

## How do we assess

## כיצד שמין –

### OVERVIEW

The משנה states the case where עדים testified that a man divorced his wife and did not pay the כתובה; and these עדים were הוזה. Let us assume that the amount of the entire כתובה is a hundred מנה. Seemingly these עדים wanted the husband to pay his wife a hundred מנה (for no reason); therefore if they were הוזה they should pay the husband a hundred מנה. However (as the משנה continues) there is the possibility that eventually, the husband will pay the כתובה to the woman (if he divorces her or he dies before her), so we cannot say that the עדים caused a loss of a hundred מנה, since he might pay it to her anyway. The משנה rules that we assess the value of the כתובה as of today;<sup>1</sup> [presumably<sup>2</sup>] by assessing how much will a person be willing to pay to the woman to purchase her rights to the כתובה; meaning that if she is widowed or divorced (it is beneficial to the buyer, for he will receive the entire כתובה of a hundred מנה), and if she predeceases her husband, the buyer receives nothing. Thus the buyer, who is speculating, will not be willing to pay the woman the entire face value of the כתובה (a hundred מנה), because there is a chance that he will receive nothing in return for it (if she predeceases her husband); rather he will pay her a discounted price (let us assume forty מנה [or 40% of the face value]). This is the assessed value and with this the משנה concludes. The גמרא immediately asks כיצד שמין, meaning that it is still not clear from the משנה how do we assess the punishment for the עדים זוממים; are they required to pay this assessed amount of the משנה (the forty מנה),<sup>3</sup> or does the משנה mean something else. תוספות explains this question and the options of how much the עדים should pay.

Let us assume that the husband set aside a field (worth one hundred מנה) for the כתובה payment. Both the husband and the wife have rights in this field while they are married. The husband currently owns the field and it will belong to him completely if he outlives his wife, and the wife has a right to this field since it will belong to her if she is widowed or divorced. Both the husband and the wife can sell their rights in this כתובה field to a potential buyer. The price they receive is their

<sup>1</sup> The value if any item (including a potential claim) can be assessed by finding what people will pay (for the right to make this claim).

<sup>2</sup> See (text by) footnote # 18.

<sup>3</sup> The עדים זוממים need to pay the loss they attempted to cause the husband (not the wife). The assessment of the משנה tells us the value of the כתובה for the wife (how much it is worth to her), not for the husband. Therefore the משנה cannot mean that the עדים pay the husband the woman's monetary interest in the כתובה.

value in the field.<sup>4</sup> The עדים זוממין wanted to make him lose his right in the field (he would have to give her the whole field and retain nothing for himself). The עדים זוממין are required to pay him the value of his right in the field. The גמרא proposes two ways in which to establish the value of his right, which the עדים זוממין attempted to deny him.

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The גמרא (when saying שמין כיצד) is asking how to assess -

**אותו זכות שיש לו לבעל בכתובה<sup>5</sup> דמה שהיא תחתיו יותר מאם גרשה -**

**That** (value of the) **right which the husband has in the כתובה field while she is married to him**, which is **more than** his rights in the כתובה **when he divorces her** (at which point his right amounts to nothing). The reason there is such a question is -

**לפי שאתה מוצא אותו יפוי כח שיש לו לבעל במה שהיא תחתיו בב' דרכים -**

**Because you can find** (or explain) **that advantage** (right) **which the husband has while she is married to him, in two ways -**

**האחד אם ימכור לאחר זכות ספיקו<sup>6</sup> שאם מתה יירשנה -**

**One is if the husband will sell someone his speculative right so that if she dies, the husband will inherit her** (meaning this כתובה field) and it will belong to the buyer, since he bought this right from the husband. We can then say that the price that the husband will be receiving for this sale is the amount the עדים זוממין would cause him to lose<sup>7</sup> and that is what they need to pay. This is one way to assess his value.

**והשני הוא יקנה מאשתו זכות ספיקה -**

**And a second way to assess the value of his right is that the husband buy from his wife her speculative right**, meaning -

**שאם תתאלמן או תתגרש שהיא תמכור לו בדמים מועטים<sup>8</sup> -**

**That if she becomes widowed or divorced**, the כתובה will belong to him or his estate, **so in this case the wife will sell her rights to the husband for less money** than the husband will receive if he sells his rights to an outside party -

**ובענין זה יפה כח זכותו יותר מאם<sup>9</sup> למכור הוא זכות ספיקו -**

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<sup>4</sup> If the wife sells her rights, the buyer will own the field, only if the woman is widowed or divorced. If the husband sells his right, the buyer receives the field now but will have to relinquish it if the woman is widowed or divorced. He can keep it only if the wife predeceases the husband. See later in this תוספות.

<sup>5</sup> See 'Overview' that we are assuming that there is a field set aside for the כתובה (in the amount of the כתובה); so when we mention כתובה in this discussion we are referring to their respective rights in this field.

<sup>6</sup> This sale is speculative (doubtful) for if he divorces her or predeceases her, the buyer receives nothing and loses his entire investment.

<sup>7</sup> If we would have accepted their testimony, the woman would receive the כתובה field and the husband could not receive anything for his right, since he has no more rights; it belongs to the wife entirely,

<sup>8</sup> תוספות will shortly explain why the value of her rights are less than the value of his rights.

<sup>9</sup> The (מאם למכור הוא זכות ספיקו כיצד) מאם בא למכור הוא זכות ספיקו לאחר כיצד, תוס' הגהות הב"ח.

**So in this (second) assessment the husband's rights are greater,<sup>10</sup> than in the (first) assessment where the husband would sell his speculative right.**

clarifies: תוספות

**כיצד הרי שהיתה כתובתה ק' מנה אם בא למכור זכות ספיקו יתן לו הלוקח נ' מנה -**  
**How is this; if her כתובה was for a hundred מנה; if the husband wishes to sell his speculative right the buyer will pay him fifty זוז (for instance) -**

**נמצא שזכות הבעל כמה הוא במה שהיא תחתיו עולה לנ' מנה בדרך זה<sup>11</sup> -**  
**It turns out that how much is the right of the husband in this כתובה field as long as she is married to him; it is valued at fifty מנה in this manner of assessment -**

**וכשהיא מוכרת כתובתה עולה זכותו ס' מנה<sup>12</sup> -**  
**However, if she sells her כתובה rights (to the husband), the value of his right is sixty מנה.**

now explains the discrepancy in the value of their respective rights: תוספות

**לפי שאין זכות ספיקה שוה כמו זכות ספיקו -**  
**Since her speculative right is not worth as much as his speculative right -**  
**חדא שהוא מוחזק ועומד והיא מחסרה גובינא<sup>13</sup> -**

**Firstly he is continually in possession of the כתובה field, and she is lacking collection -**

**ועוד שהוא אוכל תמיד פירות הקרקע המיוחד לכתובתה ולא היא -**  
**And additionally the price the husband receives is greater because the husband**

<sup>10</sup> His right to the כתובה field is the value of the field [(מנה 100), for now the כתובה field is entirely his (since he brought off her rights)] less the amount he is paying her for her rights (מנה 40 [see 'Overview']), meaning it is 60 מנה or 60%.

<sup>11</sup> If the עדים would not have testified, the husband could have made 50 מנה (and not worry about paying his wife the כתובה). The עדים caused him a potential loss of 50 מנה, since he would need to give his wife this כתובה field and retain nothing for himself. Therefore, according to this assessment, the עדים should pay the husband 50 מנה.

<sup>12</sup> תוספות will shortly explain why the husband receives more for his right than she receives for her right (even though the speculation for either buyer (from the husband or from the wife) is the same. Therefore if her right is worth (only) 40 מנה (as opposed to his right of 50 מנה) the husband can pay her 40 מנה and retain the כתובה field outright, which is worth 100 מנה, so the value of his total right (which is what the עדים wish to deny him) is 100-40 or sixty מנה (as opposed to the value of his right according to the other assessment which is (only) 50 מנה). According to this method of assessment the עדים would need to pay him 60 מנה (not 50).

<sup>13</sup> Let us assume that there is 50% chance either way (whether she gets the כתובה field or he gets it); if someone is buying her right to the field he will not give her the full 50% value of the field, for he will tell the woman, even if you get the field, I still need to take away the field from your husband [who is now in possession of the field (or his heirs; who will then be in possession)]. I will need to prove that you are currently divorced and previously married to this person; I will need to prove that that you did not receive your כתובה yet, etc. etc. Therefore it is not worth for me to give you 50%, but rather 40%. Regarding the buyer from the husband, however, he can take the property immediately.

(and subsequently the buyer) **continually consumes the produce of the designated כתובה property,**<sup>14</sup> but not the wife.

**ולכך כשהוא מוכר זכות ספיקו בני' מנה -**

**So therefore** (as a result of these two advantages the husband has over the wife), in a case **where he sells זכות ספיקו for fifty מנה** -

האשה מוכרת זכות ספיקה הן לבעל<sup>15</sup> הן לאחר במ' מנה<sup>16</sup> -

**The woman will sell זכות ספיקה, whether to her husband or whether to someone else, for (only) forty מנה -**

**הרי לך שיקנה מאשתו זכות ספיקה שתהא לו כל הכתובה של ק' מנה במ' מנה -**

**So here you have it that the husband can buy from his wife זכות ספיקה so that he will own the entire כתובה field worth one hundred מנה for only forty מנה -**

**והשתא בדרך זה עולה יפוי כח וזכות הבעל במה שהיא תחתיו לס' מנה כדפירשתי -**

**So now** if the assessment is done **in this manner** (assessing the wife's right), **the value of the husband's right** in the כתובה field **as long as she is married to him** (which the עדים זוממין attempted to deny him) **is sixty מנה as I have explained -**

**ולכך מבעי ליה כיצד שמין מי אמרינן דשמין לאשה כמה אדם רוצה ליתן בזכות ספיקה -**

**So therefore** the גמרא **queries how do we assess** the damage the זוממין wanted to bring upon the husband; **do we say that we assess the wife's** right, meaning **how much one would be willing to pay for** זכות ספיקה -

**דהיינו ארבעים וכל השאר דהיינו ס' מנה ישלמו -**

**Which is forty מנה, and the עדים זוממין will pay the remainder which is sixty מנה - שכל השאר <sup>17</sup> מפסידין אותו בעדותן שמעידין שגירשה -**

**Because through their testimony that he divorced his wife, they were causing him to lose the entire remainder** which is sixty מנה -

**שהרי היו מחייבין אותו כל הכתובה -**

**For they were making him liable for the entire כתובה** which is a hundred מנה, but he could have kept the כתובה field by paying only forty מנה, which is a loss of sixty מנה.

<sup>14</sup> When the husband sells it to the buyer, he can begin deriving benefit from the produce of the land (so even if in the end the buyer does not get to keep the field but in the meantime he receives value for his purchase). However whoever buys it from the woman has to wait until she is divorced or widowed to receive any return on his purchase.

<sup>15</sup> Even though when she sells זכות ספיקה to her husband the aforementioned two difficulties do not arise (for the husband [the buyer] is מוחזק ועומד, and he will eat the פירות), nevertheless the husband will not pay her more than the market price (the price she can receive from others) where the abovementioned two difficulties do arise.

<sup>16</sup> The exact numbers of 50 and 40 are not that relevant; the main thing is that the husband will receive more for selling his right, than the woman will receive for selling her right. Therefore it is beneficial for the husband that we assess her right and deduct it from the value of the field, thus making his claim against the עדים זוממין greater than if we would assess the value of his right. [For instance if his right is worth 40 and hers is 30; if we follow his right, he gets only forty, but if we assess her rights he receives (100-30 which is) 70!]

<sup>17</sup> The *הב"ה* amends this to read *השאר היו מפסידין* (instead of *השאר מפסידין*).

**ולישנא דמתניתין משמע הכי -**

**And the language of the משנה indicates so, that we assess the woman's right (and deduct that amount from the full value of the כתובה field) -**

**דקתני אומדין כמה אדם רוצה ליתן שאם נתארמלה או נתגרשה משמע דשמין באשה<sup>18</sup> -**

**For the משנה states, 'we assess how much is a person willing to pay for the כתובה taking into account that if she is widowed or divorced', this indicates that we assess the woman's right, and the עדים pay the difference between the full value of the field (which is a hundred מנה) and the value of her rights (which is forty מנה), which amounts to sixty מנה. This is one option; תוספות now explains the other option -**

**או דלמא הא לא אמרינן לשום באשה לחייב העדים לשלם כל הכתובה -**

**Or perhaps we do not say this; to assess the woman's value, thereby obligating the witnesses to pay the entire כתובה -**

**חוץ מזכות ספיקה כדפירשית -**

**Less than her speculative right as I explained, we do not say that, because -**

**שמא לא היה נפסד בעדותם כולי האי -**

**Perhaps the husband would not have lost so much by their testimony, because -**

**דשמא לא תמכור לו האשה זכות ספיקה<sup>19</sup> ולכך אין לנו לשום באשה כדפירשתי -**

**Perhaps the woman would not sell him ספיקה, so therefore we should not assess her value as I explained -**

**אלא שמין בבעל כמה יתנו לו בזכות ספיקו אם ימכור בה דהיינו נ' מנה -**

**But rather we assess the husband's right; how much money people would give the husband for his זכות ספיקו if he will sell it, which is fifty זוז; this is the value of the husband's right in the כתובה field -**

**וכך ישלמו לו העדים שכך מפסידין אותו -**

**That that is how much the זוממין עדים should pay the husband, since that is how much they are making him lose.**

<sup>20</sup> responds to the anticipated difficulty: תוספות

**ושאם נתארמלה או נתגרשה<sup>21</sup> דמתניתין לאו למימר דשמין באשה -**

<sup>18</sup> See footnote # 20 & 21.

<sup>19</sup> There is certainly a market price for her rights to the כתובה, which we assume to be 40 מנה. However she is not required to exercise this option. She may chose not to sell it (at least not) to the husband. The only way the husband can receive the entire right to the כתובה (less the 40 מנה) is only if she sells it to him, then since the כתובה field is entirely his he can sell it for 100 מנה and realize a gain of 60 מנה (100 less the forty he paid his wife). However if she sells her right to someone else, the husband does not own the כתובה field for the buyer also has rights in the field (just like the woman had), and so the husband can only sell his rights which are worth (only) 50 זוז.

<sup>20</sup> See previously in this תוספות, by footnote # 18.

<sup>21</sup> Presumably meaning that if she is נתגרשה או נתארמלה the buyer will receive the כתובה field; indicating that we are discussing the woman's right; this is not necessarily so, as תוספות continues.

And when our משנה stated, that we assess how much someone is willing to give for this כתובה with the understanding 'that if she is widowed or divorced', it does not (necessarily) mean that we assess the woman's<sup>22</sup> value -

אלא הכי קאמר<sup>23</sup> אומדין כמה אדם רוצה ליתן בכתובה<sup>24</sup> זו שהיא תלויה בספק -

Rather this is what the משנה is saying; we assess how much a person is willing to give (to the husband) for this כתובה which is speculative (in doubt) -

שאם תתאלמן או תתגרש תגבנה היא ואם מתה יירשנה בעלה -

For if she is widowed or divorced she will collect the כתובה field and the buyer will lose his entire investment, but if she dies (before her husband) the husband will inherit her (rights in the כתובה field) and the buyer will own the entire כתובה field -

ושמין בית דין זכות ספיקו ויתנו לו:

And בי"ד assesses this זכות ספיקו and the עדים זוממין pay him this amount (only), which is fifty מנה.

## SUMMARY

The wife's value in the כתובה is less than the husband's, because the husband is a מוחזק and is consuming the פירות. We can either assess the lower value of the woman's right and deduct it from the total value of the field, and that is what the עדים זוממין pay him, or we can assess his value in the field and that is what they pay him.

## THINKING IT OVER

Is there a difference between פרש"י and תוספות in the explanation of כיצד שמין?

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<sup>22</sup> The fact that the משנה mentions 'ואם מתה' right after 'וכי' would first (before) indicate that he is willing to pay this much, speculating that she will be נתארמלה וכי. This must refer then to a case where he is buying the woman's rights. That's when he hopes that she will be נתארמלה וכי.

<sup>23</sup> תוספות negates the reasoning in footnote # 21. The משנה is mentioning 'ואם מתה' first because that is the speculation which lowers the price of זכות ספיקו. The buyer tells the husband that the price must be low for there is the possibility that she will be נתארמלה, where the buyer loses everything.

<sup>24</sup> The הגהות הב"ח amends this to read של זו בכתובה (instead of זו בכתובה).