

לתרי נמי בית דין קרי להו - בי"ד He also refers to two as a

OVERVIEW

Our גמרא concludes that (according to ר"נ) the תנא may call two people a בי"ד. will quote another גמרא which seemingly rejects this idea, and infers from the fact that a משנה says 'בי"ד', that it is referring to a בי"ד of three only, and does not mean a בי"ד of two.

asks: תוספות

ואם תאמר דבסוף פרק ב' דיבמות (דף כב, ב) גבי מיאנה או חלצה בפניו ישאנה -

And if you will say; that in the end of the second פרק of יבמות regarding the case where a woman performed the rite of ¹מיאון or ²חליצה in the presence of a דיין, this דיין may subsequently marry this woman who performed מיאון or חליצה in his presence. We are not concerned of any impropriety that he may have performed it unlawfully, in order to marry this woman.-

מפני שהוא בית דין -

Since he was part of a בי"ד. He did not perform this rite on his own; there was a בי"ד present. If there was anything untoward they would have intervened. This concludes the quote from the משנה.

continues to quote the גמרא on this משנה. תוספות

ומדייק טעמא דבית דין הא בי תרי לא -

And the גמרא there infers; the reason he may marry her is because there is a בי"ד which means that three people officiated however had only two people officiated at the מיאון וחליצה, he would not be permitted to remarry. [The גמרא goes on to argue that even by two people there is no concern of impropriety³.] This concludes the relevant quote from the גמרא.

questions the דיוק of the גמרא from the word 'בי"ד'. Why does the גמרא assume, that since the משנה said 'בי"ד', that there were three (officiating) –

והא אמר הכא דלתרי נמי בית דין קרי להו -

¹ A קטנה who has no father may be married off by her mother or brothers מדרבנן. She needs no גט to dissolve this marriage as long as she is a קטנה. If she appears before a בי"ד and states she refuses – ממאנת – to live with him further, the marriage is dissolved.

² A married woman, whose husband died and left no children, cannot remarry if her husband is survived by brothers. One of the brothers has to either marry her (יבום) or perform the rite of חליצה (where she removes a shoe from his foot, etc), thereby enabling her to marry whomever she chooses.

³ The conclusion of the גמרא there is that by two he may also marry, the reason the תנא says 'בי"ד' is to teach us that מיאון requires three.

But the גמרא states here that the תנא refers to two people also, as a בי"ד. Perhaps, in יבמות, when the תנא there said בי"ד, it also meant only two⁴.

answers: תוספות

ואומר רבינו יצחק דהתם דייק מדלא קאמר מפני שהם שנים -

And the ר"י says; that there the גמרא infers that the משנה means three specifically and two are not sufficient since the משנה did not state: 'because there are two דינים'.

אלא תלי טעמא בבית דין שמע מינה דלא סגי התם בתרי -

But rather the משנה ascribed the reason for the permission to marry, only on account that there was a בי"ד we may derive from this that there, two are not sufficient. If two are sufficient to quell any hint of impropriety, why mention בי"ד, (even if a בי"ד may mean two)? Simply state 'because there are two'! That proves that a בי"ד of three is required to allow him to remarry.⁵

offers another answer why we cannot say that the משנה in יבמות meant a בי"ד of two: תוספות

אי נמי מיאון דומיא דחליצה ובית דין דחליצה היינו ג' -

Or you may also say; the case of מיאון must be similar to the case of חליצה; for the משנה teaches them together and the בי"ד that performs חליצה consists of three. Two are not acceptable by חליצה⁶. Even though by מיאון others maintain that two would be acceptable⁷. Why therefore does the גמרא infer that by two he would not be permitted to remarry? Perhaps by the case of מיאון there were only two?! Nevertheless, since the משנה joins חליצה and מיאון together and says בי"ד שהם מפני concerning both חליצה and מיאון. Therefore just as in the case of חליצה the term בי"ד means three, so too in the case of מיאון the בי"ד is also comprised of three.

is aware that not everyone maintains that חליצה requires a בי"ד of three: תוספות

ולא אתי כמאן דמכשיר חליצה ביחיד⁸ דחד לא מקרי בית דין ואיכא נמי רננא:

The משנה cannot follow the view of the one who maintains that a חליצה is

⁴ Not necessarily that the חליצה ומיאון was performed by only two, but rather the reason he may marry her is because (at least) two were present at the rite. [Or perhaps מיאון requires only two.] See 'Thinking it over #s 3-5.

⁵ The reason the משנה states בי"ד מפני שהם שלשה instead of מפני שהם שנים is because that is how we know that there were three, since there was a בי"ד which universally consists of three. We cannot say this concerning two, for a בי"ד normally does not consist of two. See 'Thinking it over # 1.

⁶ Concerning חליצה there is a מחלוקת (דף קד,ב) whether three are required or if even one alone is sufficient. The משנה in יבמות that we are discussing certainly cannot maintain that for חליצה, one is sufficient, as תוספות will shortly explain.

⁷ Concerning מיאון there is a מחלוקת (שם קז,ב) whether three are required or if two are sufficient.

⁸ If the משנה would follow that view, then there would be no דיוק that by two it is אסור to marry her.

בי"ד even if performed **by one for one** person is certainly **not called a בי"ד** and secondly **there will** certainly **be gossip** if the single person who performed חליצה will later marry the חלוצה. The משנה must therefore follow the ruling of those who maintain that three are required for חליצה (and also in this case of מיאון). This explains the דיוק of the גמרא; for there cannot be here, neither by חליצה not by מיאון, a בי"ד of two.

SUMMARY

The גמרא in יבמות infers from the משנה there, which states 'מפני שהוא בי"ד', that if there were only two דיינים by the חליצה ומיאון, then neither of the officiating דיינים would be permitted to marry her. תוספות offers two explanations that distinguish the גמרא in יבמות from here in גיטין where we say that two are also called a בי"ד.

A. If the term 'בי"ד' there means a בי"ד of two, why did not the משנה state clearly, 'because there are two'?!

B. חליצה definitely requires three (the option of one is unacceptable); therefore by מיאון we must also be discussing a בי"ד of three.

THINKING IT OVER

1. Why does not our משנה also state 'שנים' instead of 'בי"ד', according to ר"נ?⁹
2. Both answers of תוספות explain that the term בי"ד in יבמות cannot mean a בי"ד of two. Explain the different method that each answer employs in order to derive this.
3. When the גמרא there infers that since it states בי"ד, that proves that בשנים he cannot marry her, is this inference from the case of מיאון, or the case of חליצה, or both cases?
4. Similarly (to #3) when תוספות asks that perhaps בי"ד means only two, is he referring to the case of מיאון, or the case of חליצה, or both cases?
5. If the משנה there would have stated only the case of חליצה (and not mention the case of מיאון), could the גמרא have made the same דיוק, that בשנים he may not marry her?¹⁰

⁹ See footnote # 5. See נחלת משה.

¹⁰ See footnote # 4.