

And she thinks he had a mishap

וסברה דאניס –

OVERVIEW

The גמרא concluded that the ruling of רבא that אין אונס בגיטין (and if the תנאי was fulfilled, even because of an אונס, the גט is valid), is based on the logic that (if we would maintain יש אונס בגיטין there would be a problem with women who are either צנועות¹ (modest) or פרוצות² (promiscuous). תוספות explains why they are referred to as צנועות or פרוצות, respectively.

ומן הדין³ לית לן למיחש דלמא אניס הוא דרובן לא אניסי -

For according to the law, we are not obligated to suspect that perhaps he did not return due to an אונס, for the majority of people do not experience אונסים -

ולהכי קרי להו צנועות שמחמירים על עצמן אף על גב דמצי לאינסובי -

And therefore, the גמרא refers to these women (who will not remarry, unless they verify that the fulfillment of the תנאי is not due to an אונס) as צנועות, for they are strict with themselves, even though legally they may remarry (since רובן לא אניסי).

וגבי פרוצות לא גרסינן וסברה דלא אניס⁴ אלא ואמרה דלא אניס -

And regarding פרוצות the text do not read, 'and she assumes that there was no אונס', but rather the text read 'and she says, 'there was no אונס' -

פירוש אפילו כשיצא הקול דאניס⁵ אמרה דלא אניס⁶ -

The explanation (why she is called a פרוצה) is that even if there is a rumor that he was אניס, she will say that she knows for sure that he was not אניס (even if she does not know whether he was אניס or not) -

או אפילו כשתדע היא עצמה דאניס ואחרים לא ידעו -

Or furthermore even if she herself knows that he was אניס but others do not

¹ In the case of צנועות we are concerned that even though the תנאי was fulfilled (the husband did not return within the specified time), however the woman (because she is a צנועה) is concerned that perhaps there was an אונס that caused her husband not to return, and if we maintain יש אונס בגיטין, the גט is not effective, and the woman will not remarry, when in truth (there was no אונס and) she may remarry. See footnote # 3.

² In the case of פרוצות we are concerned that the woman will remarry (illegally) even if the תנאי was fulfilled (the husband did not return) only because of an אונס, where (if we maintain יש אונס בגיטין) she is not permitted to remarry. Since she is a פרוצה, she will remarry regardless of the circumstances.

³ תוספות explains why we refer to these (cautious) women as צנועות; since we do not know the reason why the husband did not return, it seemingly behooves us not to permit her to remarry until we verify the circumstances why he did not return and we can ascertain that it was not due to an אונס.

⁴ If she remarries because she assumes there was no אונס, we cannot call her a פרוצה; as תוספות just said that if the תנאי was fulfilled she may remarry legally since רובן לא אניסי.

⁵ Once there is a קול that אניס, the בי"ד will not permit her to remarry unless we verify the קול.

⁶ If she maintains that she knows he was not אניס, the בי"ד will not prohibit her from remarrying (because of a קול).

know that he was אַניס, she will (lie and claim he was not אַניס and) remarry illegally (if we assume בגיטין בגיטין).⁷

תוספות asks:

ואם תאמר מת תוך י"ב חודש נמי יהא גט מהאי טעמא⁸ -

And if you will say; in the case where the husband dies within the twelve months (where the ruling is that it is not a גט [unless he said מעכשיו]), **it should also be a גט for the same reason -**

דזימנין דלא מת וסברה דמת ומיעגנא⁹ ויתבה¹⁰ -

For occasionally it may be **that he did not die** (and therefore the גט is valid [for there was no אונס, and it was not מיתה]) **and she will assume that he died** (so the גט is invalid [since אין גט לאחר מיתה]), **and she will remain an עגונה -**

תוספות answers:

ויש לומר דמיתה קלא אית לה:

And one can say that there is publicity regarding death, and therefore if we do not hear that he died, even the צנועות will assume that he is alive, the תנאי was fulfilled, the גט is valid, and they will remarry.

SUMMARY

There is no חשש for אונס legally, however the צנועות are strict for themselves, while the פרוצות may remarry even if (they know) it is legally prohibited. There is no concern for אונס מיתה since there is publicity surrounding a death.

THINKING IT OVER

תוספות asks that by חודש ועד יב מכאן it should be a גט because of the צנועות.¹¹ Why did not תוספות ask (also) that it should be a גט because of the פרוצות as well?!¹²

⁷ This is obviously a much greater פרוצה than the previous case.

⁸ רבא is teaching us that even though legally אין אונס בגיטין and therefore in a case of אונס it is not a גט, nevertheless on account of צנועות (and פרוצות), we rule אין אונס בגיטין and validate the גט. The same should be true in the case of הרי"ז (אין גט לאחר מיתה), nevertheless because of the צנועות we should validate the גט (even though that it is מיתה). See 'Thinking it over'.

⁹ מיעגנא which is related to the word עגונה means that the woman is 'anchored' in place and cannot remarry.

¹⁰ In our case the issue is יבום; if the גט is valid she can remarry, however if the גט is not valid, she is זקוקה ליבום, and if for some reason there can be no יבום or חליצה, she will remain an עגונה.

¹¹ See footnote # 8.

¹² See תוספות הרא"ש.