

If the ruling of רב יוסף was taught – אי איתמר דרב יוסף אסיפא איתמר **It was taught concerning the סיפא**

OVERVIEW

The האיש מקדש בו משנה states that the reason the man himself should be מקדש the אשה so he can see who she is. Otherwise he is transgressing the ruling of אסור לאדם שיקדש את האשה עד מצוה. We therefore can no longer explain that the משנה is teaching us שיראנה (שלוחו) since here (even when there is no transgression by יותר מבשלוחו) there is an איסור if the קידושין is not בו. However it seems that רב יוסף explained that our משנה states בו because גמרא answered that indeed the reason the משנה concludes in the סיפא that האשה מתקדשת בה (איסור no) because מצוה בה יותר מבשלוחה. רישא asks and explains why we cannot apply the statement of רב יוסף to the רישא.

ולהכי לא מוקי ארישא¹ וכגון שמכירה² –

And it is therefore³ that the גמרא does not establish the statement of רב יוסף in the רישא and in a case where he knew her and saw her previously -

משום דהא מנא לן דלמא מתניתין מיירי בין מכירה ובין אין מכירה⁴ –

Because how can we know this that the משנה is discussing a case of מכירה; perhaps our משנה is discussing both cases whether he recognizes her or whether he does not recognize her⁵ and in which case -

ואפילו איסורא איכא ומלתא דרב יוסף לא נדע:

¹ The האיש מקדש בו משנה states that since there is an איסור to be מקדש a woman שליח ע"י, therefore how can רב יוסף explain that the reason the משנה states בו is because יותר מבשלוחו when the reason it states בו is because otherwise there is an איסור. However seemingly רב יוסף can respond that the משנה is discussing a case of מכירה where there is no איסור, and the בו teaches that יותר מבשלוחו. It is more likely that the משנה is discussing a case of מכירה as opposed to מכירה; for by מכירה it is understood how the משנה states אינו even though the משנה is discussing a case of מכירה (since there is no איסור); however if the משנה is discussing a case of מכירה how can the משנה state יותר מבשלוחו even though the האיש מקדש (בו) (ובשלוחו) when there is an איסור! See footnote # 5. [It is possible that (according to the קמא רב יוסף) (לישנא קמא) רב יוסף is not deriving the rule of מכירה from our משנה (for he derived it from ספרא רב יוסף), rather רב יוסף is explaining that the משנה added בו because (in a case of מכירה) it is 'א"ד מכירה. See footnote # 7 concerning the 'א"ד מכירה.]

² He knew the אשה from before, therefore the איסור of מכירה is not applicable to him.

³ Tosfos explains this 'therefore' in the following paragraphs.

⁴ There is no reason to limit the scope of the משנה to any particular situation (such as מכירה); rather the משנה is assumed to be discussing all situations (whether מכירה or מכירה).

⁵ We can perhaps say that by מכירה the קידושין is (only) בו (for there is the איסור of מכירה) that ר"א לאדם (איסור לאדם) שיקדש אשה וכו' בשלוחו. See footnote # 1. See 'Thinking it over'.

There will even be a prohibition of being מקדש through a שליח, **and we will not know⁶ the teaching of רב יוסף⁷** that מצוה בו יותר מבשלוחו.

SUMMARY

We cannot derive the rule of רב יוסף from the רישא, since the רישא may be discussing all cases including מכירה and אינו מכירה.

THINKING IT OVER

תוספות explains the reason רב יוסף cannot reference the רישא is because perhaps the רישא is discussing both מכירה and אין מכירה. Seemingly in order to explain why רב יוסף cannot reference the רישא it would have been sufficient for תוספות to say that perhaps the רישא is discussing אין מכירה (without mentioning מכירה)!⁸

⁶ We would argue that the משנה writes בו for a case where אינו מכירה, therefore it is necessary (if possible) that he should be מקדש her (without a שליח), but if he is מכירה then even לכתחילה he may be מקדש her with a שליח; not as רב יוסף rules.

⁷ It is possible that the איכא דאמרי maintain that רב יוסף derived his ruling from our משנה. Therefore רב יוסף must be referring to the סיפא; for we cannot derive this rule from the רישא.

⁸ See מהרש"א הארוך (and footnotes # 1 & 5).