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Intro

Today we will בע"ה learn דף פ"ח of מסכת יבמות The topics we will learn about include.

The reason that עד אחד נאמן regarding מת בעלה

The Halachos of תר ותרי, two sets of opposing עדים

The requirement for a Get if חזרה בעלה









So let's review

The Gemara continues explaining the Mishnah of the previous Daf:

האשה שהלך בעלה למדינת הים ובאו ואמרו לה מת בעליך וניסת

ואח"כ בא בעלה

A woman whose husband traveled abroad, and she was told מת בעליך, that her husband died, upon which she married a second husband, and her first husband subsequently returns;

תצא מזה ומזה

She is prohibited to both her first and second husbands.

The Gemara explained that the Mishnah is speaking of where she remarried based on the testimony of an עד אחד, ONE witness, which is generally not accepted.

After an extensive discussion of whether עד אחד מהימן מדאורייתא

The Gemara concludes that an עד אחד is indeed not accepted.

The Halachah of

עד אחד נאמן באיסורין

Applies only where איסורא, the Issur has not been established;

However, in our case it is איתחזק איסורא איש איתחזק איתחזק איתחזק איתחזק איתחזק איתחזק איתחזק איתחזק איתחזק אית since she is married, and we must apply the Halachah of אין דבר שבערוה פחות משנים

Therefore, the Gemara concludes;

אמר ר' זירא

מתוך חומר שהחמרת עליה בסופה

הקלת עליה בתחלה

ומשום עיגונא אקילו בה רבנן

As Rashi explains;

The Chachamim were lenient, and made a special dispensation in this case of עדות אשה, so that she not remain alone –

Combined with the understanding that אשה דייקא ומינסבא, a woman will usually investigate further to be certain that her husband died.

In addition, in the event that he turns out to be alive, the Chachamim enacted a severe קנס, a penalty that she may not return to him, plus other penalties mentioned in the Mishnah, to serve as an added incentive for her to investigate thoroughly. If he does turn up, it's assumed that she did not investigate adequately. Therefore, she is penalized.

The Gemara א דף צ' ע"ב explains that the ability of the Chachamim to be מתיר a possible איסור אשת איש דאורייתא stems from the principle of

מאן דמקדש אדעתא דרבנן מקדש

As we say

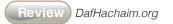
כדת משה וישראל

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The Gemara continues explaining the Mishnah which ruled

ניסת בעד אחד ואח"כ בא בעלה תצא מזה ומזה

אמר רב לא שנו אלא שניסת בעד אחד אבל ניסת על פי שני עדים לא תצא

There are two ways of understanding Rav's statement: We will first review the second, and simpler, version. רב אשי אומר

מאי לא תצא דקאמר רב לא תצא מהיתירה הראשון

Ray is discussing whether she may return to her FIRST husband.

In order to teach us that we Pasken like this Mishnah, Rav restates that which the Mishnah taught, that in the רישא מזה ומזה

She is forbidden to both men, because she remarried based on the testimony of an עד אחד, ONE witness, which is generally not accepted, as explained earlier by רבי זירא. However, in the סיפא

לא תצא

Or, as the Mishnah expressed it ואם ניסת שלא ברשות

מותרת לחזור לו

She may return to her FIRST husband, because she remarried based on the testimony of שני עדים, TWO valid witnesses, which is always accepted - Therefore, she's considered like an מותרת לבעלה, who is מותרת.

The other understanding of Rav, first advanced by the Gemara, is as follows:

Rav is discussing whether she may stay with the SECOND husband.

אמר רב לא שנו אלא שניסת בעד אחד אבל ניסת על פי שני עדים לא תצא

If she remarried based on עד אחד,

תצא מזה ומזה

She is forbidden to both men. However, if she remarried based on שני עדים,

לא תצא משני

She MAY remain with the second husband.

The Gemara asks the obvious question;

אתא גברא וקאי

Dedicated By: _

ואת אמרת לא תצא?

Since her first husband is standing before us, she is certainly an אשה איש, how can we say that she may stay with the second husband?









Therefore, the **G**emara describes the following scenario: דלא ידעינן ליה

A man, claiming to be her husband, shows up, but neither she, nor others recognize him. However,

דאתו בי תרי ואמרי

אנן הוינן בהדיה מכי נפק ועד השתא

He has two supporting witnesses who testify that they were constantly with him from when he left home until now; and

ואתון הוא דלא ידעיתו ליה

You do not recognize him because, for some reason, his appearance changed.

Now, this scenario, in and of itself, is a situation of תרי נינהו

Two opposing sets of שני עדים;

The first set who came from abroad and testified that her husband certainly died – and the second set who testify that this man is certainly her first husband.

This creates a

ספק איסור אשת איש דאורייתא

And she may NOT stay with her second husband. Actually, they are both obligated in a קרבן אשם תלוי for the time they were together.

Therefore, the Gemara adds the following two factors to this scenario:

כגון שניסת לאחד מעדיה

ואומרת ברי לי

She married one of her witnesses - and -

She is certain that this man is not her husband – as Rashi explains; based on certain marks.

It is in this case that Rav ruled אבל ניסת על פי שני עדים לא תצא

They are permitted to remain married, because they are both certain that he died - they have no ספק.

The Gemara cites a Braisa with a similar, but slightly different situation



כגון שניסת לאחר מעריה ואומרת ברי לי

She married one of her witnesses – and – She is certain that this man is not her original husband

It is in this case that Rav ruled אבל ניםת על פי שני עדים לא תצא





The Gemara cites a Braisa with a similar, but slightly different situation:

שנים אומרים מת ושנים אומרים לא מת שני עדים say that her husband died. שני עדים say that her husband is alive.

שנים אומרים נתגרשה ושנים אומרים לא נתגרשה הרי זו לא תנשא

She may NOT remarry, because it's ספיקא in a תרי ותרי

ואם נשאת לא תצא

But if she did remarry, she may remain with her husband.

יוסי differentiates:

באו עדים ואח"כ ניסת

תצא

If the second עדים who say that he's alive came first, and she remarried afterward, she may NOT stay. It's a קנס. She is penalized, because she was not supposed to get married.

אבל ניסת ואח"כ באו עדים

הרי זו לא תצא

However if she remarried first, and the second עדים came later,

לא תצא

She is may stay with her husband, because at the time she married him it was permitted based on the first עדים.

The תנא קמא holds that even in the first case of באו עדים ואח"כ ניסת

לא תצא

She may stay, because we do not penalize her, even though she should not have married him.

Similarly, in the case of Rav, where the supposed husband came back with שני עדים, the Gemara has two opinions: איכא דאמרי - Some say that Rav ruled איכא only in the case of

ניסת ואח"כ באו עדים

Because Rav holds like רבי מנחם ברבי יוסי

איכא דאמרי - Some say that Rav ruled איכא even in the case of

באו עדים ואח"כ ניסת

Because Rav holds like the תנא קמא

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Dedicated By: _









The Gemara continues with a similar case, but somewhat different:

The Gemara assumes that the רישא of the Mishnah ניסת בעד אחד

ואח"כ בא בעלה

תצא מזה ומזה

Also applies to the case of Ray, where the supposed husband came back and was not recognized by the people - and the question is when and why do we say תצא מזה

Of course if she agrees that he is her first husband, תצא. The variables are:

-1-

What type of עדים support his claim to be the first husband?

עד אחד OR עד אחד עדים פסולים OR עדים כשרים

-2-

What does the wife say to his claim?

מכחשתו, does she contradict him? OR לא מכחשתו, she does not contradict him, which means, שתקה, she does not say anything, she does not know.

ניםת בעד אחד ואח"כ בא בעלה תצא מזה ומזה



The Gemara explains:

His עדים are stronger than her עד אחד, and regardless of whether she agrees or disagrees, the Halachah is תצא. His עד אחד is weaker than her עד אחד, and whether מכחשתו or שתקה,

לא תצא

If he has שני עדים פסולים it depends; If she is שתקה, we say כל מקום שהאמינה תורה עד אחד

הלך אחר רוב דעות

His שני עדים פסולים are stronger than her עד אחד, and therefore תצא.

If she is שני עדים פסולים are not believed against her ברי, and therefore לא תצא.

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שני עדים His are stronger than her עד אחד and regardless of whether she agrees or disagrees, the Halachah is תצא

עד אחד His is weaker than her עד אחד and whether

לתקד Or אכחלתן לא תצא

If he has שני עדים פסולים it depends

שתקה If she is we say כל מקום שהאמינה תורה עד אחד הלך אחר רוב דעות

אני צדים הסולים His אני are stronger than her תצא.

If she is מכחשתו, his שני עדים are not believed against her ברי







9 The Mishna continues וצריכה גט מזה ומזה

She requires a Get from both husbands

The Gemara asks

בשלמא מראשון תבעי גט

She requires a **G**et from her first husband, because they were married legitimately.

אבל משני אמאי

זנות בעלמא הוא

But why does she require a Get from the second husband, they were never married legitimately?

The Gemara answers;

גזירה שמא יאמרו גירש זה ונשא זה

ונמצאת אשת איש יוצאה בלא גט

The Chachomim initiated a הזירה, because some might think that she was first divorced from her first husband, and then remarried legitimately to her second husband, and she's now leaving him without a Gett - And כיון דעבדא איסורא

קנסוה רבנן

The Chachamim penalized her in that she must receive a **G**ett from the second husband as well.





