

DERECH B'YAM HATALMUD ON THE DAF

LYUN INSIGHTS ON KESSUBOS 9A-9B

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

How can a man cause his wife to be אסור to himself?

The גמרא on the top of דף ט. says that if a man says, "פתח פתוח מצאתי", claiming that his wife is a בעולה, he is believed לאוסרה עליו – to cause her to be prohibited to him.

in רש"י (ד"ה נאמן לאוסרה עליו) says that the man is believed, לשיייה עליה התיכה דאיסורא – to cause her to be forbidden to him like a prohibited item. However, he cannot cause her to lose her כתובה.

The מפרשים give several approaches for how a man can cause his wife to be אסור to himself:

Approach One - תורת נדר

Several אחרונים explain that when the man says "פתח פתוח מצאתי", this is akin to **making a נדר** on himself that she is אסור to him. However, the נודע ביהודה (אהע"ז תניינא ס' כג) challenges this explanation, because a נדר must be made with a specific wording, for example that it prohibits an item on the person like a קרבן. We do not find that such a לשון was used in this case.

Approach Two – נאמנות

Many אחרונים, including the נודע ביהודה and the קצות החושן (ס' לד"ד) learn that the statement is working מדין נאמנות. A person is believed on himself more than 100 עדים, for example that he is believed that an item is prohibited to himself. (Rabbi Itzel Petselberger explains that such a statement can normally be disproven. However, the man's statement here cannot be refuted, since there is no way to prove empirically if the woman was a בעולה or a בתולה.)

Approach Three – Accepting a self-imposed איסור

The תרומת הכרי (סימן א ד"ה ועוד) argues with his brother, the קצות, and suggests another approach. He says that if a person declares that a particular item is אסור on himself, we accept his statement that the item is אסור **on him**. This would even allow a בית דין to punish a person who violated a prohibition which he accepted on himself.

In this case when the man says "פתח פתוח מצאתי", we do not know if his wife is truly a בעולה, but we accept that he thinks that she is. We agree that it is forbidden for him to remain with her.

How does a ספק ספיקא allow us to be מיקל?

The גמרא on ט. asks how could a man make his wife אסור to him by saying "פתח פתוח מצאתי",

since there is a ספק ספיקא of her status (perhaps she had ביאה when she was תחתיו, and even if it occurred תחתיו, perhaps it occurred באונס). Two approaches to explain the term ספק ספיקא:

The רשב"א says that we view a ספק ספיקא like it is a רוב – the majority. In this case, the majority of the possibilities give us reasons to be lenient.

The פני יהושע in (ד"ה לא צריכא) cites an opinion held by several ראשונים (including the רמב"ם) that on the דאורייתא level, we are מיקל when there is a ספק. However, the Rabbis decreed that we need to be מחמיר for even a single ספק.

Since the reason to be מחמיר for a single ספק is from the Rabbis, if we have a second ספק, it becomes a ספק ספיקא on a ספק דרבנן. Since we are מיקל on a ספק דרבנן, we are מיקל in a ספק ספיקא.

Writing a גט before going to war

The גמרא discusses the episode between Dovid HaMelech and Batsheva. On the bottom of ט it asks that she should have been אסור (to Dovid). On the top of ט it rejects this, because it says that soldiers in Dovid's army wrote גיטין for their wives before battle. What type of גט did Uriah write?

רש"י (ד"ה גט כריתות) says that each soldier wrote a גט על תנאי – a *conditional גט* for his wife, which would take effect from the time it was written if he died in battle (or if he did not return for another reason, such as if he was captured, according to רש"י in שבת נו).

תוס' brings רבינו תם who challenges רש"י on several points, including that if Uriah had given Batsheva a גט על תנאי, she would still have been married to him when she was with Dovid. רבינו תם suggests two other explanations:

First, he says that each soldier gave a **definite גט** to his wife which would take effect למפרע if he did not return home at the end of the war.

תוס' cites the גמרא in בבא מציעא which says there was a ספק whether Batsheva was still married to Uriah at the time that she was with Dovid. תוס' addresses this point, and says that when Uriah came home in the middle of the war, there was a ספק if he was still married to Batsheva. However when he later returned to the battlefield and was killed, the גט took effect from the time it was originally given.)

Second, he says that each soldier wrote a גט and gave it to his wife when he left for war, and they took effect when given. Each man did so בצנעה – privately, without other people's knowledge.

תוס' explains that because Uriah gave her a גט in a way which was not known to the masses, this was the source of the doubt whether she was an איש איש at the time she was with Dovid.)

To go deeper into this topic, see our short video shiur entitled Why Was Batsheva Permitted to Dovid? on our website.

**Based on the forthcoming sefer
Derech B'Yam HaTalmud on the First Perek of Kessubos (Sections 14 & 16)**

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