

The difference **ממזר צווח וחלל שותק איכא בינייהו -**
between them is by a ממזר who protests and a חלל who is silent.

OVERVIEW

The גמרא explained the ברייתא, that the ת"ק maintains that all שתוקים are פסול (however all צווחים are כשר). However ר"מ maintains (according to the ת"ק) that a חלל is שתוק (all other שתוקים are פסול). רשב"א argues with the ת"ק concerning the view of ר"מ; claiming that ר"מ maintains that (only) a ממזר is שתוק; however a ממזר צווח and חלל שתוק are פסול. The גמרא in its summation states that the argument between רשב"א and the ת"ק (concerning the view of ר"מ) is by a ממזר צווח (only); the ת"ק maintains that they are כשר and רשב"א claims that they are פסול. רשב"א and the ת"ק will argue that the גמרא omitted an additional case where רשב"א and the ת"ק disagree (concerning the view of ר"מ).

תוספות asks:

תימה דהוה ליה למימר ממזר צווח ושותק וחלל שותק איכא בינייהו -

It is astounding! The גמרא should have said that the difference between the ת"ק and רשב"א is by a ממזר who either screams or remains silent (to include a ממזר שתוק), and by a חלל who remains silent –

דבממזר שותק נמי פליגי¹ דהא מכשר ליה רבי שמעון בן אלעזר² -

Since they argue by a ממזר שותק as well; for רשב"א maintains that a ממזר שותק is כשר (and the ת"ק maintains that a ממזר שותק is פסול).

SUMMARY

The גמרא should have mentioned that the ת"ק and רשב"א also argue by a ממזר שותק.

THINKING IT OVER

Perhaps we can answer that the reason the גמרא did not include ממזר שותק with ממזר מקיל³ is that by the latter two רשב"א is מחמיר and by the former he is מקיל. In addition ר' יוחנן assumed that the חילוק (שותק) of ממזר is explicit in the ברייתא (which states ממזרים שביניהם ישראל מכירין) and needs no further elaboration; however חלל and צווח are not (that clearly) mentioned in the ברייתא. ודו"ק.

¹ According to the ת"ק (himself, as well as ר"מ אליבא דת"ק) רשב"א clearly states 'אליבא דר' יוחנן' that they argue even by a ממזר צווח.

² See תוספות הרא"ש who answers that the גמרא means that they argue even by a ממזר צווח.

³ See תו"י in the margin.