**האשה. אם יש עדים שיצאת בהינומא כולי – The woman. If there are**

**witnesses that she left** her father’s house **with a הינומא[[1]](#footnote-1), etc.**

Overview

The משנה states the case of a woman who is widowed or divorced and there is a dispute whether she was a בתולה when she originally married. If there are witnesses that she was יצאה בהינומא at the wedding, it is proof that she was a בתולה and receives a כתובה payment of מאתיים. Our תוספות will be discussing some details in this case.

There are places where the כתובה was written and used as a note to collect payment; however there are places where there was no written כתובה.[[2]](#footnote-2) The woman collected her כתובה based on a מעשה בית דין. It is an enactment of בי"ד that a woman collects a כתובה (etc.), if she is widowed or divorced.

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**בדלא נקיטא כתובה איירי דאי איכא כתובה ניחזי כתובתה אם היא בתולה או אלמנה -**

The משנה **is discussing** a case **where** the woman **is not holding a כתובה;[[3]](#footnote-3)** the widow or the divorcee has no כתובה in her possession, **for if there is a כתובה,** why should there be an issue, **let us see** what is written in **her כתובה, whether she** was **a בתולה** when she married, and her כתובה is מאתיים; **or if she was a widow** (or a divorcee) when she married and her כתובה is only a מנה.

תוספות anticipates a difficulty if we assume that there is no שטר כתובה being presented here for collection; and rejects it:

**ואפילו[[4]](#footnote-4) למאן דאמר הטוען אחר מעשה בית דין ואמר פרעתי[[5]](#footnote-5) נאמן -**

**And even according to the one who maintains,** that **one who argues with an enactment of בי"ד and he says I paid** the debt that בי"ד placed upon me **he is believed** and does not have to pay, nevertheless there is no difficulty. Seemingly according to this מ"ד there is a difficulty. In our case since the ex-wife is not presenting a כתובה, the husband (or the יתומים) has the option of claiming that the כתובה was already paid in full.

תוספות will first clarify the difficulty, and then answer it:

**מכל מקום אין נאמן לומר כאן אלמנה נשאתיך מגו דאי בעי אמר פרעתי -**

**Nonetheless,** even though that this option of פרעתי exists, **the husband is not believed in this** case **to claim,** that **I married you** as **a widow**, since he has a **מגו that he could have claimed I paid** the כתובה. If he would have claimed פרעתי he would be פטור from paying anything. Now that he is claiming אלמנה נשאתיך and is willing to pay a מנה, he should be believed.[[6]](#footnote-6) The question is why the woman receives the entire כתובה; there is a מיגו of פרעתי, which should support the claim of אלמנה נשאתיך.

תוספות responds:

**דמגו במקום עדים הוא:**

**For this is a מגו which contradicts עדים.** A מיגו במקום עדים refers to case where the claim (not the מיגו) contradicts the עדים. In our case the claim is that she was a widow at the time of marriage. The עדים claim that יצאה בהינומא; that she was a בתולה. A מיגו cannot justify a claim which contradicts עדים.

Summary

If there are עדים that יצאה בהינומא, then even though the woman does not possess a כתובה, he is not believed to claim אלמנה נשאתיך, with a מיגו of פרעתיך. This is considered a מיגו במקום עדים.

Thinking it over

The ruling that מיגו במקום עדים לא אמרינן is well established. What was תוספות question initially?

1. The גמרא (on דף יז,ב) cites two opinions whether a הינומא is a wreath of myrtles or a type of veil. [↑](#footnote-ref-1)
2. See the גמרא later on טז,ב. [↑](#footnote-ref-2)
3. It is either a מקום שאין כותבין כתובה or she lost her כתובה. [↑](#footnote-ref-3)
4. The term ‘even’ is to be understood that ‘even according to this מ"ד’ there is (ultimately) no difficulty, as תוספות continues to expound on the proposed question and subsequent answer. [↑](#footnote-ref-4)
5. There are those who maintain (ר' יוחנן) that one cannot claim פרעתי on a debt that בי"ד imposes on him (like supporting one’s wife and daughters) for it is like a מלוה בשטר where פרעתי is not believed. See ב"מ יז,א. However there are others who maintain that פרעתי is נאמן against a מעשה בי"ד; see the marginal note. [↑](#footnote-ref-5)
6. This seems to be even stronger than a regular מגו. If he would have used the מגו claim he would have been entirely פטור; certainly he should be believed with his actual claim where he is admitting to owing a מנה. [↑](#footnote-ref-6)