

If it would state 'acquires' (קונה) – אי תנא קונה הוה אמינא בעל כרחה I would have thought even against her will

OVERVIEW

The גמרא explains (in the ואב"א) that the reason the משנה does not state 'האיש' is because that would cause us to mistakenly assume that a woman can be acquired even against her will; however the term האשה נקנית indicates that she can be acquired only willingly.¹ תוספות will discuss the implications of (משמע מדעתה) (which is היבמה נקנית) and (משמע בע"כ) (האיש מקדש).

anticipates a difficulty (with this assumption that קונה can mean בע"כ):

ואף על גב דתני האיש מקדש דמשמע בעל כרחה² –

And even though the משנה states 'האיש מקדש' which indicates בע"כ, and yet nevertheless the משנה uses that expression (and is not concerned that we will mistakenly assume that a man can be מקדש an אשה בע"כ³). Why therefore are we concerned here not to state קונה? If we are not concerned there why are we concerned here?!

responds that indeed we are concerned; however the reason we are not concerned in the second פרק by האיש מקדש –

היינו משום דכבר אשמועינן הכא דבעל כרחה לא⁴ –

That is because we were already informed here in our משנה (by stating מקודשת בע"כ) **that a woman cannot** be האשה נקנית.

anticipates an additional difficulty:

והא דקתני היבמה נקנית ולא קתני היבם קונה בעל כרחה –

And the reason the משנה states היבמה נקנית (which [seemingly] indicates [like האשה נקנית], מדעתה), **and it does not state היבם קונה**, for indeed a יבם is – קונה בע"כ

The answer is:

אידי דקתני האשה נקנית תני נמי סיפא היבמה נקנית⁵ –

¹ See footnote # 6.

² If האיש מקדש means בע"כ so then האיש מקדש also means בע"כ.

³ Seemingly because it is highly unlikely to assume that someone can be acquired against their will.

⁴ No one will mistakenly assume that האיש מקדש means בע"כ, since we were already taught האשה נקנית which excludes בע"כ.

⁵ See 'Thinking it over'.

Since the **האשה נקנית** already stated **משנה** it states also in the **סיפא** that **היבמה נקנית** in order not to change the syntax of the **משנה**.

however anticipates a difficulty with this answer; if **נקנית** means **מדעתה** and not **בע"כ**, how can the **משנה** state **היבמה נקנית** (in order to preserve the syntax) since **היבמה נקנית** will be misleading us to assume that a **יבמה** can be acquired only **מדעתה** and not **בע"כ**, which is not true. **תוספות** responds -

דנקנית משמע מדעתה ומשמע בעל כרחיה:⁶

That the word **נקנית** can mean **מדעתה** and it can also mean **בע"כ**. Therefore the term **היבמה נקנית** will not be misleading.

SUMMARY

The term **האשה נקנית** may mean either **מדעתה** or **בע"כ**. Once the **משנה** stated **האשה נקנית**, we no longer can mistakenly assume that she can be **בע"כ**. The **משנה** states **היבמה נקנית** to conform to the **רישא** of **האשה נקנית**.

THINKING IT OVER

See 'Appendix' to **האשה ד"ה** concerning that which **תוספות** writes there 'דהא גבי יבמה קתני היבמה', where **תוספות** is using the term **היבמה** to disprove other interpretations of why it states **האשה** with a '**ה**'.⁷ However according to our **תוספות**⁸ that proof is insufficient, for we can say that the only reason it says **היבמה** with a '**ה**' is because **האשה** **דקתני** therefore **היבמה** **איידי** **קתני**!⁹

⁶ We still infer from **האשה נקנית** that she can only be acquired **מדעתה** (regardless that **נקנית** can mean either **מדעתה** or **בע"כ**), for if an **אשה** can be **בע"כ** then the **משנה** should have clearly stated **האשה קונה** (which is a more proper term, for it is the **איש** who is actively making the **קנין**; not the woman who is passive). The fact that the **משנה** chose **האשה נקנית** proves that it cannot be **בע"כ**. Concerning a **יבמה**, the **משנה** could have used either **לשון** (since **נקנית** means **בע"כ**), therefore even though **קונה** would be preferable, nevertheless in order to maintain the same syntax (as in the **רישא**) the **משנה** stated **היבמה נקנית**.

⁷ According to the **מהר"ם**; that we cannot say that a '**ה**' is used only by **איש ואשה** thus avoiding the difficulty by **עבד**. And according to the **מהרש"א**; that we should not say that a '**ה**' is written only at the beginning of a **פרק** (and avoid the same difficulty). The '**ה**' of **היבמה** disproves these two options (it is not **איש ואשה** and not at the beginning of a **פרק**). However according to our **תוספות** it does not disprove anything!

⁸ See footnote # 5.

⁹ **סוכ"ד** **אות מ** **בד"ה** **ובזה**.