

חזקה אין אדם טורח כולי – It is presumed; a person does not toil, etc.

OVERVIEW

explained the reason the husband is believed by טענת בתולים is because of the חזקה that אין אדם טורח בסעודה ומפסידה. This means that by claiming this טענה, he will lose his wife and would have wasted the entire expense of the wedding. Therefore if it is not true that she is not a בתולה he would not make a claim to hurt himself.¹ question whether indeed in all cases of טענת בתולים does the husband harm himself.

asks:

תימה תינח באשת כהן או בפחותה מג' דמיתסרא עליה² הילכך כיון דמפסידה נאמן -
It is astounding! This line of reasoning is acceptable in a case where she is the wife of a כהן (the one claiming טענת בתולים is a כהן) or her father was מקדש her when she was less than three years old, in which cases she is forbidden to him, therefore it makes sense to say that since he loses her, he is believed (with his טענת בתולים) -

mentions an additional situation where he loses his wife if he claims טענת בתולים:

ולמאן דאמר נמי לקמן³ כנסה בחזקת בתולה ונמצאת בעולה אין לה כתובה כלל נחא -
And also according to the one who maintains later that if he married her with the assumption that she is a בתולה and she was found to be a בעולה, she receives no כתובה at all, it is also understood -

דהשתא נמי מפסידה שהרי מקח טעות הוא⁴ -
For in this case as well he loses her, since it is a mistaken deal -

אבל למאן דאמר יש לה כתובה מנה לא מפסיד מידי -
However according to the one who maintains that by כנסה בחזקת בתולה ונמצאת בעולה, she receives a כתובה of a מנה, the husband is not losing anything with his טענת בתולים -

אלא שבא להפסידה מכתובתה מנה אבל הסעודה לא מפסיד⁵ ואמאי מהימן -

¹ Why would he claim that she is not a בתולה (if it is not true); if he has remorse and does not want to marry her, he could have divorced her during אירוסין and she would not receive a כתובה?!

² See the גמרא previously (ט,א) that by an אשת כהן or ג' פחותה מבת ג', if he claims טענת בתולים she is forbidden to him.

³ יא,ב.

⁴ The reason this מ"ד maintains that כלל כתובה אין לה כתובה כלל is because he maintains that if she is not a בתולה then the whole marriage is under false pretenses completely and he can annul the marriage (by divorcing her) and is not obligated to pay her anything. See 'Thinking it over' # 1.

⁵ They remain married (for it is not considered a טעות מקח) and (if he is believed) he can reduce her כתובה to a מנה.

But rather his intent is to make her lose a מנה from her כתובה, but he does not lose the expense of the wedding feast, so why should he be believed?!

concludes: תוספות

ונראה דלא⁶ מהימן:

And it is the view of תוספות that he is not believed with טענת בתולים according to the קבלה אביה קדושין or אשת כהן ⁷, unless she was an כנסה בחזקת בתולה ונמצאת בעולה כתובתה מנה מ"ד פחות מבת ג'.

SUMMARY

The חזקה of א"א טורח בסעודה וכו' is effective only according to the מ"ד that כנסה יש לה מנה it is effective only when she is אסורה עליו however according to the מ"ד that בחזקת בתולה ונמצאת בעולה מקח טעות is effective only according to the מ"ד that אסורה עליו.

THINKING IT OVER

1. If we maintain כנסה בחזק בתולה וכו' מקה טעות,⁸ does that mean that the marriage is completely annulled (and no גט is required) and if he wishes to remain with her she requires new קדושין, or not?⁹

2. According to the תוה"ר (in footnote # 6) there is seemingly no difference whether we maintain כנסה בחזקת בתולה ונמצאת בעולה אין לה כתובה or כתובתה מנה, for in either case if he wishes to divorce her immediately he is believed, but if he agrees to remain married to her he is not believed (and her מאתיים is כתובה); why then does 'toss differentiate between the two?!¹⁰

⁶ See הרא"ש who states that if he intends to divorce her immediately (because she is not a בתולה, he is believed and her כתובה is only a מנה (since he is losing her). However if he agrees to stay married but wishes to reduce her כתובה to a מנה he is not believed because he is not losing anything; he merely wants to make her lose a מנה. See (however) מהרש"א (who seems to disagree). See 'Thinking it over' # 2.

⁷ It will be necessary to say that when this מ"ד states that כנסה בחזקת בתולה ונמצאת בעולה כתובתה מנה is in a case where she admits (after the נישואין) that she was not a בתולה, or עדים came and testified that she was מזונה before the אירוסין (or he intends to divorce her immediately [see footnote # 6]), etc.

⁸ See footnote # 4.

⁹ See אילת אהבים סי' כז and ב"ש אבהע"ז סי' ס"ח סקכ"ד.

¹⁰ See 'סוב"ד אות י'.