

## Even if he did not hear

## אפילו לא שמיע ליה –

### OVERVIEW

There is a dispute between ר' יוסי and ר' יהודה concerning a case where a man was speaking to a woman concerning גיטה and he gave her גיטה, however he did not say anything explicit at the moment of giving. ר' יוסי says it is a valid גיטין and קידושין, while ר' יהודה maintains that it is invalid unless he specifies that he is מקדש or מגרש her.

limits the ruling of ר' יוסי to a case where they were engaged in the discussion of גיטין and קידושין right up till the time of the נתינה.

(ר' יהודה) (who argues with ר' יוסי) ruled that the הלכה is like ר' יוסי. (which states that the admonition of ר' יהודה אמר שמואל asked ר' יימר does the apply even to someone who is not aware of the ruling of ר' יהודה אמר שמואל (that the הלכה is according to ר' יוסי)).

Our תוספות has a different גירסא. Instead of ר' יימר asking if he is not aware of ר' יהודה אמר שמואל, according to תוספות, he asked concerning ר' יהודה אמר שמואל (עסוקין באותו ענין to a case of ר' יוסי who limits the ruling of שמואל).

### פירוש<sup>1</sup> אדם שנתמנה אגטין וקידושין –

**The explanation** of the question whether a person who is unaware of the ruling should be involved in גיטין and קידושין is as follows: **a person who was appointed** to be responsible for issues of גיטין וקידושין -

**צריכין אנו להודיעו הא דרב יהודה אמר שמואל<sup>2</sup> שלא יכשל בה דשכיחא –**

**Are the appointers required to notify him concerning the ruling of רב יהודה** in order **that he should not stumble over it** (by ruling

<sup>1</sup> The term פירוש is (oftentimes) used when there is a deviation from the simple meaning. A cursory reading of the גמרא would seem that the discussion is whether a person who is unaware of this הלכה should permit himself to be involved in גיטין וקידושין. However, this would seem to be a meaningless question; if he is not aware of the ruling, why would he refrain from becoming involved in גיטין וקידושין, since he does not know that he does not know. Therefore תוספות offers an alternate explanation.

<sup>2</sup> This ruling limits the rule of ר' יוסי (that it is a valid גיטין וקידושין) to a case where it was עסוקין באותו ענין. The reason תוספות changes the גירסא from ר' יהודה אמר שמואל (who rules that ר' יוסי), for even if the דיין does not know the ruling of ר' יהודה אמר שמואל, nevertheless since he does know that there is a מחלוקת between ר' יוסי ור' יהודה, there should be no concern if he is עוסק עמה for since he knows there is a מחלוקת (without a clear הלכה) he will always rule לחומרא to avoid being מתיר אשת איש. However if he is aware that ר' יוסי but he is not aware that there is a requirement of עסוקין באותו ענין, then there it can result that he will be מתיר אשת איש. He will assume that she is מקודשת (or מגורשת) since he was מדבר עמה. עסוקין באותו ענין, when in reality she is not מקודשת or מגורשת since they were not עסוקין באותו ענין.

incorrectly), for this can be a **frequent** occurrence, that one would give גיטין and not be explicit -

או דילמא ליכא למיחש להכי דלא שכיחא כולי האי<sup>3</sup> -

**Or perhaps there is no concern** that he may rule incorrectly **in this** matter, **for it is not that frequent** that one is מקדש ומגרש without being explicit, and therefore we are not required to make him aware of the ruling of שמואל רב יהודה אמר.

וכן משמע מתוך פירוש הקונטרס:<sup>4</sup>

**And this is also what is indicated from s"i's explanation.**

### SUMMARY

The question of ר' יימר was whether we are required to inform an appointed דיין the ruling of רב יהודה אמר רב (that ר' יוסי ruled that it is a קידושין only in a case where it was עסוקין באותו ענין); is it a common occurrence or not.

### THINKING IT OVER

It seems from תוספות that ר' יימר was discussing a newly appointed דיין whom we suspect (or we know with certainty) that he is not aware of ר' יהודה אמר שמואל. Why is there a question whether we should inform him or not?! Even if it is not שכיח, what harm can there be if he is informed?!<sup>5</sup>

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<sup>3</sup> See: 'Thinking it over'.

<sup>4</sup> While רש"י does state (בד"ה אפי') that the issue at hand is whether it is שכיח or not (which is as תוספות explains the question), nevertheless there is a difficulty in assuming that תוספות is referring (only) to this ruling, since רש"י states there explicitly that the question is whether he is aware that ר' יוסי ruled (the ruling of רב יהודה אמר שמואל and) not the ruling of רב יהודה אמר שמואל as תוספות maintains. Therefore others explain that תוספות is (also) referring to the fact that רש"י interprets the admonition of עסק עמהן to apply to layman as עזריאל explained in the previous (תוספות ד"ה לא). Therefore according to this we can explain that the question of ר' יימר is concerning the (appointed) דיין; however according to רש"י there could be no such explanation.

<sup>5</sup> In addition there is also the חיוב of teaching תורה.