

13.10.1

(לא מפקינן מינה, קמ"ל) → 89a (משנה א') 87b

Note: this chapter is the beginning of the final segment of the מסכת, dealing with the status of a woman whose husband has traveled abroad and is reported dead.

Premise: if a woman has relations with a man while married to another, she is thereby prohibited from ever having relations with either; this holds even if she was under the errant belief that the 1st husband had died. In such conditions, her husband must divorce her and, since the divorce is not of his volition, there is no כתובה or associated payments made to the wife.

.1 או הודיע אליו חטאתו אשר חטא והביא קרבנו שעירת עזים תמימה נקבה על חטאתו אשר חטא: ויקרא פרק ד פסוק כח
 .2 ויכר יוסף את אחיו והם לא הכרהו: בראשית פרק מב פסוק ח
 .3 וקדשתו כי את לחם אלהיך הוא מקריב קדש יהיה לך כי קדוש אני ה' מקדשכם: ויקרא פרק כא פסוק ח

- I Remarriage based on (errant) information of the death of the husband (1 witness) and husband returns
- a Reason for reliance on 1 witness (distinct from נאמן באיסורין which only applies if איסורא לא איתחזק איסורא)
- i Since the consequences if mistaken are so severe, we are lenient beforehand (i.e. she will be careful to check the reliability of the testimony) – and we are lenient (with severe consequences) because of עיוגא
- b She must divorce both
- i Divorce from 2nd - precaution against misconception that a woman may leave her husband w/o a גט
- 1 In case she was only מקודשת (and didn't violate the law with ביאה), no need for גט (קנס נח)
- ii רב: only true if there was 1 witness; if she remarried based on 2 (and married one of them) - with 2 opposing and her claiming to know that the 2 (in her favor) are correct (v. 2):
- 1 option 1: contra בר יוסי מנחם בר יוסי, even if she married after the 2nd set came
- 2 option2: in accord with בר יוסי מנחם בר יוסי, only if she married before the 2nd set came
- 3 challenge: we force (דפנו) א כהן to divorce inappropriate wives (v. 3):
- (a) case: must be akin to ours – and we force her out
- (b) answer1: איסור כהונה is different
- (c) Answer2: "force" means – we work to gather proper עדים to repudiate the first 2
- 4 Alternate reading of רב: לא תצא means she doesn't exit her היתר (to her 1st husband, since she married based on 2-man testimony and was אנוסה)
- iii שמואל: only true if she doesn't contradict witness(es):
- 1 case must be where 1st witness was a woman
- iv She has no תנאי כתובה::כתובה - פירות, מזונות, בלאות from either: (and if she took, must return – תפיסה isn't valid)
- 1 כתובה – since it was established to make divorce more difficult and here we are encouraging it
- 2 פירות – she cannot claim back any of the benefits from her נכסי מלוג – כתובה::כתובה
- 3 תנאי כתובה::כתובה - no food support - מזונות
- 4 תנאי כתובה::כתובה - נכסי צאן ברזל worn out items from her בלאות
- c child from either husband have status of ממזר (1st – if she returns to him)
- d neither husband has rights/obligations:
- i if כהן, to be מטמא for her burial
- ii הפרת נדרים, מציאה, נדריים
- e permanent stigma:
- i if she is בת ישראל, may never marry (זונה) כהן
- ii if she is a בת לוי, she may never resume eating (ר"מ) מע"ר (ר"מ) – in addition to being a זונה
- iii if she is a בת כהן, she may never resume eating תרומה – in addition to being a זונה
- f upon husband's death:
- i neither husband's heirs inherit her כתובה (?); husband's brothers must perform חליצה but not ייבום
- g dissent(s):
- i ר' יוסי: she has a כתובה – from the estate of her 1st husband
- ii ר"א: 1st husband continues to have rights to her מעשה ידיים etc.
- iii ר"ש: of any of the brothers of 1st husband exempts צרות and child of 1st husband is not a ממזר
- iv ר"ש: if she married without ב"ד (2 witnesses to his death) – may return to 1st husband
- II משנה ב': further distinctions between ניסת ברשות/שלא ברשות ב"ד
- a if she married ב"ד ע"פ, no קרבן חטאת (for her or 2nd man)
- b if she married without ב"ד רשות, both she and 2nd man have obligation of קרבן חטאת
- c if ב"ד issued permission and she had non-marital sex, חייבת as adulterer; the permit was only for marriage