

בעל בנכסי אשתו מי מעל –

A husband in the assets of his wife; who misappropriated

OVERVIEW

posed a query; who is מועל in a case where a husband married a woman who in her inheritance from her father¹ there was מעות הקדש (which they were not aware of). While רבא argued that neither the husband nor the wife, ב"ד, should be מועל, our תוספות explains the reasons why we may have thought that any one of them should be מועל.²

מי אמרינן בעל מעל שהוא עושה עיקר המעשה³ שנשאה ועל ידי זה זוכה במעות -
Should we say the בעל was מעל since he did the main act of transferring הקדש into a new רשות by marrying her, and through this marriage he acquired rights in the money הקדש -

או דלמא היא עשתה עיקר המעשה שהיא נשאת לו -
Or perhaps she did the main act, for she became married to him -

או דלמא בית דין עשו עיקר המעשה שתיקנו שיזכה במעות:
Or perhaps ב"ד did the main act, for they instituted that he has a right in the money (of her מלוג בנכסי).

SUMMARY

Each of the three (בעל, אשה, ב"ד) did something to contribute to this מעילה; the question is who is the main cause.

THINKING IT OVER

Generally, one who takes the מעות הקדש and gives it to someone, the giver is מועל. Seemingly here, the woman is giving him the rights to the מעות הקדש (by marrying him), so she should be מועל; why is there a question?!⁴

¹ From this תוספות it seems that she inherited the money before she married (not like רש"י בד"ה מי, who states that she inherited the money after she married). See מנחת הבקר לר"ש מורגנשטרן.

² The act of מעילה occurs when someone transfers הקדש away from the רשות הקדש to another (non הקדש).

³ The transferring of the assets to the daughter due to inheritance cannot be considered מעילה, since it involved no מעשה on anyone's part; it is automatic. However when the בעל married her, the act of marriage gives him (through the תק"ח that he has a קנין פירות in her מלוג בנכסי) a new right over her assets, including the מעות הקדש. The בעל did a מעשה, which should make him liable for מעילה. See 'Thinking it over'.

⁴ See תורת חיים להרא"ח שור.