

## **A defender should become a prosecutor – סניגור יעשה קטיגור –**

### **OVERVIEW**

The גמרא explained that we cannot say that a woman can be divorced with כסף (as she can be acquired through כסף) for it seems unnatural that the כסף which marries her can also divorce her; it is as if a defender becomes a prosecutor, which is inherently illogical. תוספות challenges this assumption that it is illogical that the same כסף should make a קנין and dissolve a קנין.

-----  
תוספות asks:

**ואם תאמר אם כן היכי קאמר לעיל<sup>1</sup> מה לאמה העבריה שכן יוצאה בכסף –**

**And if you will say; if this is indeed so (that a קנין which is a סניגור cannot become a קטיגור), how did the גמרא claim previously ‘that by an אמה she leaves from her master through כסף -**

**ודין הוא שתהא נקנית בכסף -**

**And therefore it is logical that she should be acquired with כסף.’** This concludes the reasoning of the גמרא. תוספות asks –

**אדרבה גריעותא דאין קטיגור נעשה סניגור<sup>2</sup> –**

**On the contrary!** The fact that she is יוצאה בכסף is a **hindrance** for her to be **קנין** (which breaks her attachment to the owner, namely כסף) **cannot be the סניגור** (the קנין which brings her into her masters possession). Why therefore does the גמרא claim that the reason (only) אמה is נקנית בכסף is because she is יוצאת בכסף, on the contrary since she is <sup>3</sup>אין קטיגור נעשית סניגור since נקנית בכסף she should not be יוצאת בכסף.

תוספות answers:

**ויש לומר דבאמה העבריה ליכא למימר הכי –**

**And one can say that by אמה העבריה this argument is not valid;** it is not a case where a קטיגור becomes a סניגור –

**לפי שמתחלה שאביה מוכרה לשפחות הוא מקבל הכסף מן האדון –**

---

<sup>1</sup> ד.ב. The גמרא there explained that we cannot derive קנין כסף by אשה from a מאמה אשה, for by אמה there is ample reason why she is נקנית בכסף, since she is יוצאה בכסף.

<sup>2</sup> תוספות reverses the order (from סניגור יעשה to קטיגור נעשה) because presumably סניגור refers to the act of creating the bond (acquiring the אמה, marrying the woman) while קטיגור refers to the breaking of the bond (releasing the אמה, divorcing the woman). Therefore תוספות asks how the גמרא can claim that since כסף is מוציא (breaking the bond) it should therefore be קונה (creating the bond); can a קטיגור (a breaker of bonds) become a סניגור (a creator of bonds). The same is true in our גמרא concerning שטר.

<sup>3</sup> And if despite that she is יוצאה בכסף, she is nevertheless נקנית בכסף, then an אשה who does not have this impairment (for she is not יוצאה בכסף) should surely be נקנית בכסף.

**For originally when her father sold her into servitude, the father receives the money from the master -**

**אם כן כשהוא רוצה לפדותה דין הוא שיקבל האדון הכסף –**

**Therefore it is logical that when the father wishes to redeem her that the master should receive the money in return.**<sup>4</sup> It is not a case of קטיגור נעשה סניגור -

**אבל איש שמקדש אשה הכל בא על ידו בין הקידושין בין הגירושין<sup>5</sup> –**

**However when a man marries a woman everything happens through the man's actions both the קידושין and the גירושין;** the man gives the כסף קידושין and (if מוציא כסף, the man will also give) the כסף for גירושין -

**והתם שייך למיפרך יאמרו כסף מכניס וכולי:**

**And in that situation, where both the כסף קידושין and כסף גירושין are given by the same person, it is appropriate to ask; can the same giving of כסף cause the woman to enter, etc. into marriage and leave the marriage!** It is illogical that when the man gives her כסף she becomes his wife, and when the same man gives her כסף (afterward) he divorces her!

### **SUMMARY**

The difficulty with כסף מכניס כסף מוציא is only if it is the same person (the קונה) who both makes and breaks the קנין by giving כסף; however if the קונה gives (to make the קנין) and receives (to break the קנין) that is understandable.

### **THINKING IT OVER**

1. How did תוספות initially understand the concept of קטיגור נעשה סניגור (in his question), and how does תוספות understand it in his answer?
2. Why cannot we say that כסף מוציא means that the husband receives the כסף (from the אשה or her father) just as by an אמה?<sup>6</sup>

---

<sup>4</sup> Giving money entitles the giver to acquire ownership and receiving money requires the receiver to relinquish ownership. This is the normal pattern of buying and selling.

<sup>5</sup> See 'Thinking it over # 2.

<sup>6</sup> See שובע שמחות and נח"מ.