

And he says it is not so but rather, etc.

והוא אומר לא כי כולי -

OVERVIEW

The משנה prefaces the claim of the husband (עד שלא ארסתיך נאנסת) with the phrase "לא כי וכו'". This phrase denotes (as the גמרא states elsewhere) sureness on behalf of the claimant. In our case the husband is not sure at all when the אונס took place. The phrase לא כי וכו' seems inappropriate here. תוספות will clarify this difficulty.

אף על גב דבסוף המניח (ב"ק דף לה,ב ושם) דייק מדקתני לא כי דמיירי בברי -

Even though that in the end of פרק המניח **infers from** the fact **that the** גמרא **states 'לא כי' (it is not so, but rather, etc) that we are discussing** a case where the one who states 'לא כי' **is certain** of his claim; he is not arguing that *perhaps* it is different than the plaintiff alleges, but rather the emphatic phrase לא כי denotes that he is certain of his claim. This poses a problem, for in our משנה, where the husband uses the phrase לא כי, he is merely claiming that *perhaps* the woman was נאנס before the קידושין. Our משנה seems to contradict the inference of the גמרא in המניח, that the term 'לא כי' is used only by a טענת ברי.

תוספות responds, that there is no difficulty, for -

הכא דליכא למיטעי² קתני לא כי³ אף על גב דאיירי בשמא:

Here in our משנה **where there is no possibility to mistake** the term 'לא כי' to mean a טענת ברי; for everyone understands that the husband does not know that the אונס took place before the קידושין **the משנה** feels free to use the expression 'לא כי' **even though we are obviously discussing** a case where the claim of the husband is a 'maybe' claim. No one will mistakenly assume that it is a ברי claim in our משנה. It is only where we are not sure whether the claim is a ברי or a שמא that the תנא of the משנה is careful not to use the term 'לא כי', unless he wants to convey to us that we are discussing a טענת ברי.

SUMMARY

The משנה uses the phrase לא כי וכו' to denote a טענת ברי. This rule is valid only when it is not clear from the case itself, whether it is a טענת ברי or not. In cases where it cannot be a טענת ברי, the משנה may use the phrase of לא כי.

¹ The משנה there is discussing a case where one ox gored another. The מזיק claimed that the ox that gored was a שור; while the נזיק responds הויק מועד היק לא כי אלא מועד היק. The גמרא infers from the phrase לא כי אלא, that the נזיק has a טענת ברי.

² The husband certainly did not know of her status as a בעולה before the נישואין; otherwise he would have brought it up, or by his lack of mentioning it, he is accepting her as a בעולה and cannot have any claim.

³ See 'Thinking it over'.

THINKING IT OVER

Why indeed does the משנה choose to use the phrase לא כי,⁴ even though it is a טענת שמא?

⁴ See footnote # 3.