

Since most women get married as בתולות, what of it that there are no עדים!

OVERVIEW

There is a מחלוקת between רב ושמאל¹ whether we can decide monetary rulings on the basis of majority (as is the case in other areas of הלכה).² Our גמרא contends that in our משנה we should follow the רוב, regardless if there are עדים or not. תוספות will qualify this challenge.

לרב פריך דאית ליה הולכין בממון אחר הרוב:

The contention of the גמרא (that the woman should collect מאתיים, on account of this רוב) is (only) **according to רב for רב maintains we follow the majority concerning monetary issues**. Therefore since רוב נשים בתולות נישאות, we are to assume that this woman, as well, was a בתולה when she married and she deserves a כתובה of מאתיים. According to the other opinion, however, that אין הולכין בממון אחר הרוב, then there is no difficulty. The fact that רוב נשים בתולות נישאות, is not sufficiently effective to extract the monies from the husband. They maintain that a רוב does not have the power to be מוציא ממון.³

SUMMARY

The question of the גמרא that we should follow the רוב is only according to הולכין בממון אחר הרוב who maintains רב.

THINKING IT OVER

Seemingly it is possible to differentiate between the case of רב (by the ox)⁴ and our case. There, the seller (the מוחזק) cannot claim with certainty that the buyer bought it for meat. Therefore the רוב is sufficient to be מוציא ממון. Here however the husband (the מוחזק) claims with certainty that she was an אלמנה. Perhaps in such a case even רב admits that אחר הרוב.

¹ ב"ק מו, א. The case there entails the sale of an ox that turned out to be a goring ox. The buyer claimed that the ox is useless to him since he bought it for plowing; the seller claimed that the ox was sold for its meat. רב maintains that since most oxen are bought for plowing, we follow the רוב and the sale is invalid. שמאל maintains that the sale is valid since עיי"ש. See 'Thinking it over'.

² The reason why ממון may be different is because the רוב is opposed by a מוחזק.

³ The תוספות (on the margin) disagrees with תוספות. The following is a (partial) translation: 'It is possible that even according to שמאל, we should follow the רוב, rather than the חזקת ממון, since the חזקת הגוף (that she was born a בתולה) supports the רוב (they both indicate that she was married as a בתולה). עיי"ש.'

⁴ See footnote # 1.