

אי הכי היינו דכתיב ונכרתו הנפשות העושות ואי קידושין לא תפסי¹ כרת מי מחייב –
If so, what is this that is written;² ‘and the souls that do this shall be
cut off’, but if the *Kidushin* are not effective, can they be liable for כרת

OVERVIEW

רמב"ם explained that we derive the ruling that if one is מקדש two sisters simultaneously, they are not מקודשת, from the פסוק לא תקח אשה אל אחותה. רמב"ם³ challenged this derivation, for if קידושין are not תופס in either of the two sisters, so if he lives with one of them there can be no חיוב כרת, since he is not married to the other sister. רמב"ם maintains that it is not possible to say that קידושין are not תופס and yet there is a חיוב כרת for having relations with one of the sisters.⁴ תוספות resolves an apparent contradiction from another גמרא.

תוספות asks:

וקשה דאמרינן ביבמות פרק ארבעה אחין (דף כח,ב)

- מסכת יבמות פרק ארבעה אהין גמרא states in

גבי שלשה אחים שנים מהם נשואים לב' אחיות⁵ -

Regarding three brother two of whom were married to two sisters -

דרבי שמעון פוטר בשתיהן מן החליצה ומן הייבוס⁶ -

Where ר"ש exempts both sisters from being required to have either חליצה or יבום - שנאמר⁷ אשה אל אחותה לא תקח לצרור בשעה שנעשו צרות זו לזו⁸ -

For it is written, ‘do not take a woman upon her sister for a rivalry’; meaning, at the time when the sisters become rivals one to the other [you cannot take even one of them]⁹. תוספות continues -

¹ The הגהות הב"ח amends this to read תפסי בה כרת (instead of כרת תפסי)

² ויקרא (אחרי) ית.כט

³ ויקרא (אחרי) ית, יח. See previous ד"ה לא for a more complete explanation.

⁴ רבא therefore maintains that the פסוק of אחות אשה is where he was first מקדש one of the sisters and afterwards he had relations with his wife's sister; in such a case (where קידושין תופסין) there is a חייב מיתה.

⁵ The case there is where there are three brothers (ראובן, שמעון, לוי) where ראובן and שמעון married two sisters (רחל and לאה). Now ראובן and שמעון both died childless. Ordinarily לוי the third brother would be required to be מייבם the wife of his deceased brother(s). Here however לוי cannot be מייבם both sisters for that is the איסור אחות אשה. He cannot even be מייבם one sister (מדרבנן) since she is אחות זקוקתו (if he were to be מייבם רחל she is the sister of לאה who is [also] זקוקה לוי). Therefore the חכמים rule that he gives חליצה to both sisters (and then they can marry whomever they want).

⁶ They are free to marry to whomever they want even without חליצה (or יבום). ר"ש argues with the חכמים (see footnote # 5).

⁷ See footnote # 3. ר"ש applies this פסוק to a case where they become rivals regarding יבום.

⁸ The ה"ח amends this to read, לזו לא יהיה לך ליקוחין אפילו באחת מהן אלמא (instead of אלמא).

⁹ Both of these sisters are זקוקות to לוי. They are rivals as to whom he will be מייבם. The תורה teaches (by saying ואשה לא תהיה לו זונה) that in such a case there is no obligation for יבום or חליצה (there is no זיקה) for either of them.

אלמא משמע אף על גב דקידושין לא תפסי יש בהם כרת -

It is evidently apparent that even though that the קידושין is not effective, nevertheless there is כרת for having relations with them; we assume this -

כיון שפוטר אותם מן החליצה ומן הייבום¹⁰ -

Since he exempts them from חליצה and from ייבום.

answers: תוספות

ויש לומר דשאני התם דליכא למיפרך כדפריך הכא כרת מי מחייב -

And one can say; that there by ייבום it is different, for we cannot ask there as we asked here, 'can there be a כרת חיוב, if קידושין תפסי; the reason is for there

דבלא הקידושין נמי איכא כרת דקא פגע באשת אחיו שלא במקום¹¹ מצוה:

Even without the קידושין (of the sisters to the ייבום) there is also כרת (for another ייבום [besides אשתו]), since the ייבום (if he is מייבם one of the sisters), is encountering (having an illicit relationship) with his brother's wife in a situation where there is no מצוה.

SUMMARY

There cannot be a כרת חיוב (according to רבא) by שתי אחיות if אין קידושין תופסין, but nevertheless there will be a כרת חיוב by שתי אחיות שנופלות לייבום, on account of אחיו.

THINKING IT OVER

Seemingly the two cases are different. When he was מקדש שתי אחיות simultaneously, since לא תפסי קידושין, there can be no כרת חיוב for living with one of them; however by ייבום since they are both זקוק to him he is living with אחות זקוקתו which the תורה prohibited, so therefore there can be a כרת חיוב (for אחות אשתו)!¹²

¹⁰ Regarding ייבום there is a difference whether the widow is forbidden to marry her deceased husband's brother on account of a כרת prohibition (she is his daughter [for instance]), or if it is a lesser prohibition (she is a divorcee [from a different marriage] and the ייבום is a כהן). In the former there is no זיקה at all (since there is a כרת חיוב, which means that אין קידושין תופסין) and she does not require even חליצה, while in the latter (where it is [merely] לאו, which means that קידושין תופסין) she requires חליצה to be permitted to marry. Here, since ר"ש exempts her even from חליצה, this indicates that if he were to be מייבם her, the קידושין would not be תופס (for only in a case where אין קידושין תופסין are they exempt from חליצה), and nevertheless the תורה prohibits this ייבום with a כרת punishment. This proves that even in a case where אין קידושין תופסין (by two sisters), nevertheless there is a כרת punishment. How can רבא state that if אין קידושין תופסין (by two sisters who were אחת בבית אחת) there can be no כרת חיוב, when we see that by ייבום there is definitely a כרת חיוב for living with one sister, even though תפסי קידושין. [See מהרש"א] See 'Thinking it over'.

¹¹ לא תפסי קידושין if שתי אחיות that there cannot be a כרת חיוב (for living with one of the sisters) is correct regarding רבא. However there in the case of ייבום, the תורה (according to ר"ש) prohibits the ייבום (with the פסוק of אשה וגו' לצרור), therefore since there is no ייבום מצוה, if the ייבום will be מייבם either sister there will be a כרת חיוב (not [necessarily] for אחות אשה [since תפסי קידושין], but rather) for אשת אחיו שלא במקום מצוה, for which there is a כרת חיוב.

¹² See נחלת משה.