אי שוכר נמי הוי תיתי שכירות כולי –

Even if he is a renter, let the rental, etc.

OVERVIEW

The גמרא rejected the initial assumption that if the post marital status changes from the original (from שוכר to שואל), only then does it revoke the initial status (and is considered שמירה בבעלים), but not if the status remains the same. Rather the גמרא argues that even if the status remains the same (שוכר) the post marital שכירות should revoke the pre-marital שכירות and it should be considered שמירה בבעלים.

תוספות is responding to an anticipated question:[1]

ולא מסתבר ליה למימר דדוקא שאלה שהוסיף להתחייב באונסין מפקיע שכירות שמתחילה:
And the גמרא **did not deem it logical to assume that only** where the **שאלה** followed the שכירות **does it revoke the initial** pre-marital **שכירות, since there was an additional** liability **that he is liable for אונסין.**[2] The גמרא did not feel that this is a logical reason to distinguish whether he becomes a שוכר or a שואל; it either overrides the initial status in both cases or in neither.

SUMMARY

It is not logical to distinguish between שאלה ושכירות to determine whether the previous status should be overridden.

THINKING IT OVER

How would our תוס' explain the case where he was שואל first and then married.[3] If he is like a שוכר בנכסי מלוג, then he is lowering his שמירה,[4] would that be cause to make it שמירה בבעלים and be פטור?

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[1] Seemingly we can say (and presumably this is what the גמרא thought initially), that when there is a change in status (from שוכר to שואל), we can say that the new status (שואל) overrides the old status (שוכר), but when the status does not change, then presumably it remains as it was originally שמירה שלא בבעלים.

[2] One may argue that since by becoming a שואל he is increasing his liability therefore it makes sense that it overrides and revokes his previous status as a ש"ש (but not if it remains the same; see footnote # 1). תוספות does not explain why it is לא מתסבר. Perhaps it is לא מסתבר that an increase in his liability (חיוב אונסין) should result in a decrease of his liability (פטור שמירה בבעלים). See, however, 'Thinking it over'.

[3] See previous תוס' ד"ה דאגר [TIE footnote # 3].

[4] See footnote # 2.