

מעידין¹ אנו באיש פלוני שגירש אשתו וכולי –

We are testifying about that person that he divorced his wife, etc.

OVERVIEW

The משנה teaches that if עדים testified that a person divorced his wife (thereby obligating him to pay her כתובה) and they were הוזה, they need to pay the husband his assessed value in the כתובה.² Our תוספות discusses why the עדים are not obligated to pay the woman the loss they attempted to cause her.

תוספות asks:

ואם תאמר וליחייבו שאר³ כסות (ועונה)⁴ זהא מפסידין לאשה⁵ -

שאר כסות עדים זוממין to pay the woman (and עונה), for they were causing the woman to lose them?!

תוספות answers:

ויש לומר דמיירי שמעשה ידיה⁶ שהן בידו⁷ שוין כשאר כסות (ועונה) -

And one can say that the מעשה ידיה which are now in [her] possession are worth as much as her (ועונה), so the עדים caused her no loss.

תוספות offers an additional answer:

ועוד יש לומר שאומרת גירשתני⁸ ואם כן מחלה לבעלה⁹ אותן (ג') דברים -

And furthermore one can say, that we are discussing a case where the wife

¹ The תוס' ד"ה כיצד should precede the תוספות.

² See תוספות ד"ה כיצד.

³ When a man marries a woman he becomes obligated to provide her with שאר (her food), כסות (clothing), and עונה (marital relations).

⁴ There is a dispute whether the word עונה is included. Seemingly there is no monetary obligation here, which the עדים should be liable for. However others argue that there is a price for עונה (as we see by זונה), so the עדים should be liable to pay her that amount.

⁵ When the עדים testified that she is divorced she is losing her שאר כסות (and עונה). The עדים should be obligated to provide this to her as a fulfillment of the זמם כאשר punishment. See 'Thinking it over' # 1.

⁶ מעשה ידיה (literally the work of her hands) refers to any income the wife produces. This income belongs to the husband in lieu of the שאר וכסות which he provides for her. However once she is divorced, her מעשה ידיה belong to her, and in a case where it is worth (at least) as much as (ועונה), the woman is not suffering any financial loss. Therefore they עדים זוממין are פטור from paying her anything.

⁷ Others amend this to read בידה (instead of בידו).

⁸ See 'Thinking it over' # 3.

⁹ See עקיבא איגר ר' that (according to תוס') she claimed גירשתני before the עדים testified (therefore she was already מוחל her husband the שאר כסות וכו'). However if the עדים testified first (even if later she agreed to them), nevertheless they should be liable to pay her since they attempted to make her lose עונה.

(also) claims, 'you have divorced me', so therefore she forgave and forfeited to her husband any monetary claim for these (three) items.

anticipates a difficulty:

ואף על גב דאמרין האשה שאמרה לבעלה גירשתני נאמנת¹⁰ -

And even though we rule that a woman who says to her husband גירשתני, she is believed (to remarry and collect her כתובה) -

responds:

הני מילי היכא דליכא עדים אבל היכא דאיכא¹¹ עדים¹² לא¹³ -

When is this true (that האשה שאמרה לבעלה גירשתני נאמנת), only where there are no עדים who support her claim that גירשתני, however when there are עדים who support her claim that she is divorced (as in the case of our משנה), she is not believed.

כדאמרין בכתובות פרק האשה שנתארמלה (דף כב,ב):

As the גמרא states in שנתארמלה פרק האשה שנתארמלה.

SUMMARY

There is no need for the עדים to pay the אשה for (ועונה) שאר כסות, either because her מעשה ידיה is (at least) of equal value, or she forfeits them by claiming גירשתני.

THINKING IT OVER

1. תוספות asks that the עדים should pay the wife the (ועונה) שאר כסות. For how long will they be required to pay her this ועונה?

2. What is worth more; her כתובה or the ועונה שאר כסות?¹⁴

3. second answer is that we are discussing a case where the woman (also)

¹⁰ Why are the עדים זוממין liable to pay him for the כתובה, since even without their testimony, he is obligated to pay her since she is claiming גירשתני. The fact that the עדים הוּזְמוּ has no effect on his obligation to pay her the כתובה. The עדים caused him no loss.

¹¹ See 'Thinking it over' # 4.

¹² The reason a woman is believed to claim גירשתני, is because there is a חזקה that בפני בעלה אין האשה מעיזה פניה בפני בעלה (a woman does not have the audacity to contradict her husband in his face); however if there are witnesses that corroborate her statement then she is מעיזה פניה בפני בעלה.

¹³ Therefore in our case the woman does not obligate the man to pay her כתובה (since איכא עדים), rather it is only the עדים that are מחייב him to pay the כתובה, therefore if they are הוּזְמוּ the must pay the husband.

¹⁴ See 38-39. [If the כתובה is worth more, why should they pay the wife, since she is gaining from their testimony, and if the שאר וכו' is worth more, why should they pay the husband, since he is gaining?]

claims גירשתני;¹⁵ indicating that (according to the first answer) we can also be discussing a case where she is not claiming גירשתני. However, seemingly this cannot be, for if she is not claiming גירשתני, she is therefore not claiming her כתובה, so why do the עדים זוממין have to pay him for the כתובה, since the wife is not claiming any כתובה, so no loss occurred to the husband!¹⁶

4. תוספות writes that when the עדים testify that she is divorced, the woman is not believed to claim גירשתני.¹⁷ Why therefore are the עדים זוממין liable to pay the husband, since in fact their testimony helped the husband, for now (since they testified [and were הוזם]) the woman is not believed to claim גירשתני; however had they not testified, the wife would have been believed to claim גירשתני!¹⁸

¹⁵ See footnote # 8.

¹⁶ See #35 אוצר מפרשי התלמוד and ערוך לנר.

¹⁷ See footnote # 11.

¹⁸ See מהרש"א.