

## מה לאמה העבריה שכן יוצאה בכסף –

**כסף Why is it so by an אמה העבריה; because she leaves through**

### OVERVIEW

The גמרא sought to derive כסף קידושי from a מאמה ק"ו. If an אמה who is weaker<sup>1</sup> than an אשה (for she is not בביאה), can be נקנית בכסף, then an אשה (who is stronger than an אמה) can surely be נקנית בכסף. The גמרא initially attempted to refute this ק"ו by saying יבמה תוכיח; meaning that being 'stronger' than an אמה (in the sense of being בביאה) is not a compelling reason to be נקנית בכסף, for a יבמה is (also) נקנית בביאה (and therefore 'stronger' than an אמה) and nevertheless is not נקנית בכסף. The גמרא refuted this יוצאה by arguing that an אשה is 'stronger' than a יבמה for a יבמה is not יוצאה בשטר (as an אמה is) and a אשה is יוצאה בשטר. The גמרא then offered its refutation of the ק"ו that an אמה is נקנית בכסף and an אשה is not.

asks: תוספות

ואם תאמר נילף כסף מביאה<sup>2</sup> –

And if you will say let us derive כסף קנין ביאה from אשה by an אשה קנין כסף by an אשה through a ק"ו. The ק"ו will be as follows -

ומה ביאה שאין קונה באמה העבריה קונה באשה –

And if ביאה, which is not קונה by an אמה (proving that it is a weak קנין), is nevertheless קונה by an אשה, then -

כסף שקונה באמה העבריה אינו דין שיקנה באשה<sup>3</sup> –

כסף קנין which is קונה by an אמה העבריה (proving that it is a stronger קנין than ביאה), it should certainly be קונה by an אשה!

answers: תוספות

ויש לומר כל שכן דאיכא למיפרך<sup>4</sup> יבמה תוכיח<sup>5</sup> שנקנית בביאה ואינה נקנית בכסף:

<sup>1</sup> The term 'weaker' here means that she does not have the capacity to be acquired in the manner that an אשה can be acquired. The term 'stronger' indicates the capability to be acquired.

<sup>2</sup> כסף is a 'stronger' קנין than ביאה in the sense that it is effective in places where ביאה is not (as תוספות points out). ביאה is not קונה by an אמה, and כסף is; proving that כסף is stronger than ביאה. It follows that wherever ביאה is effective ([as] by an אשה), then כסף should surely be effective.

<sup>3</sup> The advantage of this ק"ו (over the מאמה ק"ו) is; that we cannot say כסף שכן יוצאת בכסף, for we are not discussing the strengths and weaknesses of אמה but rather the strengths and weaknesses of ביאה and כסף. [The fact that אמה is נקנית בכסף only enhances the strength of כסף קנין.]

<sup>4</sup> תוספות is refuting the basic assumption of this ק"ו that כסף is stronger than ביאה. It is not so; for ביאה may be stronger than כסף. This can be proven from יבמה; that she is not נקנית בכסף but is נקנית בביאה. See תוספות מה לכסף שכן הורע כחו שאינו קונה ביבמה במקום שביאה קונה; 'תוכיח' who (does not use the word 'תוכיח', but) states; יבמה 'proves' that כסף is not 'stronger' than ביאה.

<sup>5</sup> The word תוכיח here is to be understood that יבמה 'proves' that כסף is not 'stronger' than ביאה.

And one can say; we can certainly<sup>6</sup> refute the ק"ו by saying **יבמה** will disprove this ק"ו; for a **יבמה** is **ביאה** and is not **בכסף**.

### SUMMARY

קונה is not (necessarily) a stronger קנין than ביאה (even though כסף is קונה by ביאה and ביאה is not), for כסף is not קונה by a יבמה where ביאה is קונה.

### THINKING IT OVER

ביאה is explained that we cannot derive כסף from ביאה because ביאה is stronger than כסף, for it is קונה ביבמה (which כסף is not), and therefore it is (קונה ביבמה, since it is not באשה, but כסף will not be באשה). Why do we not ask on this פירכא that שטר יוכיח; even though שטר is not קונה by a יבמה, nevertheless it is קונה by an אשה (so the same should apply for כסף). If we will argue that שטר is מוציא by an אשה and therefore it is מכניס (as opposed to כסף which is not מוציא), we can respond that ביאה תוכיח, for is not מוציא and nevertheless it is מכניס. It will be a חזר הדין; so we can derive כסף through a שטר. Why therefore is a פסוק necessary?!<sup>7</sup>

### APPENDIX

Concerning the question which the מהרש"א (and others) asks that we should say and disprove the פירכא from שטר יוכיח, it is possible to suggest the following argument. In our ק"ו from ביאה to כסף, both the חומרא וקולא as well as the דין that is to be derived are concerning קנין. The initial חומרא of כסף is that it is קונה באמה, the subsequent פירכא that ביאה is חמור than כסף (for it is קונה ביבמה) is concerning קנין, as well as the דין that is to be derived is concerning קנין. In such a case perhaps it is inappropriate to ask שטר יוכיח as will be explained.

There are other instances of a ק"ו where the חומרא וקולא as well as the יוכיח and the intended דין are concerning different issues. For instance the גמרא<sup>8</sup> in פסחים derives

<sup>6</sup> The כ"ש can be understood in two ways. 1. Initially when the גמרא said יבמה תוכיח, it did not refute the basic assumption of the ק"ו that אשה is 'stronger' than אמה. It was (merely) a יוכיח that even if something is stronger than אמה (like a יבמה, which is נקנית בביאה), nevertheless it does not necessarily follow that it should be נקנה בכסף. However in this ק"ו the יבמה is not merely a יוכיח, but destroyed the entire foundation of the ק"ו which suggested that כסף is stronger than ביאה. From יבמה we see that ביאה is stronger than כסף. 2. The פירכא by אמה did not entirely disprove the purported claim of the ק"ו that an אשה is stronger than אמה as far as being נקנית is concerned; the manner in which it refuted the ק"ו was that since אמה has additional ways of יציאה, therefore we cannot derive אשה from אמה. However here, יבמה refutes the entire basis of the ק"ו (as mentioned in # 1). Since this ק"ו can be refuted more soundly than the ק"ו which the תוספות brings, therefore the ברייתא chose that ק"ו over the ק"ו which the תוספות suggested.

<sup>7</sup> See מהרש"א [הארוך]. See also 'Appendix'.

<sup>8</sup> כד, ב וכה, א.

that נעבדה is that ערלה over בב"ח of חומרא. The ק"ו מערלה from a אסור בהנאה is בב"ח that נעבדה בו (since חמורה which is בב"ח then, אסורה בהנאה is ערלה, therefore if ערלה is, בו עבירה (עבירה) should be surely בהנאה.

The ערלה אין לה, for בב"ח is more חמור than ערלה, for ק"ו, there then refutes the גמרא. This שעת הכושר is then refuted by a יוכיח from חמץ, for חמץ is שעת הכושר and nevertheless it is אסור בהנאה, therefore בב"ח should also be אסור בהנאה.

The יוכיח there of חמץ is understood. Granted that ערלה has a חומרא over בב"ח (that חומרא is irrelevant, however חמץ בפסח proves that this חומרא is irrelevant, (לא היתה שעת הכושר), for חמץ does not have that חומרא and it is אסור בהנאה. Once we prove that the purported new חומרא is irrelevant to the discussion, we rely on the original ק"ו that בב"ח is more חמור than ערלה.

This יוכיח there is valid because the various חומרות (whether עבירה בו or לא נעבדה בו) are not directly connected with the intended דין that is to be derived (היתה שעת הכושר). We can debate whether the new חומרא is the cause of the intended דין or not. חמץ בפסח proves that שעת הכושר is irrelevant to אסור הנאה.

In our case of כסף וביאה, however all the חומרות and the דין to be derived are in the very same issue; whether it is קונה or not. Initially כסף was considered more חמור than ביאה because it is קונה by אמה and ביאה is not. This חומרא of כסף was refuted, for ביאה is קונה by יבמה and not כסף. At this point there is no possibility of a ק"ו; both כסף and ביאה are equal קנינים. The very same חומרא that כסף has over ביאה, we find the very same חומרא by ביאה over כסף. When we refute the ק"ו with יבמה we are not merely arguing that ביאה also has a חומרא over כסף and that is why it is קונה באשה; but rather that if in the same concept of קנינים we find sometime that כסף is קונה and not ביאה (as by אמה) and other times ביאה is קונה and not כסף (as by יבמה) this proves that כסף וביאה are equal and there can be no ק"ו.

If we will say שטר יוכיח; for it is not קונה ביבמה and is קונה באשה, what will that prove? Can we say that it will prove that כסף is stronger than ביאה, or that the חומרא of ביאה (that it is קונה ביבמה) is irrelevant? Definitely not! It cannot prove that כסף is stronger than ביאה. And it cannot prove that the fact that ביאה is קונה (by יבמה) and not כסף is irrelevant. For any קנין of ביאה is always relevant when we are discussing whether כסף must be קונה if ביאה is קונה!

To summarize: A יוכיח is valid to refute a פירכא when we can discuss whether the חומרא is relevant to the דין or not (as the case is concerning the חומרא of ערלה (of שעת הכושר)). We can say that חמץ proves that שעת הכושר is irrelevant concerning אסור הנאה. However when the חומרא of the פירכא is similar to the original חומרא and is in the very same category of the דין which we wish to derive, then certainly a יוכיח of this sort proves nothing!