

For they can be done forcibly

שכן ישנן בעל כרחא –

OVERVIEW

The גמרא concluded that we cannot derive כסף קידושי שטר וביאה from כסף קידושי שטר, for we can refute the צד השוה that they are קונה even בע"כ, and even though we find a קנין בע"כ concerning an אמה העבריה, nevertheless by marriage issues we do not find a קנין בע"כ. The גמרא does not clearly state what is meant that there is a קנין בע"כ by (שטר וביאה) as well as by אמה העבריה. There is a dispute between רש"י and תוספות how to interpret the קנין בע"כ by אמה.

פירש בקונטרס¹ ביאה ביבמה שטר בגרושין כסף באמה העבריה² –
גירושין by שטר, יבמה by ביאה בע"כ explained the term רש"י
אמה העבריה by an כסף, where the father can sell his daughter against her will.

asks: תוספות

וקשה לרבינו תם אם זה חשוב בעל כרחא מה שהאב מוכר את בתו בעל כרחא –
And the ר"ת has a difficulty with this interpretation, for if this is
considered a case of בע"כ when the father sells his daughter against her
will -

אם כן מאי קאמר רב הונא לקמיה³ כסף באישות⁴ מיהא לא אשכחן בעל כרחא –
Then why does רב הונא state later that 'concerning marital issues (at
least), we do not find a case of בע"כ;' but this is not so -

הלא האב מקדש בתו קטנה בכסף בעל כרחא⁵ –
for does not the father have the right to be מקדש his minor daughter
כ?!! If selling an אמה בע"כ is considered בע"כ, then being מקדש בתו בע"כ should also be
considered בע"כ! How can רב הונא state לא אשכחן בע"כ?!

answers: תוספות

¹ Perhaps תוספות is referring to the רש"י on the שכן בד"ה שכן. See (also) following footnote # 2.

² Others append the additional words from פירש"י that שאביה מוכרה שלא מדעתה. See also תוספות הרא"ש.

³ כסף. חופה אשה through אמה. He derives it through צד השוה from כסף. שטר וביאה. The גמרא challenges this צד השוה for בע"כ; to which רב הונא responds that אמה העבריה by כסף בע"כ but not by אישות. [רב הונא agrees that there is בע"כ.]

⁴ The גירסא of רש"י there is כסף בד"ה שכן. This means that unlike שטר וביאה where we find a קנין באישות בע"כ; by כסף we cannot find a קנין באישות בע"כ. However concerning כסף קידושין there is clearly רש"י states there. See footnote # 89.

⁵ In our גמרא it also states לא אשכחן באישות מיהא. However this presents no difficulty, for our גמרא is discussing if there would be no לימוד for כסף קידושין, therefore there could not be a case of האב מקדש את בתו. כסף שטר וביאה of קנינים. However רב הונא is discussing where we already know all.

ואומר רבינו תם כיון דאב במקום בתו קאי אין זה חשוב בעל כרחא –

And the ר"ה explains that since the father stands in the place of his daughter, the קידושין of his daughter (even if it is) against her will is not considered בע"כ –

כיון שהוא מדעתו של אב⁶ –

Since it is done with the consent of the father who takes the place of the daughter –

anticipates the obvious question:

ואם תאמר אם כן היכי קאמר כסף נמי איתא באמה העבריה בעל כרחא –

And if you will say; if this is so that whenever it is done with the consent of the father it is not considered בע"כ, then how can the גמרא state that by כסף there is also a case of בע"כ by an אמה העבריה, this is not so –

הרי אב מוכרה מדעתו⁷ –

for the father sells her with his consent and we just said that if it is מדעת האב it is not considered בע"כ since the father takes the place of the daughter.

resolves the contradiction:

ויש לומר דהכי פריך כסף איתא באמה בעל כרחא –

And one can say is that this is what the גמרא asked that there is בע"כ by an אמה; the בע"כ is not referring to the selling of the אמה but rather –

כגון שהאדון מייעד את העבריה בכסף מקנתה בעל כרחו של אב ובעל כרחא של בת –

For instance where the master is מייעד⁸ the אמה העבריה with her purchase money (which he initially gave to the father); he can do this בע"כ of the father and בע"כ of the daughter. The case of בע"כ באמה העבריה is where the כסף is where the אמה בע"כ, with the money that he paid for her initially. The קנין כסף allows him to be מייעד בע"כ.

anticipates a difficulty and resolves it:

דהא דאמר לקמן (דף יט,א) אשר לא יעדה שצריך לייעדה⁹ –

⁶ A would mean that the person making the קנין does it without the consent of the other party (as it is by אשה בע"כ [where the husband is] or by גט [where the husband is]). However, here the husband and the father both agree to the קנין. The בת is merely the object being acquired.

⁷ There is an inherent contradiction here (if we assume that בע"כ באמה העבריה is referring to his selling his daughter for an אמה). Here the גמרא maintains that it is בע"כ (albeit not באישות), and later רב הונא maintains there is no באישות בע"כ (even when the father is מקדש his daughter בע"כ) since it is מדעת האב.

⁸ The אדון can be מייעד the אמה and she becomes his wife. The term יעור means that he designates her (as his wife). The יעור is based either on the money he paid initially (ניתנו לקידושין) or she becomes מקודשת to him in lieu of her time of servitude still owed. See footnote # 14.

⁹ The word יעדה (which means יעור) is interpreted as דעה knowledge; she is to be informed of the יעור.

For that which the גמרא states later based on the פסוק of לא יעדה that it is necessary for the master to inform her that he is being מייעד her -

לא שצריך לעשות מרצונה אלא שצריך להודיעה שלשם קידושין מייעדה -

It does not mean that the יעוד must be done with her consent, but rather the master is required to inform her that he is being מייעד her for the purpose of קידושין, however the יעוד can be בע"כ.

anticipates an additional difficulty:

ואף על גב דאמר לקמן באישות מיהא לא אשכחנא -

And even though רב הונא stated later that at least by אישות we do not find a case of בע"כ -

ובכי האי גוונא שמייעד הוי אישות -

And in this instance where the master is מייעד her בע"כ it is אישות, so how can רב הונא state that לא אשכחנא באישות?!

replies:

מכל מקום בתחילה לא בא הכסף בשביל אישות¹⁰ -

Nevertheless initially the money was not given for אישות but for servitude.

Therefore we can say that there is כסף בע"כ by אמה, for with the money the owner received for her עבדות he can be מייעד her בע"כ; however in regards to אישות we do not find a case where money given for אישות can be בע"כ.

offers a possible justification of פירש"י:

ויש מיישבים פירוש הקונטרס דודאי זה קרוי בעל כרחא מכירה של אמה העבריה -

And others justify the פירוש הקונטרס (where the sale of an אמה is considered בע"כ, but not the קידושין of a קטנה), for it is certain that the sale of an אמה העבריה is called בע"כ; the אמה definitely does not want it -

שחוב הוא לה ואם היתה בת דעת לא היתה מתרצית -

For it is detrimental to her and if she were mature she would not agree to be sold into servitude -

אבל קידושי קטנה לאו חוב הוא לה¹¹ כמו מכירה -

However the קידושין of a minor girl is not as detrimental to her as being sold into servitude -

וסופה עומדת לינשא אם¹² היתה בת דעת היתה מתרצית ולא חשיב על כרחא:

For eventually she will be married and if she were mature she would consent and therefore it is not considered ע"כ.

¹⁰ See 'Thinking it over # 1.

¹¹ See 'Thinking it over # 2.

¹² Others amend this to ואם.

SUMMARY

According to רש"י when a father sells his daughter for עבדות that is considered בע"כ; however when he marries her off that is not considered בע"כ (since [eventually] she would have agreed). According to תוספות the יעוד which takes place later is considered the בע"כ, but it is not considered אישות since the money was given for עבדות and not for אישות.

THINKING IT OVER

1. בע"כ her מייעד even though he is באישות לא אשכחן בע"כ explains that תוספות. ¹³ Later in the גמרא because initially the money was not given אישות לשם. (יעוד) whether קידושין ניתנו (concerning מחלוקת) or not. Is תוספות explanation valid only according to one view or is it valid according to both views?¹⁴

2 תוספות writes (according to the פ"ה), that קידושי קטנה is not a חוב; indicating that it is not בע"כ.¹⁵ However רש"י on the כסף בד"ה כסף רש"י states that בע"כ through her father is considered קידושי בת!¹⁶

3. Our גמרא here [universally] maintains that we cannot derive כסף שטר from שטר since there is no כסף בע"כ by אישות (even though there is כסף בע"כ by אמה). Later the גמרא insists that since there is כסף בע"כ [even though it is not רב], therefore we cannot derive חופה from שטר וביאה. (It is only רב who maintains that since לא אשכחן, therefore it is not a valid אישות.) Why is it that here the גמרא insists that since we do not find אישות בע"כ, we can differentiate between שטר וביאה and כסף, and later the גמרא maintains that even though we cannot find אישות בע"כ by כסף, nevertheless we cannot distinguish between שטר וביאה and כסף?¹⁷

¹³ See footnote # 10.

¹⁴ See footnote # 10. Alternately; if we maintain קידושין ניתנו מעות הראשונות לקידושין, then how is it considered בע"כ at all? The father accepted the קידושין with the understanding that the אדון has the option of יעוד. This should be considered מדעתו של אב. If, on the other hand we assume that קידושין ניתנו מעות הראשונות לא לקידושין, and the יעוד takes effect in exchange for the work she owes him, then how can we say that the כסף is not אישות? He is presently [forcibly] giving her כסף (freeing up her obligation) in exchange for קידושין!

¹⁵ See footnote # 11.

¹⁶ See מהרש"א (בד"ה בא"ד).

¹⁷ See (פירש"י פ"ר ר"ת or also on פ"ר) מהרש"א הארוך.