

ואין אני קורא בה אשת שני מתים¹ –

And I do not call her the wife of two dead men

OVERVIEW

ruled regarding a woman who was half-slave and half free, and she received קידושין from ראובן and then she was freed completely and married שמעון (who is the brother of ראובן) and then both died childless, this widow may receive יבום from לוי (the brother of שמעון and ראובן) and she is not considered a wife of two מתים (who is not eligible for יבום).

asks: תוספות

ואם תאמר והכא מאי נפקא מינה אם היא אשת שני מתים -

- מתים two wife should I care if she is a wife of two

הא אמרינן בפרק ד' אחין (יבמות דף לא,ב) דזיקת שני יבמין דרבנן -

Since the גמרא states in פרק ד' אחין that the prohibition regarding a זיקה of two brothers is merely מדרבנן, [and the פסוק is (presumably) only an אסמכתא] -

גזירה שמא יאמרו שתי יבמות הבאות מבית אחד² מתיבמות³ וזה לא שייך הכא⁴ -

It is an injunction; for if you will allow יבום in this case perhaps people will say two יבמות who come from one house can be מתייבם, but this concern is not applicable here.

answers: תוספות

ויש לומר דהתם⁵ במאמר דרבנן הויה זיקת ב' יבמין דרבנן אבל בעלמא⁶ הויה דאורייתא:

¹ The תורה (in [תצא] כה,ה) writes regarding the מצוה of יבום that אחד מהם, we expound it to mean that יבום is only if she is a widow of one brother but not of two brothers. This excludes a case where there were three brothers, ראובן married רחל and died childless; שמעון (who was already married to שרה) made a מאמר in רחל (but was not מייבם her) and he also died childless; in this case לוי cannot be מייבם רחל since רחל is a wife from both ראובן (מאמר מדרבנן) and שמעון (through the מדאורייתא).

² This means if there are two brothers ראובן and שמעון, and שמעון married two wives but died childless, שמעון has a מצוה to be מייבם one of ראובן's wives but he is not allowed to be מייבם both.

³ In the case of footnote # 1, if לוי will be מייבם שרה (who is the real wife of שמעון) and then be מייבם רחל (the wife of שמעון), who may mistakenly be assumed to be שמעון's wife as well (since he gave her a מאמר), people will assume that one can be מייבם two wives (שרה ורחל) from one husband (שמעון).

⁴ This חורין who married ראובן and then (after she was freed) married שמעון is one person, there can be no concern that one may permit אחד מבית אחת, שתי יבמות הבאות מבית אחד, for here there is only one יבמה (not like the case in footnote #1, # 3), so why would we even think that there is a problem of יבמין ב' זיקת? See 'Thinking it over'.

⁵ See footnote # 1.

⁶ This would be referring to our case where she conceivably could be married to both brothers דאורייתא. See מהר"ם. Therefore we may have thought that she is אסורה because of יבמין ב' זיקת. זיקת ב' יבמין מה"ת.

⁷ In this case the דרשה (in footnote # 1) is not an אסמכתא, but a דאורייתא.

And one can say; that there where the זיקת ב' יבמין was through a מאמר דרבנן, indeed the prohibition is only מדרבנן (because of the 'וכו' שמא יאמרו וכו'); however generally the prohibition for זיקת ב' יבמין is מה"ת.

SUMMARY

קידושין מה"ת if she was מקודשת מדרבנן, however if it was זיקת ב' יבמין is אסור מדרבנן. מה"ת would be איסור the.

THINKING IT OVER

The rule by זיקת ב' יבמין is that לוי cannot be מייבם the המאמר even if שמעון (the one who gave the מאמר) has no other wife; where seemingly there cannot be the גזירה שמא יאמרו וכו' (since there is only one יבום).⁸ Seemingly here too even though we are discussing a יבום of only one person,⁹ nevertheless it should also be אסור, just like there where presumably we are גוזר one יבמות ב' אטו ב' יבמה א', the same should apply here!¹⁰

⁸ See (לא,ב on ד"ה is תוס' ד"ה מדרבנן יבמות לב,א).

⁹ See footnote # 4.

¹⁰ See נחלת משה and מהר"ם.