

That betrothed groom and bride

[ההוא¹ ארוס וארוסתו -

OVERVIEW

The גמרא is discussing a case of an ארוסה who became pregnant. The issue at hand is the status of the child.² Was the child fathered by the ארוס and therefore a ולד, or did a stranger father the child and therefore he is a ממזר? רב יוסף ruled that there is nothing to be concerned about. Firstly the ארוס admitted that he had relations with the ארוסה (therefore we presume the child is his). Secondly (according to תוספות understanding – even if the ארוס would not be present and claim that he had relations with the ארוסה, there still is no concern), since the woman claims the ארוס fathered the child (she claims she only had relations with the ארוס), the child will also be כשר, since שמואל maintains that the הלכה is כר"ג, who rules that the אשה is believed to claim לכשר נבעלתי.

There is another גמרא cited in יבמות and קדושין, which records a מחלוקת between רב רב in a similar situation; where an ארוסה bore a child. רב maintains that the child is a ממזר and שמואל maintains the child is a שתוקי; a ספק ממזר. There are differing variations as to the exact nature of this מחלוקת. Our תוספות will reconcile various differences between the סוגיות.

קדושין in סוגיא begins by quoting the תוספות:

והא דאמר בעשרה יוחסין (קדושין דף עה,א) איתמר הבא על ארוסתו בבית חמיו³ -

And that which the גמרא relates in פרק עשרה יוחסין, it was discussed; if a betrothed groom came upon his bride in his father-in-law's house and she had a child –

רב אמר הולד ממזר⁴ ושמואל אמר הולד⁵ שתוקי⁶ –

רב maintains that the child is a ממזר, and שמואל maintains that the child is a שתוקי; he cannot marry a ישראל because he may be a ממזר, and he cannot marry a ממזר because

¹ The following three תוספות beginning with ההוא ארוס until חדא (הב') are bracketed in our text. According to the marginal note these תוספות were missing in earlier manuscripts. Many commentaries (including the תוספות הרא"ש, ש"י"ף and מהרש"א) do not comment on these תוספות.

² See later (הב') יד,א תוספות ד"ה חדא (הב').

³ Generally, a bride and groom are prohibited from having relations until the נישואין; when the bride leaves her father's house and moves in with her husband.

⁴ We assume that since she is a promiscuous woman, who had an illicit relation with her groom, she also must have had relations with other men and one of them fathered the child, therefore he is a ממזר. The child cannot marry a ממזר(ית). However the child may marry a ישראל(ית).

⁵ It is not certain who is the father of this child; it may be the ארוס or it may be another man.

⁶ A שתוקי refers to a child whose father is unknown. When the child calls out 'father' to someone, the child is hushed; hence the name שתוקי, the hushed one.

he may be a כשר. This concludes the citing of the מימרא.

continues that we must say that the מחלוקת between רב and שמואל is in a case –

כשלא בדקו את אמו דאי בשבדקו קשיא דשמואל אדשמואל -

where they did not inquire of the child's mother, who the father is. Therefore שמואל maintains that the child is a שתוקי, a ספק ממזר; **for if** the מחלוקת is in a case **where they did inquire** of the mother and she said the child is the son of the ארוס;⁷ she claims she had no relations with anyone else except her ארוס, then there is a **contradiction from שמואל** in our גמרא **to שמואל** in קדושין.

goes on to explain the contradiction:

דהכא אמר שמואל דנאמנת –

For here שמואל maintains that she is believed. If the ארוס claims that the child is from the ארוס she is believed and the child is כשר. continues to explain where שמואל says that she is believed: רב יוסף stated that there is no concern in our case. Firstly because the ארוס admitted that he is the father and secondly (meaning that even if the ארוס did not admit that he is the father,⁸ there is still no concern for the child) -

דהלכה כרבן גמליאל דנאמנת -

because שמואל stated **that the הלכה is like ר"ג** that the woman is believed to claim that the child is from the ארוס. רב יוסף maintains that even if the ארוס did not admit that he is the father, nevertheless the child is כשר, since שמואל maintains that the הלכה is כר"ג. That proves that according to שמואל if the ארוס claims that the child is from the ארוס she is believed even if the ארוס did not substantiate her claim –

והתם קאמר איפוך⁹ שמואל אמר הולד ממזר -

And there in קידושין the גמרא **said reverse** the aforementioned opinions of רב and שמואל. According to the reversal רב maintains שתוקי הולד, and שמואל **maintains that the child is a ממזר.** This is in contradiction to our גמרא where שמואל maintains that the child is from the ארוס if the ארוס claims that the child is from the ארוס.¹⁰ Therefore in order to avoid this contradiction we are required to assume that in the קדושין (since שמואל maintains שתוקי הולד or ממזר), we are discussing a case where the ארוס made no claim as to the status of the

⁷ It certainly cannot be in a case where she admits that the child is from someone else, for then how can anyone maintain that the child is a שתוקי. If the child is from anyone but the ארוס the child is a ממזר.

⁸ This does not mean that the ארוס claimed that he had no relations with the ארוס; for then the child could not be כשר. Rather it means that the ארוס was not available to testify and support her claim.

⁹ The גמרא there initially said איפוך in order to avoid a contradiction between two rulings of רב.

¹⁰ See רש"י who explains why it was necessary for תוספות to pose the contradiction (only) according to the איפוך; seemingly there is a contradiction even if שמואל maintains שתוקי הולד, for here he maintains that כשר הולד. The רש"י answers that we could (mistakenly) interpret the term שתוקי to mean that he cannot inherit the ארוס's estate (but not that he is בבת ישראל), for the other heirs can claim, that the שתוקי cannot inherit the ארוס unless he proves that he is a legitimate son. עיי"ש.

child; she did not clearly state that she had no relations with anyone besides the ארוס.

offers an additional proof that there is a difference whether the ארוסה claims the child is from the ארוס or not:

וכן משמע דבמסקנא משני התם לעולם לא תיפוך כולי -

And it is so indicated that there is a difference whether the אמו or not, **for in the conclusion, the גמרא there answers, 'really there is no need for a reversal', etc.;** we can retain the original text that רב maintains that the child is a ממזר and שמואל maintains that he is a שתוקי –

ומפרש¹¹ מאי שתוקי שבודקין את אמו ואומרת לכשר נבעלתי¹² -

And the גמרא explains; what did שמואל mean by שתוקי (not that he is a ממזר, but rather) **that we inquire of his mother and she says I had relations with an אדם כשר;** namely, only with the ארוס, she is believed. It is evident from that גמרא that the ארוסה is believed to say the child is from the ארוס.¹³

In summation: The first question of תוספות dealt with a seeming contradiction. In our גמרא it is the opinion of שמואל that the child of an ארוסה is כשר, and in מסכת קדושין however, שמואל maintains that the child of an ארוסה is either a שתוקי or a ממזר. תוספות answers that the child is a שתוקי or a ממזר only if the mother made no claim. If the mother claims that the ארוס fathered the child, she is believed and the child is כשר.

has an additional difficulty:

ואם תאמר אכתי לשמואל דהתם משמע דוקא בבא על ארוסתו בבית חמיו מהני בדיקה -

And if you will say; that there is still a difficulty on שמואל, for there in קדושין it appears the inquiring of the mother is effective only when it was known that he had relations with his ארוסה in his father-in-law's house.¹⁴ The text of the גמרא there is **הבא על ארוסתו**; this indicates that it is known (whether through their admission or עדים) that they had relations –

והכא משמע אפילו כי לא מודה אמר שמואל דנאמנת¹⁵ כרבן גמליאל -

However here from our גמרא it seems even if the ארוס does not admit to having

¹¹ According to the new פשט in the גמרא there, it was necessary to explain what שמואל meant by שתוקי.

¹² The גמרא there continues to cite our גמרא that שמואל maintains כר"ג הלכה כר"ג.

¹³ To summarize the גמרא in קדושין: According to the original reading שמואל maintained הולד שתוקי, which means he is a ממזר and ספק ממזר. We therefore are required to say that it is a case where אמו את אמו לא בדקו את אמו. According to the איפוך, the opinion of שמואל is that he is a ממזר; which certainly requires us to say that אמו את אמו לא בדקו את אמו. According to the תיפוך, then when שמואל said הולד שתוקי we interpret it to mean בדוקי; we ask the mother and accept her claim that the child is from the ארוס.

¹⁴ is discussing the תוספות, where שמואל maintains that the child is a 'מאי שתוקי' בדוקי.

¹⁵ הלכה כר"ג claims שמואל, for ארוסה, even if the ארוס is not מודה, she is still believed, ועוד' רב יוסף states.

relations with the ארוסה; it is not known whether they lived together, nevertheless **שמואל maintains that she is believed**; for ר"ג ruled **like** שמואל that the woman is believed to claim לכשר נבעלתי. The question is why does the גמרא in קדושין state 'הבא על ארוסתו וכו', which indicates that it is known that the ארוסה וארוס had a relationship, inferring that only in such a situation would שמואל believe her testimony;¹⁶ when in our גמרא it states that שמואל maintains that we always believe her testimony even if we are not sure that they had relations.

answers: תוספות

ויש לומר דהא דנקט בא היינו משום רבותא דרב נקטיה דאפילו הכי אמר הולד ממזר -

And we can say that the גמרא in קדושין also agrees that according to שמואל she is believed even in a case where we did not know (through his admission, etc.) that he was בא על ארוסתו, **but** the reason **that** the גמרא **used** the phrase **בא**; indicating that we knew that they had relations, **that was mentioned to emphasize the novelty of** רב's opinion; that even though we know that the ארוסה וארוס had relations, **nevertheless** רב **maintains that the child is a ממזר**. However שמואל will maintain that if the ארוסה claims the child is from the ארוס, she will always be believed even if it was not 'בא'.

¹⁷הבא וכו' offers an additional answer to the question why it says:

אי נמי התם הוא דבעינן בא משום דאיירי בדדיימא מעלמא -

Or you may **also** say that generally the ארוסה is believed even without 'בא', however only **there** in קדושין **is** בא **required** in order that she be believed **because** there the case is **concerning** an ארוסה **who is generally promiscuous**. In the case of a promiscuous ארוסה we say that she is believed that the child is fathered by the ארוס only when it is known that she and the ארוס had relations. That is why the גמרא there uses the term 'הבא'.

דדיימא מעלמא is discussing a case of the גמרא in קדושין will support his contention that the

כדאמר רבא¹⁸ ביבמות בשלהי אלמנה לכהן גדול מסתברא מילתא דרב בדדיימא מעלמא -

as רבא **stated in** יבמות **in the end of** ג"ה **פרק אלמנה לכה"ג**, **it is reasonable to assume** that the **ruling of** רב (that the child is a ממזר), is in a case **when she is promiscuous in general**. This indicates that (at least according to רבא) the הבא על ארוסתו of מחלוקת is in a case of דיימא – **הבא על ארוסתו** we require that it should be according to קדושין. This explains why מעלמא.

¹⁶ When it is known for a fact that the ארוס וארוסה had relations, it is more likely to assume and believe them that the child is fathered by the ארוס, and not from someone else. However, when we are not sure that they had relations then it is more likely that the child is fathered by someone else, and hence a ממזר.

¹⁷ It is possible that תוספות is not satisfied with the previous answer that 'הבא' is written לרבנותא דרב that the child is a ממזר even it was בא. For if it would be preferable not to have written 'הבא', and then it would be דשמואל רבותא that nevertheless the child is כשר. There is a rule that כח דהיתרא עדיף; it is a greater חידוש to be מתיר than to be אוסר. The חידוש according to שמואל (which is להיתרא) would have been greater than the חידוש according to רב (which is לאיסורא).

¹⁸ דף סט,ב.

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that perhaps since she was wanton with the ארוס,²¹ she was also wanton with anyone else; that is why רב maintains that the ולד is a ממזר.²² This concludes the citation of the יבמות in גמרא.

תוספות continues with the question:

הא אמר הכא חדא דקא מודה ומשמע דכשר אפילו לרבי יהושע²³ ובא כמודה דמי -
However, רב יוסף **states here** that there is no reason for concern, **firstly because** the ארוס **admitted** that he had relations with the ארוסה. The גמרא continues and says; secondly there is no concern, even if he weren't מודה, since the הלכה is according to ר"ג. **So this indicates** that according to the 'חדא', the ולד is **even כשר according to ר"י**. It is only when the ארוס was not מודה, that רב יוסף said the ולד is כשר, since the הלכה is like ר"ג. However when the ארוס is מודה, then the ולד is כשר according to everyone, even ר"י. **And** the case of בא (in יבמות) **is similar** to the case of מודה (here),²⁴ in both case we (only) know that the ארוס וארוסה had relations.

תוספות did not entirely conclude the question yet. However תוספות anticipates a possible doubt that בא and מודה are similar. Perhaps מודה here means that the ארוס testifies that the child must be from him, because he knows for certain that the ארוסה had no relations with anyone else. תוספות rejects this view:

דהא מודה דהכא אינו אלא שהיה אומר שבא עליה -
For when the גמרא **here** says the ארוס was מודה, **it does not** mean any more **than that he states that he had relations with her -**

דפשיטא שלא היה מזנב אחריה לאורבה שלא תזנה²⁵ -
For it is obvious that he was not trailing after her to ambush her that she should not commit adultery.

We have concluded that the case here of מודה and the case of הבא are similar. According to אביי the case of הבא is even when מעלמא לא דיימא (as is the case here). תוספות concludes his question:

²¹ We know she was ארוס לגבי ארוס מפקרה נפשה because we are discussing a case of חמיו בבית ארוסתו.

²² See 'Thinking it over' # 1.

²³ If the child is כשר [even] according to ר"י (and ר"ג), then how can רב maintain that ממזר הוא?

²⁴ It seems that תוספות equates בא (a case where it is known [perhaps through עדים] that they had relations) with מודה (a case where the ארוס states that they had relations). The מודה of the ארוס is more believable than the claim of the ארוסה. The ארוסה has a vested interest in claiming that she had relations only with the ארוס: otherwise; a. she is מחוייב, b. she becomes לכהונה, c. her child is a ממזר, etc. The ארוס, however, would not admit to having relations with the ארוסה unless it was true. He gains nothing by saying they had relations if it is not true; for a. it is not his child, and b. he did something wrong.

²⁵ A woman can claim she had no relations except for the ארוס. The ארוס however cannot make such a claim concerning the ארוסה.

ובין לרב ובין לשמואל אסור הוא בבת ישראל -

And according to both רב ושמואל (in יבמות and קדושין) the ולד is forbidden to marry a ברת ישראל – clearly says מזור and הולד, and שמואל agrees that he is ברת ישראל –

דשתוקי דאמר שמואל היינו דאסור בבת ישראל לכולהו לישיני דבפרק בתרא דקדושין -
אסור בבת ולד is ²⁶ **שתוקי** it means that the ולד is ²⁷ **מסכת קדושין** of פרק ²⁸ **וללישנא דבדוקי** ²⁹ **נמי קשה טפי** -

And according to the opinion that שמואל means שתוקי of **בדוקי**; we ask the mother and accept her testimony **it is also even more difficult** –

דמשמע דאפילו על ידי בדיקת האם לא מיתכשר אלא לרבן גמליאל אבל לרבי יהושע לא -
for it seems from the גמרא there that even through the inquiry of the mother when she claimed that the ארוס fathered the child **the ולד is not כשר except according to ר"ג**; ³⁰ **who is generally of the opinion the אשה is believed, however according to ר"י** she is **not** believed and the child is פסול. ³¹ This is what it seems from the – (ר"י) **אסור בבת ישראל** the ולד is שמואל (at least according to **והכא אמר דהא קא מודה וכשר לכולא עלמא** -

And here רב יוסף states there is no concern for he is מודה and the ולד is כשר according to everyone including ר"י.

The question in brief is that from the 'הדא' it appears that if we know that there were relations between the ארוס וארוסה, the ולד is כשר even according to ר"י (without examining the mother); however from the גמרות in יבמות וקדושין it is apparent that even if there were relations על (הבא על) the child is either a שתוקי or a ממזר (if the mother is not examined).

הבא על ארוסתו and גמרא our answers that there is difference between תוספות

ושמא יש לחלק דבא דהתם היינו שפעם אחת בא עליה -

²⁶ This is according to the original (and final) text in קידושין before we said איפוך.

²⁷ The term שתוקי means that he is a ספק ממזר and אסור בבת ישראל. [Even if בדוקי means שתוקי, the ולד is אסור, unless we ask the mother.]

²⁸ This is according to the last opinion in the גמרא that תיפוך.

²⁹ One may have thought that according to the לשון of בדוקי there is no such contradiction (compared to the לשון of שתוקי), because if we examine her and she says לכשר נבעלתי she is believed; similar to what רב יוסף says here according to the ועוד. However, according to the לשון of שתוקי, she is never believed. תוספות will point out that the contradiction is even greater according to the לשון of בדוקי. See (however) footnote # 31.

³⁰ The גמרא there when it states that נאמנת וכל אמו וכל נאמנת continues immediately and explains כר"ג.

³¹ According to the לשון of שתוקי the גמרא is not discussing a case where they are בודק the mother; therefore we cannot clearly state that she would not be believed if she claimed she only had relations with the ארוס. However, according to the לשון of בדוקי the גמרא states that if the mother claims she was only with the ארוס, she is believed only according to ר"ג and here we say that even without her testimony the child is כשר even according to ר"י. See however השחר who suggests that the word 'טפי' should be omitted.

And perhaps we can differentiate between the two גמרות **that** when the גמרא relates there that he was על ארוסתו **בא** **that means they had relations** (only) **one time**; therefore there is a possibility that she became pregnant from someone else and the וולד is פסול –

אבל מודה דהכא דקאמר מיניה³² היינו שבא עליה ביאות הרבה -

However here where the גמרא states **that he admitted when he said** the child is **from me**; he did not merely say that he had relations with her, but rather he emphasized that he is certain that it is his child, **which means that they had frequent relations** –

והיה רגיל אצלה תמיד וכדאמרין³³ רוב בעילות הלך אחר הבעל:

And they were constantly together; that is why the וולד is כשר **and as we say** concerning an adulteress woman that her children are nevertheless כשר because **the majority of her relations were with the husband**. In our case also since she lived continuously with him we assume by following the rule of רוב, that it is his child.

SUMMARY

According to שמואל if the ארוסה claims she was only נבעל by the ארוס (and the ארוס does not claim anything), the וולד is כשר. If the ארוס claimed he had continual relations with the ארוסה the וולד is כשר, without בדיקת האם (at least when she was not מחלוקת). When the ארוס admits to very limited relations, that is the מחלוקת between שמואל and רב; whether the child is a ממזר according to רב (if it was דיימא according to רבא, or even לא דיימא according to אביי), or either a שתוקי or a בדוקי according to שמואל.³⁴

THINKING IT OVER

1. מדאפקרה נפשה mentions the explanation אביי gave for רב's ruling; namely **מדאפקרה נפשה** תוספות 1. לגבי אריס מפקרה נפשה לגבי עלמא.³⁵ [How] is this relevant to our תוספות?

2. רב יוסף mentions two reasons why the וולד is כשר: 'ועוד' and 'חדא'. Our תוספות asks three questions from the סוגיות in יבמות and קדושין. Which of these questions are (mainly) on the 'חדא' and which are (mainly) on the 'ועוד'?

³² Perhaps it should read מינאי.

³³ סוטה כז,א.

³⁴ See 'Chart' at the conclusion of the following (הא) תוספות ד"ה חדא (הא).

³⁵ See footnote # 22.