

If there are courts of law, etc.

אי איכא בתי דינין כולי –

OVERVIEW

The גמרא explained that if nowadays there are places where the courts convene every day, a בתולה may get married on any day. תוספות qualifies this ruling and discusses whether one may marry on a Friday.

נראה לרבינו יצחק דמכל מקום אין נשאת בששי¹ דהא אין דנין בשבת² -

It is the view of the ר"י that notwithstanding this which the גמרא states that she can marry on any day, she cannot be married on a Friday, for we do not judge on שבת; the בי"ד does not convene on שבת, and he will not be able to present his טענת בתולים to שבת on בי"ד.

תוספות notes an exception to the previous ruling:

ועתה נוהגין לישא אף בששי משום דאין בית דין קבועין -

And nowadays it is customary to marry even on Friday, since there are no בי"ד קבועין at all (even on Mondays and Thursdays) -

ואם יש לו טענת בתולין יכול לקבול בשבת בפני שלשה³ כמו בשאר ימות השבוע⁴ -

So if he has טענת בתולים he can complain on שבת in the presence of three people, just as he would do in the other days of the week.

תוספות offers an alternate reason why nowadays we may marry on Friday:

ועוד לפירוש הקונטרס⁵ דוקא בימיהם קבעו יום הנישואין –

And additionally, according to פרש"י it was only in those days (of the תלמוד) that they established a wedding day for all בתולות on יום ד' -

משום שעל ידי כך יתברר הדבר ויבואו עדים מתוך שמתאספים העם לבית דין⁶ –

Because through his coming to בי"ד, the issue will be clarified, for witnesses may come, since the people gather in the בי"ד -

ואין שייך לומר עכשיו כך:

But this is not applicable today; for there is no קבוע בי"ד where people gather, so even if he complains it will not cause that יתברר הדבר. Therefore there is no difference when he marries.

¹ One may certainly not marry on שבת for it appears is if he is making a קנין בשבת, which is prohibited.

² See the משנה ל,ב in ביצה. The reason (on לז,א) is because of a גזירה that they may write on שבת.

³ It will not be considered that they are בשבת דנין בשבת.

⁴ See 'Thinking it over'.

⁵ יתברר הדבר. פרש"י disagrees with רש"י בד"ה שאם תוס', ב,א במתני' ד"ה בשני.

⁶ When he comes to בי"ד to claim his טענת בתולים there will be many people there who will hear about it and witnesses may surface who will testify whether she was (ברצון) מזנה תחתיו and is אסורה to him.

SUMMARY

Even when בי"ד קבועין every day he cannot marry on Friday since there is no בי"ד on שבת. Nowadays we marry on Friday because there is never a קבוע בי"ד, or because there is no purpose to go before בי"ד (according to רש"י).

THINKING IT OVER

תוספות writes that nowadays he can present his טענת בתולים in front of three people.⁷ Why then was a תקנה made at all to marry ביום ד', let them marry whenever they want and if he has טענת בתולים he will present it before three people?!⁸

⁷ See footnote # 4.

⁸ See פרדס יצחק אות צא and תוס' ד"ה אשה on the previous אילת אהבים.