

ומניין שאף בשטר –

And from where do we derive that she is also acquired with שטר

OVERVIEW

The גמרא is searching for a source from where we derive that an אשה is נקנית. Our תוספות explains why we cannot derive it from a מאמה בשטר.

anticipates a solution, but refutes it:

ומקל וחומר דאמה העבריה שאין נקנית בביאה ונקנית בשטר ליכא למימר –

We cannot say that we can derive that an אשה is נקנית בשטר through a ק"ו from נקנית בשטר; it is nevertheless נקנית בביאה and who is not אמה העבריה. It follows therefore that a woman who is נקנית בביאה should surely be נקנית בשטר.

explains why the גמרא however does not offer this solution:

חדא משום דאמה גופה מדאיתקש לאחרת¹ נפקא לן לקמן (דף טז,א) –

Firstly, because later we derive this rule that an אמה is נקנית בשטר since an אמה is compared to אחרת (another meaning an אשה). At this point where we have not yet derived that an אשה is נקנית בשטר then obviously an אמה is also not נקנית בשטר and we cannot derive אשה from אמה. This answers the question if we maintain that אמה is derived from אחרת.

ואפילו לרב חסדא דיליף לה מלא תצא כצאת העבדים אבל נקנית היא בקנין העבדים – And even according to רב חסדא there, who does not derive באמה שטר from (she) לא תצא כצאת העבדים of פסוק² but rather he derives it from the פסוק (she should not leave [her master] as slaves leave [their master]), this פסוק teaches us, that **however she is acquired with the קנין of עבדים** which refers to שטר. The reason why according to רב חסדא we do not derive אשה from אמה through the previously mentioned ק"ו, is because –

איכא למיפרך כדלעיל שכן יוצאה בכסף³ –

¹ שמות (משפטים) כא,י. The פסוק is discussing a case where the אמה for an אשה was מיעד. The פסוק states that if the אדון will marry another wife [אם אחרת יקה לו], he must make sure that his original wife [the אמה] will not lose any of her privileges that she is entitled to. The fact that the תורה refers to an אשה as an אחרת [another] in relation to the אמה indicates that the אשה and the אמה are similar to each other. We can thereby derive the קנינים from one to apply to the other. See מעיקרא דב"ה מתיקרא footnote # 6.

² יוצא עבדים כנענים as יוצאה בשן ועין. This means that she is not יוצאה (משפטים) כא,ז.

³ דב"ה מתיקרא. This answer would seem to support that which was mentioned in מעיקרא דב"ה מתיקרא. That the פירכא of בכסף שכן יוצאה means that since an אמה has extra יציאות, therefore she can have extra קנינים. This is in contrast to how 'והואיל וכסף חשוב בה לפדותה חשיב נמי' explains the פירכא, namely רש"י (שם בד"ה שכן) explains. According to רש"י we could not use that פירכא here where we wish to derive שטר.

We can refute the ק"ו as it was previously refuted by arguing that only אמה is נקנית בשטר, since she is יוצאה בכסף; however an אשה who is not יוצאה בכסף is not נקנית בשטר.

אשה מק"ו מאמה offers an alternate reason why we do not derive

ועוד דכיון דלרב חסדא אב כותבו ליכא למילף באשה⁴ –

And furthermore since according to רב חסדא the father (who is the מקנה and not the קונה) writes the שטר קנין for the אמה, therefore we cannot derive from אמה the קנין שטר for an אשה –

שאינה נקנית בזה הענין שהבעל כותבו⁵:

Who is not acquired in this manner; for it is the husband, who is the קונה, who writes the שטר.

SUMMARY

We cannot derive that an אשה is נקנית בשטר from a מאמה ק"ו either because אשה is derived from קנין שטר באמה, or because we can refute the ק"ו or the two שטרות are different.

THINKING IT OVER

1. first answer (according to רב חסדא) is that we can refute the ק"ו because אמה is בכסף. Why did not תוספות use the פירכא which the גמרא mentioned previously לשום אישות קנינה⁶?

2. last answer is that we cannot derive אשה from אמה since by אמה the rule is that האב כותבו and אשה הבעל כותבו. Why cannot we derive אשה from אמה and the father should write the שטר by an אשה as well?⁷

⁴ Indeed (see the גמרא there) it is because רב חסדא maintains that by אמה it is the father who writes the שטר (and not the אדון who is the קונה), therefore he could not derive קנין שטר by an אמה from the היקש of אחרת (as עולא does), since the two שטרות are totally different; by an אשה the קונה (who is the husband) writes and gives the שטר to the מקנה (the women) and by אמה the מקנה (who is the father) writes and gives the שטר to the קונה (the אדון). [This also (obviously) explains why שטר באשה cannot be derived from אמה through the היקש of אחרת (according to רב חסדא).]

⁵ See 'Thinking it over' # 2.

⁶ רש"י ובל"י אות קה.

⁷ See footnote # 70.