

## מידי דהוה אכל עדיות שבתורה –

### As is wont to be in all testimony in the Torah

#### OVERVIEW

The גמרא contends that we should require two witnesses to confirm that the גט was written לשמה, since that is what is usually required when we need witnesses.

The תורה writes<sup>1</sup>: 'לא יקום עד אחד באיש לכל עון ולכל חטאת וגו' על פי שני עדים וגו'. From the words 'עון ולכל חטאת' we derive that neither a monetary loss, nor a physical punishment can be meted out without the testimony of two עדים. Similarly the Torah writes<sup>2</sup> concerning a גט that 'דבר דבר' גיטין. We derive from the 'דבר דבר' שוה דבר דבר, that also by דיני אישות, such as גיטין we require two עדים.

However in other matters of איסור והיתר, like כשרות etc. as will be learnt in the גמרא, one עד is נאמן. This is the issue we are discussing here; is this testimony that the גט was written לשמה, similar to those that require two עדים, or those for which one עד suffices.

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#### בדלי"ת גרסינן –

**The text should read עדיות with a דלי"ת** (referring to testimony), not עריות with a רי"ש. The meaning of עדיות is –

#### כגון עדות דיני ממונות ודיני נפשות –

**For instance the testimony in monetary matters and in capital punishment matters**, in both these instances, two witnesses are required to either compel one to pay, or to punish someone convicted of a capital crime. The גמרא contends that the same standard of two עדים should apply to the testimony in this concern of אין, since it too is a testimony.

גירסא presents an alternate תוספות:

#### ואית דגרס עריות ברי"ש –

**And there are those who render the text עריות with a רי"ש**, meaning testimony concerning (illicit) marriage relationships, in which two witnesses are (also) required<sup>3</sup>.

<sup>1</sup> דברים (שופטים) יט, טו.

<sup>2</sup> שם כד, כא.

<sup>3</sup> Those that prefer this reading of עריות, feel presumably that it is more appropriate to compare the גט שליח והגט,

**ולא נהירא דאם כן מאי משני עד אחד נאמן באיסורין –**

This rendering of the text **does not seem correct, for if this reading would be correct** (that we are comparing this שליה הגט to a שבעררה), **what does the גמרא answer; that ‘a single witness is to be believed in matters of איסור’**, and therefore the שליה is believed as an עד אחד. However the גמרא is not addressing the question –

**מה לו להזכיר איסורין והא ערוה נמי איסור הוא –**

**Why does he mention** that an עד אחד is **באיסוריו**, **for the laws of ערוה are also laws of איסור**, and we require two witnesses, and since this שליה is seemingly testifying concerning a שבעררה דבר which was the contention of the מקשן, we should also require two witnesses<sup>4</sup>.

**והכי הוה ליה למימר לא דמי לשאר עריות והוה ליה ליתן טעם**<sup>5</sup> –

**And this is the way the גמרא should have responded** to the question (that we should require two עדים since it is a שבעררה), that this testimony is **not similar to all other cases of עריות** and the גמרא should continue **and give a reason** why this testimony is different than all other עריות, and one עד is sufficient. Had the גמרא answered in this fashion, it may have been acceptable to be גורס. However since the גמרא merely answers נאמן באיסורין עד אחד, that shows that the original question did not deem to compare this testimony to עריות, but rather to compare it to testimony in general, which under certain circumstances (specifically דיני ממונות ודיני נפשות), requires two עדים. The גמרא answers that since this עדות is only concerning איסור and is not like דיני ממונות and דיני נפשות; therefore for איסור one עד is sufficient<sup>6</sup>.

עריות of גירסא attempts to justify the תוספות

**ומיהו יש לומר דהכי קאמר עד אחד נאמן באיסורין להתיר –**

**However perhaps one can say that this is what the גמרא meant** with its answer **that an ע"א is נאמן** when there is a concern of איסורין – he is believed **to permit** the איסור even by a שבעררה -

**והא דבעי תרי הני מילי לאסור דחד לאו כל כמיניה –**

**And that** which is an accepted fact that by a שבעררה, **two witnesses are**

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where we are seemingly dealing with איש אשת איש issues, to a case of עריות rather than to עדיות, which deal with monetary and capital crime issues.

<sup>4</sup> According to the גמרא's answer is understood; two עדות are required for דיני ממונות ודיני נפשות, but for איסור והיתר עדות is sufficient, and here by גט it is a question of איסור והיתר, whether the גט was written לשמה or not.

<sup>5</sup> It is not suggesting which reason the גמרא should have used.

<sup>6</sup> It is only later that the גמרא claims that since איסורא דאשת איש, so this is also a שבעררה.

**required that was said only** in regards to **place a prohibition**, that is when we require two עדים, because **one witness cannot be believed** to place a prohibition on a person, who up to this point of testimony was not under this prohibition, therefore we require two עדים to create a איסור; however to remove a suspected איסור, the גמרא says, one עד is sufficient<sup>7</sup>.

כל עריות of גירסא presents a question of semantics on this תוספות

**אבל הא דקאמר כל עריות לא אתי שפיר דמאי כל<sup>8</sup> -**

**However, that** which the גמרא says, according to this גירסא, **all עריות, this is not properly worded; for what** is the meaning of the word **כל – all**. Seemingly the word כל would indicate all עריות that are mentioned in the תורה, but this is not correct, for –

**עיקר דבר שבערוה אין פחות משנים זהו באשת איש בגיטין ובקידושין –**

**The main rule that a דבר שבערוה requires no less than two עדים this is (only) concerning** the ערוה of **אשת איש** **concerning גיטין and קידושין**, where we require two עדים that it be a valid גיטין or קידושין

**וזנות דאשת איש לאוסרה על בעלה –**

**And** also establishing **the adultery of a married woman** requires two עדים, who witnessed the adultery in order to **prohibit her from living with her husband**<sup>9</sup>. However concerning all other עריות we do not find the requirement of דבר אין דבר. The question therefore remains why does the גמרא say אכל עריות, the גמרא should have said מידי דהוי אאישות or something similar.

## SUMMARY

There are two גירסאות in our גמרא; whether we are comparing this שליח הגט to גירסא כל (as תוספות prefers), or to כל עריות. The difficulty with the

<sup>7</sup> We would need to say that this distinction that תוס' is making between להתיר where one עד is sufficient, and לאסור where two עדים are required, is only concerning cases where there is no established precedence, i.e. no חזקה that is in opposition to the עדות. For instance if one עד would claim that a certain woman is married – and we have no prior knowledge whether she is or is not married, then the עד is not believed להתיר. If he would claim however, concerning this same woman that she is not married, then he would be believed להתיר. However, if there is a contesting חזקה, obviously one עד is not sufficient to be מתיר a known אשת איש, for instance. In our case here, the שליח, who is saying בפ"נ, is merely stating that the גט was written לשמה. There is no חזקה claiming otherwise, therefore at this point the גמרא maintains according to this גירסא, that one עד is sufficient. Later the גמרא claims that since based on his testimony we are permitting her to get married, there is a חזקה of איסור אשת איש contesting the claim of the שליח, and we should require two עדים.

<sup>8</sup> See 'Thinking it over'.

<sup>9</sup> See מהרש"א הארוך.

<sup>10</sup> One עד is believed to testify, for instance, that this woman is or is not your sister, etc., thereby permitting or prohibiting a marriage. See נח"מ, בל"י.

is, if the גמרא maintained originally that the שליח הגט is comparably with עריות, the proper response should have been that in some way he is different than all עריות, and explain why. The text ע"א נאמן באיסורין is seemingly not appropriate, according to this גירסא, for עריות are also איסורים and (yet) they require two עדים.

However תוספות concedes that the גמרא means to say that even in עריות if the purpose is to be מתיר an איסור then even an ע"א is believed, as opposed to creating an איסור, where two עדים are required.

Nonetheless one problem remains with this גירסא of עריות כל, namely that the word כל (which means literally all types of עריות), is superfluous, for the requirement of two עדים, by עריות is generally limited to the ערוה of איש, and not the remaining עריות.

### **THINKING IT OVER**

Why according to תוספות גירסא is the word כל, proper.<sup>11</sup> Not all עדיות require two, as seen from נאמן באיסורין ע"א?

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<sup>11</sup> See footnote # 8.