרשה we do not return it כשאין הבעל; however regarding a שטר חוב, if she was חייש לפרעון; however regarding a כתובה, if she was נתאלמנה או נתגרשה we do not return it כשאין הבעל, meaning if he claims he wrote her another כתובה because we are חייש לפרעון, מודה, meaning if he claims he wrote her another כתובה because we are חייש לפרעון.

³ However if we maintain קמייתא איפוך then the רבנן are חייש לפרעון; however by כתובה (whether she is married or not), we never return the כתובה if the husband claims I wrote her another כתובה. And ר' יוסי who is חייש לפרעון agrees that if she is no longer married we do not return the כתובה; however, if she is married, then there is no concern that he paid her, for a כתובה is usually not paid off while they are married. [ר' יוסי is חייש לפרעון, לא יחזיר לאשה כשאין הבעל מודה, since a second כתובה is highly publicized and people would have known about it See הירושא הריטב"א החדשים.]

For if this is indeed so (that חייש לב' כתובות ר' יוסי is) then in the case **where she is still married why would ר' יוסי maintain that we return the כתובה to the woman even when the husband does not agree to return it to her and claims he wrote her another כתובה?!⁴**

SUMMARY

ר' יוסי who differentiates between עודה תחת בעלה and נתגרשה או נתאלמנה cannot be concerned for ב' כתובות.

THINKING IT OVER

תוספות asks if כתובות לב' כתובות חיישינן then even if she is עודה תחת בעלה we should also not return it.⁵ Perhaps we can say that ר' יוסי is חייש לב' כתובות, however here since she claims that she has no כתובה (and it may be true) therefore we return the כתובה to her since it is forbidden for a person to live with his wife without a כתובה even שעה אחת?⁶

⁴ See 'Thinking it over'.

⁵ See footnote # 4.

⁶ See נהלת ישראל.