ותהא אשת איש יוצאה בחליצה –

And a married woman should go out with חליצה

Overview

The גמרא wanted to derive that an א"א should go out מרשות בעלה through חליצה. Our תוספות explains why we could think that a יציאה which is effective only by an איסור לאו should also be effective by a חיוב מיתה.

תוספות asks:

ואם תאמר איכא למיפרך מה ליבמה שכן בלאו ולכן דין הוא שתצא בקל –

And if you will say; we can challenge this ק"ו as follows: **what** is the reason **by a יבמה** that she is יוצאה בחליצה **for** the איסור of יבמה לשוק **is** merely **a לאו, and therefore it is logical that she can easily leave** her relationship -

תאמר באשת איש שהיא במיתה –

Can you say that by an א"א where her transgression is punishable **by death,** therefore she cannot leave so easily as a יבמה with חליצה.

תוספות answers:

ויש לומר כיון שמצינו שחליצה מפקעת איסורא[1] אין לחלק בין חמור לקל[2] –

And one can say; since we find that חליצה dissolves a prohibition, there is no reason **to differentiate between a strict and lenient** prohibition.

תוספות shows support for his view:

והכי נמי אמרינן ביבמות[3] (דף קיט,א) וכי מאחר שהתרתה[4] –

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[1] Our משנה states וקונה את עצמה בחליצה ובמיתת היבם. This implies that חליצה is a קנין that removes any זיקה from the יבם and places the woman in her own רשות. When this זיקה is removed there is no longer an איסור of יבמה לשוק, since she was קונה herself. See following footnote # 2.

[2] The קנין of חליצה accomplishes that the woman is קונה את עצמה and therefore (automatically) there is no איסור (of יבמה לשוק). The same should apply to an אשת איש; if she receives חליצה she should be קונה את עצמה (for we have the ק"ו); once she is קונה את עצמה there is (automatically) no longer the איסור מיתה of א"א. The ק"ו is not attempting to be מבטל a חיוב מיתה, but rather to teach us קניני אשה; the resulting severity or leniency which this קנין removes (automatically) is of no concern to us. See מהרי"ט (in בירורי השיטות).

[3] The משנה there states in the רישא that if a childless husband and a צרה went away and the woman who remained was told that her husband died, she may not remarry (because she may be זקוקה ליבום assuming that the צרה did not bear a child for her husband) and she may not have יבום with her brother-in-law (for perhaps the צרה did give birth and it would be אשת אח שלא במקום מצוה). The סיפא of the משנה states that if the childless husband had no brothers at the time and her mother-in-law was overseas, the wife may remarry after her husband's death for we are <u>not</u> concerned that her mother-in-law gave birth to a child (which would have caused her to be זקוק ליבום to this child; her husband's brother). The question is why in the רישא she can not have יבום because maybe her צרה did give birth, and in the סיפא she can marry for we assume that the mother-in-law did not give birth! The גמרא initially answered that in the רישא (if she would marry her brother-in-law) there can be a איסור כרת (if her צרה gave birth), however in the סיפא even if her mother-

And the גמרא **also says something similar in** מסכת **יבמות; and since you permitted her** to marry -

מה לי איסור לאו[5] מה לי איסור כרת[6] –

What difference is there if she may be transgressing an **איסור לאו or if** she is transgressing **an איסור כרת.**[7] It is evident that we do not distinguish between more severe and less severe איסורים. Therefore here too if חליצה can be מתיר (even) a less severe איסור it should be able to be מתיר even a more severe איסור.

תוספות anticipates a difficulty:

ואף על גב דעבדינן מינה לעיל קל וחומר ומה אשת איש שהיא במיתה כולי –

And even though we used this logic (of indeed distinguishing between איסור חמור and איסור קל) **previously to make a ק"ו,** which was; **and what if an א"א whose** איסור **is במיתה, etc.**, nevertheless מיתת הבעל is מתיר, then a יבמה who is only בלאו should surely be מותרת במיתת היבם. It is seemingly evident from that ק"ו that the severity of the איסור plays a role; why should we say here that it is irrelevant?!

תוספות responds that the two cases -

לא דמי דהתם אנו רוצים להשוותם זה לזה[8] –

Are not similar, for there where we made the ק"ו (based on the severity of the איסורים) **our intent** ultimately **was to compare them one to another** -

ולימא[9] דבכולהו אשה מותרת לאחר מיתה בין דבעל בין דיבם –

And to say that in all cases a woman is מותרת after מיתה whether it is מיתת **הבעל or whether** it is מיתת **היבם -**

אבל אין לומר כשמפקיע את הקל לא יפקיע את החמור –

However we cannot say that if something **dissolves a קל it cannot dissolve a חמור** (for instance חליצה by an א"א) **-**

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in-law gave birth she would only be עובר an איסור לאו (of a יבמה לשוק) if she remarries. רבא there challenges this distinction as תוספות continues.

[4] In our texts there it reads: מכדי הא דאורייתא והא דאורייתא מה וכו'.

[5] This is referring to the סיפא where she might be עובר the לאו of יבמה לשוק if her mother-in-law gave birth to a son.

[6] This is referring to the רישא where she would be עובר an איסור כרת if there would be יבום (for it is an אשת אח שלא במקום מצוה).

[7] The reason that in the סיפא (of חמותה) she is permitted to remarry is because of her חזקת היתר (that her husband has no brothers); similarly in the רישא she should be מותר for יבום because of the חזקת היתר to her brother-in-law (since both she and her צרה are childless). The חזקת היתר determines her status. Therefore it is applicable both to an איסור לאו and an איסור מיתה, because once she is בחזקת היתר there is no longer any איסור. Similarly here once a woman is קונה עצמה בחליצה there is no איסור at all.

[8] The לימוד was not based solely on the ק"ו (for indeed אין לחלק בין חמור לקל), but rather it is a מה מצינו, except it was couched in terms of a ק"ו (to make it more acceptable). See אמ"ה # 124.

[9] Others amend this to ולמימר (or ולומר).

דאדרבה נאמר עתה להפך הוא הדין את החמור –

For on the contrary we will now say the opposite; the same law that applies to the קל **applies to the חמור** as well -

דאין לחלק בין לחמור בין לקל כדפירשתי:[10]

for we cannot differentiate between a חמור and between a קל as I explained.

Summary

Concerning [אשה] קניני we cannot differentiate whether the קנין dissolves an איסור חמור or an איסור קל.

Thinking it over

Why did not the גמרא phrase this ק"ו (that an א"א should be יוצאה בחליצה) as follows: If גט which is a קל (for it is not effective by a יבמה) is (nevertheless) effective by an א"א, then it follows that חליצה which is a חמור (for it is more effective than a גט since it is effective by a יבמה), should surely be effective by an א"א. Had the גמרא used this ק"ו it would have avoided תוספות question that מה ליבמה שכן בלאו (since we are deriving חליצה from גט, and not א"א from a יבמה).[11]

[10] If a certain act is דוחה an איסור קל, we cannot derive that it is דוחה an איסור חמור (or similarly if an איסור חמור is דוחה we cannot derive that an איסור קל is דוחה [see יבמות ה,ב]); however here the חליצה is not דוחה any איסור; it is merely a קנין by which the woman acquires herself. Once she acquires herself there are no איסורים (neither איסורים קלים nor איסורים חמורים).

[11] See מהרש"א (הארוך).