

## הממאנת אין לה לא קנס - One who refuses does not receive *K'nass*

### Overview

A minor girl (under the age of twelve), who has no father and was married off by other family members, can dissolve the marriage by merely stating that she refuses to be with her husband. This refusal is called **מיאון**. The **ברייתא** teaches us that a **קנס** is received if she was forced or seduced. There is a dispute between **רש"י** and **תוספות** as to what the **ברייתא** means.

פירש בקונטרס<sup>1</sup> לפי שהיא בחזקת בעולה<sup>2</sup> -

**רש"י** explained that the reason there is no **קנס** for a **ממאנת**, for she is in the presumptive status of a **בעולה**, and the **קנס** is only for a **בתולה** -

פרש"י asks on תוספות:

וקשה לרבינו יצחק דאם כן היכי דייק לקמן<sup>3</sup> הא קטנה בעלמא אית לה -

And the **ר"י** has a difficulty with פרש"י, for if indeed it is so (that someone [else] was מאנס (or מפתה) her after the **מיאון**), how does the **גמרא** later infer from this **ברייתא**, 'but a **regular** קטנה receives קנס', how can we make such an inference -

דלמא הכי קאמר הממאנת אין לה קנס אם בא עליה כשהיא נערה<sup>4</sup> הא נערה בעלמא אית לה -

Perhaps this is what the **ברייתא** means when saying that the **ממאנת** has no **קנס**, in a case where he came upon the **ממאנת** later, when she was a **נערה**, she does not receive **קנס** since she is **בעולה**. The inference would be, 'but a **regular** נערה (not one who was previously a **ממאנת**) receives קנס -

פרש"י anticipates and rejects another possible difficulty with תוספות:

ומיהו אין להקשות אמאי נקט ממאנת הוי ליה למינקט כל אשה שניסת<sup>5</sup> ונתגרשה -

<sup>1</sup> בד"ה אין.

<sup>2</sup> A **בעולה** is a woman who is no longer a **בתולה** (a virgin). **רש"י** is interpreting the **ברייתא** in the case where the **קטנה** was מאנס (or מפתה) her after the **מיאון**. We assume that this **קטנה** had marital relations with her husband during their marriage, before the **מיאון**, therefore she is a **בעולה** (not a **בתולה**) and not eligible for **קנס**.

<sup>3</sup> **רש"י** א. ל. **קטנה** is by necessity a **קטנה**. The **גמרא** infers that the **ממאנת** (who is a **קטנה**) has no **קנס**, but a 'regular' **קטנה** (who is not a **ממאנת**) does receive **קנס** (even though she is not a **נערה** [which is written in the פסוק]).

<sup>4</sup> Why should we assume that when the **ברייתא** states אין לה קנס, it means that he was מאנס her when she was a **קטנה**, perhaps the **ברייתא** meant that it took place later when she was a **נערה**, so there is no proof that a **קטנה** receives **קנס**.

<sup>5</sup> This is referring to a woman who had נישואין also, after her (אירוסין). Once a woman had נישואין, we assume her to be a **בעולה** (and she will not receive **קנס** if she was נאנס after her divorce). According to **רש"י** that the reason **ממאנת** אין לה קנס is because since she was married (נישואה), she is **בעולה**, so why limit it to a **ממאנת**, the **ברייתא** should have stated that any woman who was a נישואה is considered a **בעולה** and does not receive **קנס**. This is the

However, we cannot ask, why does the ברייתא mention that a ממאנת has no קנס; the ברייתא should have stated, 'any woman who was married and divorced has no קנס' –

תוספות responds that this is no question:

דהא איכא למאן דאמר לקמן (דף לח, א) דאפילו אם נתגרשה אין לה קנס<sup>6</sup> -

For later there is one opinion who maintains that even if there was only אירוסין and she was divorced, she still does not receive קנס.

תוספות offers his interpretation:

ונראה לרבינו יצחק דהכי פירושו אין לה לא קנס ולא פיתוי -

And it appears to the ר"י that this is the explanation of 'the ממאנת does not receive neither קנס nor פיתוי'; it is a case -

אם אנסה בעלה או פיתה אותה כשהיתה תחתיו קודם מיאון -

Where the husband forced her or seduced her when she was married to him before the מיאון, so -

אף על גב דכשמיאנה איגלאי מילתא שלא היתה אשתו<sup>7</sup> -

Even though when she was ממאנת, it was revealed retroactively that she was not his wife when he was מאנס or מפתה her, nevertheless she does not receive the קנס -

והשתא דייק שפיר לקמן הא קטנה בעלמא אית לה -

So now that the case of the ממאנת is where he was מאנס or מפתה before the מיאון, when she was still a קטנה, the ממאנת later rightfully infers from this ruling of the גמרא, that by a 'regular' קטנה, she receives the קנס if someone was מאנס or מפתה her –

תוספות asks:

אבל קשה לרבינו יצחק מהא דקאמר בסמוך<sup>8</sup> –

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question we seemingly could have asked on פרש"י.

<sup>6</sup> See מהרש"א. We could say that the תנא of this ברייתא also maintains that נתגרשה מן האירוסין has no קנס. He derives it from the אשר לא אורשה (דברים [תצא] כב, כח) in מאנס and (שמות [משפטים] כב, טו) מפתה both by פסוקים indicating that (even) if there was (just) אירוסין, there is no קנס. However, this would be considered a גזירת הכתוב, so if the ברייתא would state, נתגרשה מן האירוסין אין לה קנס, we would say that (since it is a גזירת הכתוב) it would not apply to a ממאנת, who, מה"ת, is not considered married at all. Therefore, the ברייתא teaches us that by a ממאנת there is (also) no קנס (not because of a פסוק, but rather) because she is בעולה.

<sup>7</sup> בחזקת בעולה accomplishes that the marriage is completely annulled retroactively; it is as if they were never married. Seemingly she should receive the קנס, since now we know that when he was מאנס or מפתה her, she was not his wife (for she made מיאון later), nevertheless she does not receive קנס since when he was מאנס or מפתה her, she was his wife.

<sup>8</sup> The גמרא there had a difficulty how to establish the ברייתא of קנס אין לה קנס. The ממאנת רבנן maintain that a קטנה receives קנס, while ר"מ maintains a קטנה does not receive קנס. The ברייתא cannot follow the view of ר"מ since we can infer from קנס אין לה קנס that a 'regular' קטנה does receive קנס. It cannot follow the רבנן, since the ברייתא states that קנס אין לה קנס. The גמרא attempted to answer that the ברייתא follows ר"מ who agrees with ר"י that a נערה can also be קנס. The ברייתא is discussing a ממאנת, that she does not receive קנס, but a regular נערה receives קנס.

However, the ר"י has a difficulty from this which the גמרא states shortly -

וכי תימא כולה רבי מאיר היא ובממאנת סבר לה כרבי יהודה -

‘And if you will say the entire ברייתא is according to ר"מ, and by ממאנת he (ר"מ) agrees with ר"י -

והשתא<sup>9</sup> כיון דאירי שבא עליה בעלה כשהיא נערה<sup>10</sup> שוב אינה יכולה למאן<sup>11</sup> -

But now since the case of ממאנת is where her husband was with her when she was a נערה, she can no longer be ממאן -

דמודה רבי יהודה כשבעל כדאמר בפרק בא סימן (נדה נב, א. ושם) -

For, as the גמרא states in פרק בא סימן that ר"י admits that if he had relations with her when she was a נערה that she can no longer be ממאן -

answers: תוספות

ותירץ רבינו יצחק דמירי כשפירש בהדיא שאינו בועל לשם קידושין<sup>12</sup> -

And the ר"י answered that it is in a case where he explicitly stated that he is not being בועל for the sake of קידושין -

ועוד<sup>13</sup> דפיתוי ואונס לאו לשם קידושין הוא דבההיא לא מודה רבי יהודה:

And additionally, פיתוי and אונס are not for the sake of קידושין, so in that case, ר"י does not admit that she cannot be ממאן when she is a נערה, but rather she can be ממאן.

## Summary

According to רש"י the פיתוי ואונס took place after the מיאון, while according to תוספות it took place before the מיאון.

## Thinking it over

1. Why did the גמרא (later) assume that the פשט of the ברייתא is like תוספות (so we can infer that קנס ליה קנס, but not like רש"י (so we cannot infer that קנס ליה קנס)?<sup>14</sup>

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<sup>9</sup> According to רש"י that the אונס ופיתוי took place after the מיאון, there is no difficulty; she was ממאן when she was a נערה, and someone was מאנס ומפתה her.

<sup>10</sup> According to תוספות the rule of קנס לה קנס, is where he was מאנס ומפתה before the מיאון. We will have to say (מיאון) before נערה (before נערה) that he was מאנס ומפתה when she was a נערה (מיאון) that he was ממאן (מיאון) that a נערה can be ממאן (מיאון) that ר"י agrees with ר"מ (מיאון) that he was מאנס ומפתה while she was a נערה, for then even a 'regular' קנסה will not receive קנס (according to ר"מ), therefore we must say that we are discussing a case where he was מאנס ומפתה when she was a נערה, before מיאון.]

<sup>11</sup> Once she is a נערה, she is a גדולה and the ביאה makes her "ת"ת מקודשת to her husband, and she can no longer be ממאן.

<sup>12</sup> Therefore, she is still not מקודשת to him "ת"ת, and she can still be ממאן (according to ר"י).

<sup>13</sup> The 'ועוד' maintains that it is not necessary to establish this in a case where he explicitly stated that the ביאה was not לשם קידושין, but rather since the ביאה was in a manner of אונס ופיתוי, it is self-understood that it was not לשם קידושין, without him needing to say it explicitly. See 'Thinking it over'.

<sup>14</sup> See footnote # 4.

2. תוספות writes that by אונס ופיתוי it is לאו לשם קידושין.<sup>15</sup> This may be self-evident by אונס, however why should we assume that by פיתוי it was לאו לשם קידושין?<sup>16</sup>

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<sup>15</sup> See footnote # 13.

<sup>16</sup> שיטה מקובצת.