

**טעמא מאי תקינו לה רבנן כתובה שלא תהא קלה בעיניו להוציאה -**

**What is the reason the Rabbis instituted a כתובה for her, in order that it should not be easy in his eyes to divorce her**

### **Overview**

The רבנן maintain that the מאנס is not required to pay her a כתובה if she wishes to leave the marriage, and similarly if he dies, she does not receive a כתובה payment, for the money she received for the קנס is in place of the כתובה payment. The reason there is no כתובה is because the reason why a כתובה was instituted is in order for the husband not to divorce his wife on a whim (for he will have to pay the כתובה), however here since he cannot divorce her in any case, there is no need for a כתובה.

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תוספות responds to an anticipated difficulty:

**אף על גב דבתולה יש לה כתובה מן התורה<sup>2</sup> זאת בעולה היא<sup>3</sup> -**

**Even though that a virgin is entitled to a כתובה by תורה law (and was not instituted by the רבנן), nevertheless this woman is a בעולה and not a בתולה, so there is no כתובה מה"ת, only on account of the תקנת חכמים and that reason does not apply here –**

תוספות asks:

**ומיהו תימה דקא פסיק ותני דבכל ענין אין לה כתובה -**

**However it is astounding; for the ברייתא states unequivocally that she has no כתובה in any situation -**

**אפילו בא עליה שלא כדרכה<sup>4</sup> ובתולה גמורה היא ויש לה כתובה מן התורה -**

**Even if he had unnatural relations with her, in which case she is still a complete בתולה afterwards, and therefore she is entitled to a כתובה מה"ת –**

- בתולה she still remains a בתולה שלא כדרכה תוספות proves that by

**דהא אם בא עליה שני יש לה קנס<sup>5</sup> ולא הוי טעמא שלא תהא קלה בעיניו להוציאה -**

**For if a second person would have relations with her, there would be a קנס**

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<sup>1</sup> מה"ת is כתובת בתולה that ד"ה אמר there תוס' and in י, א, See previously

<sup>2</sup> שלא (and therefore since the reason [of תק"ח] is (merely) a כתובה the reason for having a גמרא say that [תהא קלה בעיניו להוציאה] does not apply here [for he cannot divorce her anyway], there is no כתובה), when in fact there is a כתובה מה"ת for a בתולה, and therefore in all cases she is entitled to a כתובה (regardless of whether בעיניו להוציאה applies or not).

<sup>3</sup> He was against her will, there was no קידושין, and later when he will marry her she is already a בעולה and is not entitled to a כתובה מה"ת, only מדרבנן.

<sup>4</sup> תוספות מ, א ד"ה יאמרו. קנס אונס ומפתה obligates a שלא כדרכה A

<sup>5</sup> There is a קנס payment by a בתולה only.

payment, for she is considered (still) a בתולה, **and therefore the reason** she is entitled to a כתובה **is not because** **שלא תהא קלה בעיניו להוציאה**, but rather she is entitled to a כתובה מה"ת, so why would the רבנן maintain in this case also that she has no כתובה; why not?! does תוספות not offer an answer.

תוספות asks:

**תימה לרבינו יצחק כיון דטעמא שלא תהא קלה בעיניו להוציאה<sup>6</sup> -**

**The ר"י is astounded, since the reason for having a כתובה is שלא תהא קלה בעיניו להוציאה -**

**אלמנה<sup>7</sup> אמאי תקינו לה רבנן כתובה לא היה להם לתקן אלא לגרושה בלבד -**

**Why did the רבנן institute that an אלמנה should receive a כתובה, they should have only instituted a כתובה for a divorcee only, but not for a widow –**

תוספות answers:

**ואומר רבינו יצחק דמתוך שהוצרכו לתקן בגרושה שלא תהא קלה בעיניו להוציאה -**

**And the ר"י says that since it was necessary to institute a כתובה for a divorcee, in order שלא תהא קלה בעיניו להוציאה -**

**תקינו נמי לאלמנה משום חינא<sup>8</sup> ומיהו לכתחילה לא היו מתקנים משום חינא -**

**The also instituted a כתובה for a widow so she should find grace, however initially they would not have instituted a כתובה for the sake of חינא alone –**

תוספות asks:

**קשה לרבינו שמשון בן אברהם הא דתניא בהחובל (בבא קמא דף פט, (א) [ב] ושם) -**

**- פרק החובל ברייתא taught in רשב"א The וכן היא שחבלה בבעלה לא הפסידה כתובתה<sup>9</sup> -**

**- כתובה And similarly, a woman who wounded her husband does not lose her כתובה -**

**ופריך אמאי תזבין לכתובתה בטובת הנאה<sup>10</sup> ותיתיב ליה בהאי חבלה -**

<sup>6</sup> This question is regarding a woman who was not a בתולה when she married, so the כתובה is only מדרבנן, on account of שלא תהא קלה בעיניו להוציאה.

<sup>7</sup> This is referring to a woman whose husband died, where the rule is that she collects her כתובה from his estate. Why should she receive a כתובה, since the reason for a כתובה is that the husband should not divorce her easily, therefore only a divorcee should receive a כתובה (in order to prevent him from divorcing his wife for no reason; he will be reluctant to divorce her, since it will cost him money), but not one whose husband died. There is no concern here!

<sup>8</sup> See later פד, דא that according to משום ד"ה משום רש"י ד"ה this means that the women will like the men and be willing to marry them, since the women know that they will be left with a כתובה if the husband dies. However the ר"ה in לכתובתה תוס' ד"ה there says that the men will be happy to marry the women (אלמנות) for they will come into the marriage with the כתובה money (from their previous husbands).

<sup>9</sup> We do not deduct from the כתובה payment the amount of damage that she caused him by this wound.

<sup>10</sup> כתובה הנאה means the market value of the כתובה. Let us assume the כתובה is for 200. One may want to buy the כתובה from the woman (so he will receive the כתובה payment if she is divorced or widowed). However he will buy it only at

**And the גמרא asks, why; let her sell (to her husband) the כתובה for the הנאה and she should pay him with this money for this wound which she caused him - ומשני הא מני רבי מאיר היא דאמר -**

**And the גמרא answers, this ברייתא is according to ר"מ, who maintains - אסור לאדם שישהא את אשתו בלא כתובה אפילו שעה אחת<sup>11</sup> -**

**It is forbidden for a man to have his wife by him even for one hour without a כתובה. This concludes the citation from that גמרא. continues - והשתא כיון דטעמא שלא תהא קלה בעיניו להוציאה -**

**But now since the reason for a כתובה is קלה בעיניו להוציאה - שלא תהא קלה בעיניו להוציאה - תזבין כתובתה על מנת שאם תתאלמן אבל אם יגרשנה יהא לה כתובה<sup>12</sup> - She should sell her כתובה (to her husband) with the stipulation that if she is widowed (there will be no כתובה, since she sold it already), however if he divorces her, she will receive the כתובה payment and the sale will be annulled - דהתם לא שייך משום חינא<sup>13</sup> -**

**For in the case there, the reason of חינא is not applicable –**

answers: תוספות

**ואומר רבינו יצחק כיון דבשאר נשים שייך חינא אף על גב דבזאת לא שייך - And the ר"י says, since that by other woman, חינא is applicable, so therefore even though that by this woman it is not applicable, nevertheless - לא פלוג רבנן ואסור להשהותה בלא כתובה לרבי מאיר - The רבנן did not differentiate, and it is forbidden to live with her without a כתובה according to ר"מ –**

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a discount from its face value of 200, since we are not sure that the woman will even receive it, for if she dies before the husband, the woman (and the purchaser of the כתובה) will receive nothing. Therefore the price of purchasing this כתובה will be (considerably) less than the face value of 200.

<sup>11</sup> Therefore she cannot sell him her כתובה because then she will be living with him without a כתובה owed to her.

<sup>12</sup> The reason she does not sell the כתובה is because כתובה אשתו בלא כתובה שישהא, the reason she needs a כתובה is קלה בעיניו לגרשה, therefore let her sell the כתובה to him with the stipulation that if he divorces her, he must pay her the entire כתובה, disregarding the sale (the discount will then be much greater), this will take care of the prohibition of ר"מ that אסור לאדם וכו' that חינא, since she will get a כתובה if he divorces her, so it will not be להוציאה. The sale is valid only if she becomes a widow, and then she will not receive the כתובה (since she sold it to him). In this case the issue of חינא is irrelevant. See following footnote # 13.

<sup>13</sup> According to רש"י (see footnote # 8) that חינא means the women will like the men and marry them, for they know they will receive a כתובה if he dies, it is certainly irrelevant here, since she is already married to him. According to the ר"ה (there) that חינא means that we want the men to marry the rich widows, nevertheless here where she owes her husband money for wounding him, is it proper to say that we should give her money (to get married) at the expense of the damage she caused her husband?! Would we say that a widow (who has her כתובה money) who damages someone should be exempt from paying since she needs the money to attract men to marry her?! That is absurd!

תוספות asks:

ואם תאמר ואמאי תני הכא יצא כסף קנסה בכתובתה ליתני מת אין לה עליו כלום<sup>14</sup> -  
And if you will say, but why does the תנא teach here, that if the מאנס dies 'the money is instead of her כתובה', let it state instead, 'if he dies, she has no claim on him at all' -

דהא לא תקינו רבנן לאלמנה אלא משום גרושה<sup>15</sup> -  
For the only reason the רבנן instituted a כתובה by an אלמנה is because of a גרושה -  
והכא מכח גרושה אין לתקן לזאת דהא לא מצי לגרשה<sup>16</sup> -  
But here (by אונס) there is no reason to institute a כתובה on account of a גרושה, since the מאנס cannot divorce her –

תוספות answers:

ואומר רבינו יצחק דהכא נמי כיון דשייך בה חינא כמו בשאר אלמנות -  
And the חינא answers that here too (like in the previous answer), since חינא is applicable to her, like other widows -  
אין לנו לשנותה משאר אלמנות –

We should not make her different from other אלמנות -  
להכי איצטריך טעמא דיצא כסף קנסה בכתובתה ולא חשו במה דאין לה כתובה:  
Therefore it was necessary for the גמרא to give the reason that her כתובה was paid with her קנס money, and they were not concerned with the fact that she has no כתובה since he cannot divorce her in any case.

## Summary

A בתולה is entitled to a כתובה מה"ת. A בעולה receives a כתובה מדרבנן; a divorcee in order to receive a כתובה, she must be a widow חינא משום חינא. Even in cases where these reasons are not applicable, she will receive the כתובה because of לא פלוג.

## Thinking it over

תוספות is differentiating between יצא כסף קנסה בכתובתה (which means she is entitled to a כתובה, but it was already paid for), and אין לה עליו כלום (which means there is no

<sup>14</sup> תוספות is not merely asking a semantic question, but rather there is a difference in content; according to the גמרא, it means that the מאנס owes her a כתובה if he dies, however he already paid it when he paid the קנס. However תוספות is arguing that in this case of a מאנס, there should be no כתובה obligation in the first place – אין לה עליו כלום – See 'Thinking it over'.

<sup>15</sup> See previously in this תוס' (text by footnote # 8).

<sup>16</sup> If the only reason why an אלמנה has a כתובה is because the רבנן were מתקן a כתובה by a גרושה, otherwise there is no reason for an אלמנה to receive a כתובה, so in this case where the מאנס cannot divorce her, there is no reason to have a כתובה for a גרושה, and therefore also no cause to have it for an אלמנה.

obligation at all).<sup>17</sup> In the ברייתא is states כשיוציא (which is explained to mean through a divorce כלום עליו כלום (which means there is no obligation at all). Why is it that by אַלמנָה, even though there should be no כתובה (since there is no reason for a כתובה by a גרושה), nevertheless we say יצא כסף קנסה בכתובתה (on account of לא פלוג [since there is חינא]), however by a גרושה we do not say יצא כסף קנסה on account of לא פלוג with other גרושות, but rather עליו כלום?! Why this difference between a גרושה and an אַלמנָה?<sup>18</sup>

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<sup>17</sup> See footnote 14.

<sup>18</sup> See ראנ"ח (תשובות וחי' מס' כתובות).