

איתנוסי הוא דאיתניסו – They accidentally encountered a mishap

OVERVIEW

The גמרא asked why it is necessary to pass an uncovered barrel in front of the אלמנה. The גמרא answered that we are concerned that eventually (by the time she is divorced or widowed again from this husband), the אלמנה may seize two hundred זוז (the כתובה of a בתולה) from her husband's estate, and claim that she was a בתולה. She will explain that there was no חבית סתומה passed before her, since איתנוסי הוא דאיתניסו; it was due to unforeseen circumstances. If this will occur she will be believed and the husband will suffer a loss. Therefore a חבית פתוחה is passed before her, so there will be testimony that she is an אלמנה. Our תוספות explores this future concern that she may be תופס מאתיים (if no חבית פתוחה is passed before her). It is a concern, according to תוספות, only in a limited situation.

נראה דמיירי כגון שיש לה מגו דאי בעי אמרה אין בידי כלום -

It seems that the גמרא is discussing a future case, where the concern is in a situation where **for instance she has a מגו that she could have claimed, 'I possess nothing'**; I did not take any money at all. There is no proof that she seized her כתובה payment. It is only in that case that there is a concern, and therefore the need to pass before her an open barrel.¹ The husband claims that she took מאתיים, even though since she was an אלמנה and is only owed מאה. She admits to taking מאתיים, but claims that she was a בתולה. She explains that the reason there was no חבית is because איתנוסי. We would have to believe her that she was a בתולה (and allow her to keep the מאתיים), since she could have claimed, 'I took nothing and you owe me my כתובה' (at least מאה).² In order to prevent this fraud, we pass a חבית פתוחה before her so there will be witnesses that she is an אלמנה. -

דאי לאו הכי אמאי מהימנא -

for if it is not like this; but we are concerned about any situation, even where we know that she has the כתובה money in her possession, then there is no reason to pass the חבית פתוחה, for **why should she be believed** that she was a בתולה. There was no sealed barrel passed before her. It is assumed that she is a בעולה. It is up to her to prove that איתנוסי הוא דאיתניסו; seizing the money gives her no additional right.

¹ When she marries as an אלמנה we are concerned that she may grab מאתיים without any one knowing about it, and she will illegally take more than she is due. Therefore the חבית פתוחה is passed before her.

² The reason she has to claim איתניסו (even though she has a מגו), is because if there is no claim of איתנוסי, then the מגו would not be effective, for it would be a סהדי במקום אגן סהדי, since no חבית סתומה was passed before her, we assume her to be an אלמנה. The claim of איתנוסי removes the אגן סהדי.

תוספות has a question:

ואם תאמר בחילוק קליות דאמר לקמן³ דארמלתא ליה לה כיסני -

And if you will say, that the גמרא states later concerning the distribution of dried grains; that by a widow, קליות are not distributed; that is the sign the she is an אלמנה and not a בתולה. The question is –

אמאי לא חיישינן דלמא תפסא כולי כדאמר הכא -

Why are we not concerned that perhaps she will seize, etc. two hundred זוזים as the גמרא is concerned here that she will claim they did not pass the barrel because of an אונס. In the places where קליות is the proof of a בתולה, we should also institute that by an אלמנה something else of note should be done to indicate that she is an אלמנה. Otherwise she may be זוז and she will claim that the reason there was no קליות is because איתנוסי וכו'.

תוספות answers:

ואומר רבינו תם דדוקא בדבר שיש טורח כגון חבית דהכא יכולה לומר דאיתנוסי -

And the ר"ת says that the claim of איתנוסי is specifically limited to something which requires effort to do, for instance the passing of the sealed barrel mentioned here; bringing and passing sealed barrels of wine before the כלה requires an effort. Therefore it is only in these cases, that **she can claim איתנוסי;** it was too difficult for them to arrange to have the barrels brought, etc. –

אבל קליות ושאר דברים שהם קלים לעשות לא:

However, concerning קליות or other customs, which are easy to accomplish, then **she is not** believed to claim איתנוסי, even if she was תופס. It is too far fetched to imagine that they could not distribute קליות, etc. Therefore since she cannot claim איתנוסי, even if she were to grab and have a מיגו, she would not be believed, for it is (like) a במקום עדים.

SUMMARY

A woman who admits that she seized מאתיים is believed to claim איתנוסי, even if a חבית סתומה was not passed before her. She has a מיגו of כלום בידי כולם, and can excuse the lack of חבית by claiming איתנוסי. [She cannot excuse however the lack of easily realized customs, even with a מיגו.] When it was known that she seized money, however, then the claim of איתנוסי is ineffective.

THINKING IT OVER

Why does the woman need to claim איתנוסי in order to explain the lack of חבית, she can simply claim there was a חבית, but no one remembers?!⁴

³ דף יז, ב.

⁴ See פנ"י and ס' אות ס'.