

אומר לה שתיקותיך יפה מדיבוריך -

He says to her; your silence is better than your talking

Overview

rules in our משנה that if someone divorces his wife because she is an אילונית,¹ he may never take her back as a wife. If she married someone else and bore children, and demands her כתובה payments from her first husband, ר"י rules that the (first) husband says to her מדיבוריך יפה שתיקותיך; meaning that if you persist in claiming the כתובה, I will be מבטל the גט, for I only divorced you because I assumed that you were an אילונית, but now that it turns out that you are not an אילונית, I may be מבטל the גט (and your marriage to the second husband will be null and the children will be ממזרים). This is how he is able to deny her request by making this threat. גמרא reconciles our תוספות with seemingly contradictory גמרות.

asks:

ואם תאמר ואם היא שתקה אנן מי שתקינן -

And if you will say; and if she is quiet, will we be quiet -

דהכי פריך רב פפא בסוף פרק הבא על יבמתו² (יבמות דף סה, א) גבי נשאת לרביעי והיו לה בנים -

For this is what רב פפא asks in the end of פרק הבא על יבמתו regarding the case where she married a fourth husband and bore children to him –

answers:

ויש לומר דהתם נמי לא הוי אלא לעז דהא סתם גירשה ולא התנה כדפרישית הכא³ -

And one can say that there too (in יבמות) we are only concerned for rumor

¹ He is not obligated to pay her כתובה, if she is an אילונית (and he was not aware until after the wedding).

² The ברייתא there states if a woman married two men (consecutively) and bore no children, she should not marry a third person (who is childless) and if she marries him she leaves without a כתובה. The גמרא asked what if she married a fourth person and had children from him, can she go back and claim her כתובה from her third husband (for we now see that she can bear children). The גמרא there answers (similar to here) that we say to her מדיבוריך יפה שתיקותיך; meaning that the third husband may nullify the גט, so therefore release your claim (see 'Overview'). רב פפא challenged this answer saying; 'אי איהי שתקא אנן מי שתקינן! The point ר"פ is making is if the husband has a valid claim that he can nullify the גט by saying, 'I only divorced you because you could not have children, but had I known that you can bear children I would not have divorced you', thereby nullifying the גט, this argument can seemingly be made by us the בי"ד; why does not the בי"ד say that the גט is בטל since he divorced her under a mistaken assumption. The fact that we do not say this, indicates that this claim is meaningless, that he certainly divorced her regardless whether she can or cannot have children, so since he has no threat against her; what is the meaning of שתיקותיך יפה מדיבוריך? The same question that רב פפא asked there, we can ask here. Since we the בי"ד do not claim that the divorce by the first husband to the אילונית is void (even though she had children from the second husband), so how can he threaten the אילונית, since we assume that the divorce is binding (see מהר"ם). See 'Thinking it over'.

³ See ד"ה אי (regarding המוציא משום נדר) that the concern is only for לעז, but not that he can be מבטל the גט.

mongering, but not to nullify the \mathfrak{u} , since he divorced her explicitly without making any stipulations or reasons, as I explained here -

תוספות responds to an anticipated difficulty:⁴

וּפְרִיץ רַב פָּפָא דְהוּה לֵן לְתַקֵּן נְמִי הֵתָם⁵ דְּלֹא יִחְזִיר שְׁלֵא יֵהָא לַעֲזָא כְּדִתְקִין הַכָּא⁶ -

And s'פלא רב question was that that the חכמים should have enacted also there that he cannot take her back in order that there should be no לעז as they instituted here (by אילונית, etc.) -

ומשני אלא ודאי בלאו הכי אפילו לעז ליכא דהשתא הוא דברית ⁷ -

And the גמרא there answers that even without the תקנה of לא יחזיר, there certainly will not be even a לעז, for we will say, that she became healthy now when she married the fourth man

ומהאי טעמא⁸ לא מצי למתבע כתובה -

And for this very same reason she cannot claim her כתובה from the third husband –

אייהי שתקה אנן מי שתקינן explains now why here we do not say

אבל הכא אם היא שתקה אנו נמי שתקינן דליכא לעז כיון דתקון דלא יחזיר -

However here (by the אילונית if she is silent (and does not claim her כתובה), we will also be silent for there is no concern of לעז by an אילונית since the חכמים enacted that לא יחזיר -

וְאִי אֶתִּיא לִמְתַּבֵּעַ כְּתוּבָה מִצִּי אִמֵּר לָהּ אֲדַעְתָּא דִּיהִיבְנָא כְּתוּבָה לֹא גִירֶשְׁתִּיךָ⁹ -

And if the אִלֻּנִית comes to claim her כְּתוּבָה payment, he can tell her, ‘I did not divorce you with the intent a paying you the כְּתוּבָה’ –

⁴ We are now saying that when the גמרא writes שתיקוּתִיךָ יפה מדיבוריךָ, it means that he is threatening her that if she will demand her כתובה, he will be מוציא לעז on the גט. How is it then that ר"פ asks מי שתקינן אנן, אי איהי שתקא אנן, does he mean that the ב"ד should threaten her that they will be מוציא לעז on the גט; this is inconceivable!

⁵ In a case where she was twice married without bearing children the rule should be that if a third person marries her (בדיעבד) he should be told that if he divorces her he can never take her back; in which case there will be no לנצח.

⁶ The *לעז* prevents a *יחזור* *התנה*. The reason he is *מוציא לעז* is in order to take her back; however once he realizes that he cannot take her back (because of this *חכמים* *תקנת*), there is no point in being *מוציא לעז*.

⁷ There is no לָעַן because he cannot say that ‘if I would have known that you can bear children I would not have divorced you’, because we will say that indeed when he divorced her she was incapable of having children (so the שָׁטוּט is valid), and later (when she married the fourth husband) she was healed, and was able to bear children. See footnote # 17.

⁸ She cannot say, 'I deserve a כתובה from my third husband since I can bear children', because we will say that when you were divorced, you were indeed incapable of bearing children (because of some illness or malfunction) and only now were you healed, therefore his divorce was justified and you have no claim for a כתובה payment.

⁹ It is only where she is claiming her כתובה that her first husband says to her מדיבוריך יפה שתיקוּתִיךָ; he threatens her that he will be מוציא לעז. He will say that 'if had known that you will have children and therefore I would need to pay the כתובה I never would have divorced you', so the divorce is void; this is the לעז that he will be מוציא if she pressures him for the כתובה, otherwise (if she is quiet) there will be no לעז since לא יחזיר.

responds to another anticipated difficulty:¹⁰

והתם דאיירי בעקרה דוקא שייך השתא הוא דברית -

For only there where she was (merely) a barren woman (not an אילוניית) can we say - השתא הוא דברית

אבל הכא דאיירי בספק אילוניית כדפירשנו¹¹ לא שייך לומר השתא הוא דברית¹² -

However here in our משנה where we are discussing a ספק אילוניית, as we explained, it is not possible to say - השתא הוא דברית

In summation; firstly in all cases there is only a concern of לעז, but not of הגט (since he divorced סתם). There are two ways in which לעז can be prevented; either by being מתקן that לא (this is applicable in the cases of אילוניית, etc. where the סברא of דברית is not applicable), or by the סברא of דברית (which is applicable by the four marriages), in which case there is no need to make a תקנה of לעז.

responds to an additional anticipated difficulty:

ואפילו לרבנן דלא חיישי הכא לקלוקלא פריך התם שפיר אנן מי שתקינן¹³ -

And even according to the רבנן of our משנה who are not concerned for a problem (they maintain יחזיר and are not concerned for לעז), nevertheless the גמרא there in יבמות, correctly asks, אנן מי שתקינן -

responds:

דמודו רבנן התם דמשום דאין לה בנים גירשה שכבר נשאת לשנים ולא היו לה בנים¹⁴ -

There the רבנן admit that there is a concern of לעז, since he divorced her because of no children, for she was already married to two people and she had no children -

asks:

¹⁰ In יבמות we were not יחזיר because we were not concerned for לעז, since we can say דברית (see footnote # 7), so here too by אילוניית why was there a תקנה of לעז, let us say here too דברית?!

¹¹ See previous תוס' ד"ה המוציא

¹² If she was actually an אילוניית she can never be healed (see footnote # 11), and if she was not an אילוניית, why should we say דברית הוא השתא; we assume she was always healthy, and therefore there will be לעז.

¹³ לא לא תקנה made that when he asked מי שתקינן ר"פ explained previously that ר"פ (as a תקנה was made by אילוניית according to [ר"י]). However the רבנן maintain by אילוניית (so there will be no לעז). (for they are not concerned), so what is ר"פ asking that there in יבמות there should be a תקנה of לעז; why should there be a תקנה there (by ד' נשים) more than here (by אילוניית), according to the רבנן.

¹⁴ In our משנה where he is divorcing her because of a ספק אילוניית (see previously) we assume that he is divorcing her with finality, whether she turns out to be an אילוניית or not, therefore there will be no לעז; however there where she married twice without any children and then she married this third husband and bore him no children, he is divorcing her because he is sure that she cannot bear children. However if it turns out that she can have children, he will be מוציא לעז and say if I knew you can have children I would never divorce you. [This all is in the הו"א before we say דברית הוא השתא; in which case there is no לעז.]

ואם תאמר בסוף פרק קמא דנדה (דף יב, ב) גבי אשה שאין לה וסת¹⁵ פריך פשיטא דלא יחזיר -
And if you will say; we learnt in a ברייתא in the end of the first פרק of נדה, מסכת נדה, regarding a woman who has no וסת, that he needs to divorce her and never take her back; the גמרא there asked; 'it is obvious that לא יחזיר'; why does the ברייתא need to teach it to us -

ומשני לא צריכא דהדר איתקן מהו דתימא ליהדרה -
And the גמרא answered, it was necessary to teach us this rule even in a case where, she improved and she now has a וסת, I would think perhaps he may take her back -

קא משמע לן זימנין דאזלה ומינסבה כולי¹⁶ -
Therefore the ברייתא teaches us that he may not, for sometimes she may go and marry, etc. This concludes the citing of the גמרא asks

ואמאי לא אמרינן התם השתא הוא דברית -
But why do we not say there (as we said in יבמות) that השתא הוא דברית; in which case there is no לעז?!?

answers: תוספות

ויש לומר דהתם כיון שנתרפאת הרי היה מועיל לה סם רפואה ולהכי מצי מקלקל לה -
And one can say that there (by the וסת) since she was healed, this shows that a medicine can cure her (to give her a וסת), therefore he can ruin her -
דאומר אילו הייתי יודע שיש רפואה לזו הייתי מבקש לה סם לרפואה:
For he will say, 'if I would have known that this (problem) can be healed I would have found for her this medicine to heal her', but the same cannot be said for the case in יבמות.¹⁷

Summary

Where we can apply the logic of דברית הוא השתא (in יבמות) we do not make the תקנה מתקן לא (וסת and אילונית by) סברא does not apply (by) however where that לא יחזיר; לעז to prevent יחזיר. There may be a greater concern for לעז in יבמות than by אילונית.

Thinking it over

¹⁵ A וסת means a set time (or a set trigger) for the onset of her menstrual cycle.

¹⁶ By this second husband she had a וסת, we are concerned that the first husband would say, 'had I known this, I would never have divorced her, etc.', (as we said here in similar cases), ונמצא גט בטל ובניה ממזרים.

¹⁷ See וי"ל דהכא בקל ע"י סממנים תחזיר לוסתה ואיכא לעז טפי ולא דמי לעקרה דאין לה רפואה בקל. תוס' ד"ה אילו who writes; לבא לידי בנים ומשמיא הוא דמסו לה. There is seemingly no easy cure for a barren woman; we can only say דברית הוא השתא that they healed her now מן השמים. Therefore by וסת he can claim, 'had I known of this medicine I certainly would not have divorced her', however by the childless woman he cannot claim that he would have done anything, because there is nothing basically that people can do; it is up to the שמים and one does not depend on miracles. See נחלת משה.

איהי regarding יבמות in גמרא to אילונית of משנה from our asks his question תוספות
18. לא שתקה אנן מי שתקינן. Seemingly תוספות could have asked the same question
(also) on the previous משנה of נדר ומשום ש"ר ומשום נדר. Why did תוספות
only ask his question on our משנה?!¹⁹

¹⁸ See footnote # 2.

¹⁹ See מהר"ם.