

מאי איבדה איבדה באור –

What is meant by ‘she lost it’? She lost it in a fire.

OVERVIEW

The גמרא says that according to רב פפא who maintains that אין כותבין שובר, the reason that the husband must pay without receiving the כתובה in return, is because it is a מקום שאין כותבין כתובה and the כתובה which the husband wrote especially for her, was burnt.

Tosfos asks a question:

ואם תאמר¹ אם כן אפילו במקום שכותבין הוה ליה לאוקמי -

And if you will say, if this is so; if the כתובה was burnt the גמרא could have established that the ברייתא was even discussing a place where they write
– כתובות

ומאי דוחקיה לאוקמי במקום שאין כותבין -

And what forced the גמרא to establish that the ברייתא is only discussing a place where they do not write כתובות.

answers:

ואומר רבינו תם דבמקום שכותבין ונשרפה איכא למיחש שכתב לה כתובה אחרת -

And the ר"ת says that it is necessary to maintain that we are discussing a מקום, **for in a place where כתובות are written**, then even **if it was burnt, there is the concern that he wrote her another כתובה**; the reason for this concern is –

דאסור להשהותה בלא כתובה² -

For it is forbidden to have the woman linger and be married **without a כתובה**. Therefore since there is a strong possibility that he renewed the כתובה, the husband should not be required to pay if he claims that he wrote a new כתובה and wants it returned before he pays. However if it is כתובין כתובה, and we know that the כתובה was burnt, then there is no concern. The husband cannot claim that he wrote a new

¹ The גמרא initially answered that we are discussing a מקום שאין כותבין כתובה. This answer was challenged since it says in the ברייתא that איבדה כתובתה. The גמרא responded that really it is כתובין כתובה; however he wrote a כתובה for her. The גמרא asked that nonetheless she can collect twice, to which the גמרא responded that it was באור. It seems that the גמרא still maintains that we are discussing a מקום שאין כותבין כתובה, for otherwise the גמרא would have used the term איבדה באור, מאי איבדה איבדה באור or something similar.

² See that, ב"ק פט, א, ² אסור לו לאדם שישא את אשתו אפילו שעה אחת בלא כתובה וכו' כדי שלא תהא קלה בעיניו להוציאה,

³. מקום שאין כותבין כתובה, since this is a כתובה.

offers another option: תוספות

מיהו הוה מצי לאוקמה במקום שכותבין -

However, the גמרא **could have established** that we are discussing a **place where כתובות are written**. The difficulty mentioned above can be resolved if we establish –

ונשרפה אחר הגירושין דליכא למיחש שמא כתב לה אחרת -

that the כתובה was burnt after the divorce; in which case **there is no concern that perhaps he wrote another** כתובה for her; there is no halachic need for a כתובה, and he certainly is not interested in helping her after the divorce. If there is no other כתובה, then it is understood that he is required to pay, since she has עדים that the כתובה was burnt after the גירושין.

explains why indeed the גמרא did not offer this solution: תוספות

אלא שנראה לו דוחק:

However, it seemed to the גמרא that this is an **unlikely** solution. It is not realistic to narrow the focus of the ברייתא that it is (only) discussing a case where the כתובה was burnt after the divorce. The גמרא would rather be discussing a case where it was burnt (even) during the marriage, even if it means that we will be discussing a כתובין כתובה.

SUMMARY

In a כתובה, even if the woman has עדים that her כתובה was burnt, nevertheless the husband is believed if he claims that he rewrote the כתובה. He does not have to pay her unless she returns the new כתובה, according to the מ"ד that אין כותבין שובר (unless she has עדים that the original כתובה was burnt after the divorce). However, then he is not believed that he rewrote the כתובה and is obligated to pay her, even if she does not return the כתובה.

THINKING IT OVER

What is the דין in a כתובין כתובה, if the husband claims that he wrote her a כתובה, according to the מ"ד that אין כותבין שובר. Is the husband believed that he wrote a כתובה, and not obligated to pay unless she returns it to him, or is the husband not believed?

³ See who adds that granted that he changed the custom once by writing a כתובה, but if it was destroyed we are not concerned that he wrote another one. תוספות הרא"ש