

A widow cannot collect from the assets of the orphans without an oath – אין אלמנה נפרעת מנכסי יתומין אלא בשבועה

OVERVIEW

The משנה states that an אלמנה cannot collect her כתובה from the יתומים of her husband, unless she first takes an oath that she received no payment during her husband's lifetime. תוספות will explain the reason and the simplicity of this ruling

תוספות asks:

ואם תאמר והא לא ניתנה כתובה ליגבות מחיים (כתובות פא, א) –

And if you will say; but a כתובה was not intended that it be collected while the husband is alive -

ואמר ריש לקיש בפרק קמא דבבא בתרא (דף ה, א) חזקה אין אדם פורע בתוך זמנו¹ –

And ר"ל ruled in the first פרק of ב"ב; there is a presumption that a person does not pay his debt within the time allotted to him; he pays only when the debt is due -

ואמרינן התם הלכתא כוותיה ואפילו מיתמי ליפרע בלא שבועה² –

And the גמרא stated there; the ruling is like ר"ל and one may even collect from orphans without an oath; why does the אלמנה require an oath to collect from the יתומים?³

תוספות answers:

ויש לומר דהני מילי בעל חוב אבל אלמנה דאית לה בתנאי בית דין⁴ –

And one can say; that when does this apply (that תוך זמנו does not require an oath to collect מיתמי) **only by a creditor** of a loan; **however** regarding a **widow which she is owed because of stipulation of בי"ד** (and not on account of a loan) the rule is different, for we are concerned that the husband -

מתפיס לה צרי אפילו בתוך זמנה כדאשכחן בפרק הנושא (כתובות דף קב, ב) –

Placed in her possession a bundle of money to pay off her כתובה even זמנה, as

¹ In a case where we know that the לווה borrowed money for a specific time, and the מלוה asked for payment during this time, and the לווה claimed that he paid it, the לווה is not believed and is obligated to repay the loan. See תוס' ד"ה ב"ב ה, א, ובה.

² The (general) rule is that a creditor cannot collect from the assets of the יתומים of his debtor unless he first takes an oath that the money is still owed to him (for we are concerned that perhaps the deceased paid him). However if the note is תוך זמנו (it was not due and payable at the time of the debtor's demise), then the creditor may collect from the יתומים without a שבועה, because we are certain that the debt was not paid (before it was due).

³ The debt of the כתובה was not due for collection until after the husband passed on, why is a שבועה necessary?⁴

⁴ The husband does not owe his wife the כתובה money because she lent him money, but rather this is a stipulation of בי"ד that whoever marries a woman owes her a כתובה which includes a sum of money to be paid to her at his death (or if he divorces her). This obligation weighs heavily on the husband that oftentimes he will pay off her כתובה to her while he is alive in order to be freed from this burden and not saddle his heirs with it.

- פרק הנושא⁵ we find in

דחיישינן בבנותיו טפי לצרי⁶ מבנות אשתו⁷ –

That we are more concerned for צרי regarding his daughters than his wife's daughters; the reason for this is -

משום דכיון דאיתנהו בתנאי בית דין אתפסינהו צרי –

Since his daughters are owed because of a תנאי בי"ד, he will deposit צרי by them (as opposed to בנות אשתו where he owes them money because of an agreement but not תנאי בי"ד).

(שבועה a requires תוך זמנו even אלמנה by the conclusion that asks (based on the conclusion תוספות

ואם תאמר הא דפריך בגמרא מאי איריא אלמנה כולי –

And if you will say; regarding this which the גמרא asks, why does the משנה teach the rule by אלמנה, etc. that she cannot collect from the יתומים without a שבועה, when it is a universal law that no creditor can collect from יתומים without a שבועה -

לימא דנקט אלמנה אף על פי שהוא תוך זמנה –

Let the גמרא answer that the משנה mentions אלמנה, because even though it is תוך זמנה where usually one can collect from the יתומים without a שבועה, nevertheless there is a novelty by אלמנה that even though it is תוך זמנה, she cannot collect from the יתומים without a שבועה!

answers: תוספות

ויש לומר דטפי הוה ליה לאשמועינן בדבר שאינו תנאי בית דין –

And one can say; [the גמרא asks that] the משנה should have rather taught us that - תנאי בי"ד regarding something which is not אין נפרעין מנכסי יתומים אלא בשבועה

כגון בבעל חוב לאחר זמנו –

For instance a creditor after the due date; that would have been a greater novelty, than teaching us regarding -

מבאלמנה אף על גב שהיא תוך זמנה –

An אלמנה even though that by her it is זמנה תוך; nevertheless it is not such a great novelty that she requires a שבועה. The reason it is not such a great novelty is -

כיון דאית לה בתנאי בית דין:

⁵ The case there is where a person married a woman who had a daughter and agreed to support the daughter for five years. The husband had other daughters. If the husband dies (within the five years), his (minor) daughters can collect for their sustenance only from בני חורין; נכסים; however his wife's daughter can collect (within the five years) even from משעובדים. This גמרא can also be found in נא, גיטין.

⁶ Therefore his daughters cannot collect from משעובדים since it is possible that he may have paid them while he was alive (even though he was not obligated to pay their future expenses).

⁷ He is obligated to pay for his wife's daughter's sustenance only because he agreed to do it; he is not obligated to so because of a תנאי בי"ד; he is only obligated בתנאי בי"ד to sustain his biological daughters.

Since she is owed the כתובה by a תנאי בי"ד.⁸

SUMMARY

There is a greater possibility of a תנאי בי"ד being paid even תוך זמנו, than a loan being paid (even) לאחר זמנו.

THINKING IT OVER

1. There is seemingly another reason why by כתובה we should not be at all concerned that he paid while he is alive, since there is the distinct possibility that his wife will predecease him and he will not owe her anything. Why does not תוספות mention this?⁹

2. Why is it that a person is more likely to pay off a תנאי בי"ד (even תוך זמנו) than a regular debt (even לאחר זמנו)?¹⁰

3. תוספות explains the question גמרא's that there is a greater חידוש for מאי איריא אלמנה than by אלמנה בתו"ז.¹¹ Would it not be sufficient to say that the חידוש is the same for both; therefore the גמרא asks why is it necessary to mention merely a specific case when the rule applies universally?¹²

⁸ The sense of obligation for paying a תנאי בי"ד (even תוך זמנו) is greater than the sense of obligation for paying a debt (even לאחר זמנו). Therefore there is more chance of צררי אתפסי by an אלמנה than by repaying a debt (לאחר זמנו) by a בע"ה. See 'Thinking it over' # 3.

⁹ See #19 אמ"ה.

¹⁰ See נה"מ.

¹¹ See footnote # 3. תוספות writes 'טפי'.

¹² See # 33 אמ"ה (see also following מאי (תוס' ד"ה מאי).