

DERECH B'YAM HATALMUD ON THE DAF

IYUN INSIGHTS ON KESSUBOS 10A-10B

(A selection of issues discussed by the מפרשים on the דף.)

How do we act when two תקנות דרבנן conflict?

The גמרא on the top of דף י. discusses two תקנות of the חכמים. First, it says that they required men to give their wives a כתובה, to discourage them from divorcing their wives easily. (The גמרא in other places discusses if the כתובה is from the תורה or from the חכמים.)

Second, they decreed that if a man says "פתח פתוח מצאתי", he is believed to deprive his wife of her כתובה. This תקנה would seem to leave women unprotected against claims by their husbands.

in רש"י (ד"ה חכמים תקנו) says that the two דינים mentioned here are connected. It is only because the חכמים instituted that women are protected by a כתובה that they were able to say that a man is believed with the claim of "פתח פתוח מצאתי" to take it away. This is due to the rule הם אמרו והם אמרו – they created the requirement of a כתובה, and they can negate it in certain situations. If, however, the כתובה was from the תורה, it would be necessary to have testimony (from two עדים) to withhold payment.

The ר"ן in (ט: ד"ה נאמן להפסידה) brings the רמב"ן who argues and says that we cannot learn from here that the requirement of a כתובה is from the רבנן. He says that if the כתובה was from the תורה, it would work like other ממון שטר. Regarding those, if there is a ספק whether the intended recipient should receive the money, he must prove that he deserves it. Since the man married the woman on condition that she is a בתולה, and now he has a ספק, she must bring proof of her status. (The ר"א says that due to the המוציא מחבירו עליו הראיה, the onus is on the woman, since she is trying to extract her כתובה.)

The ר"ן argues with the רמב"ן, saying like רש"י that the כתובה was created by the Rabbis to protect women. If a man could push off paying the כתובה because of the הראיה מחבירו עליו without any basis, then women would be left unprotected. It is only because men know that if they make such a claim, they will suffer a loss as a result (the expenses of the התונה and the סעודה), they will refrain from doing so. This then causes the man to be believed when he claims "פתח פתוח מצאתי".

Checking a woman's status

The גמרא on י: brings a case of a woman whose status as a בתולה or a בעולה was verified by placing her on top of a wine barrel. When the רמב"ם in (הלכות אישות יא:יב) משנה תורה discusses how to check a woman's status if her husband claims "פתח פתוח מצאתי", he does not mention this method. The גמרא in (ס' סח ס'ק ג) חלקת מחוקק says the wine in our days is not as strong as the wine in the time of the גמרא.

Based on the forthcoming sefer
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