

לא יהא לו עסק עמה¹ – He should have no involvement with them

OVERVIEW

stated that anyone who is not well acquainted with the rules of גיטין וקידושין אמר שמואל should not be involved with them. It is not clear whether this admonition applies to Rabbis (judges) that they should not be involved issuing rulings concerning whether the קידושין or גירושין are valid; or whether this applies to the lay person that he should not be talking to women concerning קידושין וגירושין. Our תוספות cites the two opinions on this matter.

פירש בקונטרס לא יהא דיין בדבר שמא יתיר איסור ערוה וזהו עיוות שאינו יכול לתקן explained (the meaning and reason for this rule is) that he should not be a judge in these matters of גיטין וקידושין,² for perhaps he will mistakenly issue a permissive ruling concerning an ערוה prohibition and that is a mistake that cannot be repaired.³

offers an alternate interpretation:

והרב רבי עזריאל פירש שלא ידבר עם הנשים על עסקי קידושין לקדשם – And הרב ר' עזריאל explained that it means that one should not speak with them - מקדש them - concerning קידושין matters with the intent of being שפעמים שתהא מקודשת באמירתם או בנתינתם⁴ ולא יבין⁵ – For occasionally she will become מקודשת through his saying or giving to her and he won't realize it.

הר"ר עזריאל of פירוש has a difficulty with the תוספות:

וקשה תינח בקידושין בגירושין מה בכך אם יסבור שאינה [מגורשת]⁶ –

¹ In our text the גירסא is עמהם. See נח"מ כאן בד"ה בא"ד מיהו.

² See 'Thinking it over' # 1.

³ He may rule on a questionable קידושין that it is not a valid קידושין (when in reality it was a valid קידושין) or concerning a questionable גט that it is a valid גירושין (when in reality it is not); in both these case the woman involved (who in reality is an אשת איש, but) thinking that she is unmarried will marry someone else באיסור ממזרים of an אשת איש and her children will be ממזרים.

⁴ Others amend this to באמירתו או בנתינתו (in the singular, instead of the plural).

⁵ They will think she is still a פנויה; she may therefore mistakenly marry someone else, when in reality she is still an אשת איש to the first man. See 'Thinking it over' # 2.

⁶ There can be no concern that he may discuss גירושין with her and she will not be divorced but they will mistakenly think that she is divorced and she will marry someone else (while she is still an אשת איש). This does not concern us because since this woman is presumably married, ב"ד will not allow her to marry unless she verifies her גירושין properly (see [מהרש"א] and תוספות הרא"ש).

And this interpretation is difficult; granted by קידושין there is this concern that she will not realize that she is מקודשת, however **concerning גירושין what can be the matter if he assumes she is not divorced** (even when in reality she is divorced). No harm can come from it.⁷

attempts to give answer:

– **ושמא איכא למיחש לכהן**⁸ –

And perhaps there is concern if the husband is a כהן.

remains unsatisfied:

– **מיהו לישנא דעמהן⁹ לא משמע הכי דאין אדם יכול ליתן גט אלא לאשתו**¹⁰ –

However the expression ‘with them’ in the plural does not support this interpretation of ר' עזריאל, **for a person can give a גט only to his wife**, what does it mean that he should have no dealings with them (in the plural).

הר"ר עזריאל of פירוש has an additional difficulty with the תוספות:

– **ועוד דלקמן בפרקין (דף יג,א) משמע שיש חשש איסור אשת איש**¹¹ –

And furthermore later in our פרק it seems that there is concern of transgressing the prohibition of having relations with a married woman - דאמר וקשין לעולם מדור המבול –

For the גמרא **states** there that one who is not וקידושין גיטין and is יודע בטיב גיטין **causes more destruction to the world than the generation who perished in the flood.** However, according to הר"ר עזריאל (גיטין), there is only the issue of a כהן living with a גרושה, but no איסור of אשת איש.

הר"ר עזריאל even according to תוספות explains that there can be a חשש אשת איש:

ומיהו יש לומר דאיכא למיחש אם פשטה ידה וקבלה קידושין מאחר:

However, one can say that there is a concern of אשת איש in a case where she stretched out her hand and accepted קידושין from another man, thinking that the dealings she had with her husband concerning גירושין were inconsequential and she is still married [when in truth she is no longer married to her first

⁷ The commentaries explain that even if they continue living together (when in actuality they are not a married couple) they will not transgress the לא of תהיה קדשה since in their minds they are living in marriage and she is not acting promiscuously.

⁸ If a כהן speaks to his wife concerning גירושין and he does not realize that he divorced her, then if they continue living together he will transgress the לא of גרושה לכהן.

⁹ According to הר"ר עזריאל the word עמהן refers to women (see footnote # 1); while according to רש"י the word עמהן refers to men. See רש"י, who claims that according to פירש"י it should have said בהם instead of עמהן.

¹⁰ See רש"י who argues that a man may have many wives.

¹¹ The גמרא there states that בנין מנשי חבריהון, which is an איסור א"א.

husband but rather she is married to the second person from who she accepted [קידושין].
When she continues to live with her former husband they will transgress the איסור אשת איש.

SUMMARY

According to רש"י the admonition of עסק עמהן לא יהא עסק refers to the דיינים and according to הר"ר עזריאל it refers to layman, for it can result in transgressing the איסור אשת איש.

THINKING IT OVER

1. According to רש"י that we are discussing the דיינים, why does רב יהודה אמר limit his admonishment to גיטין וקידושין; a דיין who is not expert in any field of law should not be involved in that area?!¹²

2. הר"ר עזריאל states that there is a concern that she will be מקודשת and he will not realize it.¹³ Seemingly if he does not realize it then he had no intent to be מקדש her, and if so why is she מקודשת regardless of what he said or did?!¹⁴

¹² See תוספות הרא"ש (this may be the reason that הר"ר עזריאל offers his alternate interpretation). See אמ"ה footnote # 111.

¹³ See footnote # 5.

¹⁴ See אמ"ה footnote # 113.