

Promiscuity is not prevalent

זנות לא שכיחא –

OVERVIEW

The גמרא explains that ר"ל does not agree with ר"י that the reason the חכמים were שכיחא is because of שמא יחפה, since ר"ל maintains that זנות is not שכיחא. Our תוספות qualifies this statement that זנות לא שכיחא.

פירוש זנות בעדים ובהתראה¹ לא שכיח –

The explanation of the phrase זנות לא שכיחא is that זנות with עדים and התראה, which will lead to a חיוב מיתה, is not שכיחא (and therefore no תקנה will be made out of concern for this type of זנות) -

אבל לא בעי למימר דשום זנות לא שכיח –

However, the גמרא did not mean to say that any type of זנות is not שכיחא (and therefore no תקנה should be made out of concern for any type of זנות) -

דהא בריש כתובות (דף ב,א) תקנו שתהא בתולה נישאת ביום הרביעי –

For in the beginning of משנה מסכת כתובות teaches that the חכמים instituted that a בתולה should marry on the fourth day (Wednesday) -

שאם היה לו טענת בתולים² ישכים לבית דין דחיישינן לאיקרוי דעתא –

So that if the husband has any בתולים claims he should come early on Thursday to ב"ד³, for we are concerned (if he does not marry on Wednesday) that he will calm down and not go to ב"ד⁴. It is evident from the גמרא in כתובות that we are concerned for זנות (that is his טענת בתולים). Therefore we must say that even though we are concerned for זנות (without עדים והתראה) as it appears from the גמרא in כתובות, nevertheless we are not concerned for זנות בעדים (as it appears from our גמרא) and ובהתראה.

סוגיות suggests an alternate distinction between the two תוספות:

ומסתברא⁵ דטפי איכא למיחש לשמא תזנה⁶ מלשמא זנתה –

¹ The husband will be מחפה for her only if she may receive מיתה (which can occur only ובהתראה), otherwise if there is no מחפה he will not be מחפה for the consequences are not so dire. See (however) 'Thinking it over' # 2.

² טענת בתולים means that the husband will claim that he did not find her to be a בתולה when he was בועל her. There is a concern that she was מזנה (ברצון) after the קידושין, when she is already considered an איש. If indeed that is the case, she is לבועל and her husband may not continue to live with her.

³ The בית דין would convene on Mondays and Thursdays. So if he marries on Wednesday, he will still be passionate about his discovery, he will go to ב"ד on the next morning and they will instruct him what to do.

⁴ It may be possible that he will continue to live with his wife באיסור.

⁵ The marginal note indicates that the remainder is not from תוספות. Initially our תוספות maintains that there is a difference between זנות בעדים and זנות בלא עדים, however the following two explanations do not make this distinction.

⁶ In כתובות we are discussing when she should marry; the משנה says that she should marry on Wednesday, because perhaps from now (after the קידושין) until the wedding she may be מזנה.

And it is logical to assume that there is a greater concern that perhaps she may be מזנה (in the future), than perhaps she was already מזנה (in the past).⁷

גמרות offers an additional distinction between the two:

ועוד דהתם אף על גב דלא שכיח עשו תקנה וחשו שלא תאסר עליו עולמית ויתפסנה באיסור – And additionally, there even though is not שכיח, nevertheless the חכמים made a תקנה that she should marry on Wednesday, for they were concerned that she should not be forbidden to him forever and he will remain with her in a forbidden manner⁸ -

אבל הכא לא חשו אי מחייבת מיתה ולא מיקטלה כיון דלא שכיח⁹:

However here the חכמים were not so concerned if really she is liable for the death penalty and she will not be executed, since it is not common.

SUMMARY

We are חושש for זנות without והתראה עדים, but not for זנות בעדים וכו'. We are חושש שמא זינתה but not שמא תזנה. We are concerned for a חשש רחוק if it will result in an איסור עולמית.

THINKING IT OVER

1. Seemingly here it is an איסור עולמית, but not here.¹⁰ There can also be an איסור עולמית, if the husband or the בועל (re)marry this woman after she receives the גט.¹¹ What is the difference between the two cases?¹²

2. Does the concern of שמא יחפה (nowadays) when there is no דיני נפשות?¹³

⁷ In our גמרא he is writing a גט; the חכמים (ר"י according to) are to be concerned that he is writing the גט to be מחפה על מזנה, because she already was מזנה. (It is hard to imagine that he is writing now a גט because he is concerned that she may be מזנה [see נח"מ].) It is more logical to be concerned that something may happen and take the appropriate measures in case it does happen, than to assume that something untoward actually happened and take steps to prevent any unwanted consequences. [It is somewhat similar to what the גמרא states later (כח, ב) that חיישינן (לא, ב) that שמא מת לא חיישינן.] (see נח"מ) שמא ימות חיישינן but

⁸ In a case where there may be an איסור עולמית, the חכמים were concerned even for a חשש רחוק.

⁹ See 'Thinking it over'.

¹⁰ See footnote # 8.

¹¹ She is לבעל ולבועל.

¹² See רש"י ונח"מ.

¹³ See בל"י אות שצז and תוס' יח, ד"ה הנהו.